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May 11, 2023

State of Hawaii
Board of Land and Natural Resources
Chairperson, Dawn N.S. Chang
Kalanimoku Building
1151 Punchbowl St. Room 132
Honolulu, Hawaii 96813

Via email to: blnr.testimony@hawaii.gov

Re: May 12, 2023 Meeting Agenda Items D-3
Support for Lessee's Request for Consent to Mortgage and Security
Agreement, General Lease No. S-5844, WHR LLC, Lessee; Waiakea,
South Hilo, Hawaii, Tax Map Keys: (3) 2-1-01:012 and 2-1-05:013, 016,
017, 027, 032, and 046

Dear Chairperson Chang and Board Members:

On behalf of WHR LLC ("**Lessee**"), as Lessee under the above-referenced Lease ("**Lease**"), we write to you in support of WHR's Request for Consent to Mortgage and Security Agreement. We have reviewed the DLNR staff recommendations by Mr. Russell Y. Tsuji, Administrator, dated May 12, 2023 ("**Staff Recommendation**"), and wish to clarify certain points addressed below.

Executive Summary:

- Pursuant to WHR's request, the Board of Land and Natural Resources is being asked to approve a new Mortgage and Security Agreement ("**New Mortgage**") that will be recorded on the leasehold interest underlying the Naniloa Hotel ("**Hotel**") upon the release of the existing mortgage.
- The purpose of the New Mortgage is to describe and provide public notice of the security interest being provided Lessee as collateral for loan not to exceed \$54,000,000 ("**New Loan**") from UBS AG, a U.S. Branch of a Swiss Banking Corporation ("**UBS**"), resolving the current foreclosure litigation.
- The New Mortgage is commercially reasonable and contains provisions typical for loans of this nature and amounts as set forth herein and as further evaluated by Jordi DeHoyos, Vice President, Colliers International.
- The New Loan and the New Mortgage do not supersede or disturb the provisions of the Lease that permit State oversight of the leasehold interest underlying the Hotel.

- Approval of the New Mortgage supports the mission of the Board and the Department of the Land and Natural Resources because it enhances and protects the public trust asset.

Background:

The New Loan will refinance an existing \$50,000,000 loan ("**Existing Loan**") currently held by Wilmington Trust National Association, as Trustee for the Benefit of the Holders of Bank 2018-BNK-14, Commercial Mortgage Series 2018-BNK 14 ("**Existing Lender**"). The existing Loan is secured by that certain Leasehold Mortgage, Assignment of Leases And Rents, Security Agreement and Fixture Filing ("**Existing Mortgage**"), recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-68220552 and in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. T-10474133.

As noted in the Staff Recommendation, due to the unprecedented circumstances that occurred in connection with the recent COVID-19 pandemic, Lessee defaulted in certain obligations under the Existing Loan. Accordingly, Existing Lender is seeking to foreclose the Existing Mortgage and accordingly, filed a Complaint for Foreclosure in the Circuit Court of the Third Circuit of the State of Hawaii, Hilo Division, as Civil No. 3CCV-21-360. A receiver was appointed in respect of the Hotel on June 3, 2022. As noted in the Staff Recommendation, a hearing was held on March 20, 2023, to appoint the receiver in a second role as foreclosure commissioner was also granted, although the order in respect of such appointment was stayed, with the agreement of the Existing Lender, for sixty days, or until approximately May 20, 2023.

Seven (7) copies of a Confidential/Executive Session Only Term Sheet ("**Term Sheet**") prepared by UBS in respect of the New Loan have been or will be provided to the Board. Board Members are requested to maintain the Term Sheet as confidential and not for public disclosure, notwithstanding that certain elements of the Term Sheet may be discussed herein.

Draft agreements and instruments in respect of the New Loan are attached hereto as the following exhibits:

Exhibit

- A** General Lease S-5844
- B** Loan Agreement
- C** Promissory Note
- D** Leasehold Mortgage, Security Agreement, Financing Statement and Fixture Filing
- E** Proposed Form of Consent to Mortgage of General Lease
- F** New Lender's Counsel Letter in respect of New Loan
- G** Collier's "Loan Snapshot" Analysis of the Commercial Features of UBS Loan
- H** Lessee's Request to Add Controlling Party, dated May 8, 2023
- I** 1 IMPACTS Approval v Disapproval

Specific Responses:

1. **The mission of the Board to protect the public trust assets underlying the Lease will be supported by consenting the Mortgage and Security Agreement.**

The mission of the Department of the Land and Natural Resources ("**Department**") is to "Enhance, protect, conserve and manage Hawaii's unique and limited natural, cultural and historic resources held in public trust for current and future generations of the people of Hawaii nei, and its visitors, in partnership with others from the public and private sectors."¹

The purpose of the Lease is to ensure the premises is used for hotel and hotel-related uses (including retail, restaurant, banquet, commercial office, and spa facilities), but excluding condominium or hotel condominium uses, and shall be used for golf course and golf course related uses (including clubhouse, restaurant and bar, cart barn and driving range) and other recreational and parking uses as may be permitted under the county zoning ordinances or land use permits. *See **Exhibit A***, Lessee Covenant No. 12, page 8.

The Board's approval of the New Mortgage and Lessee's acquisition of the New Loan will support the renovation of the Hotel, the continued use of the Hotel for hotel and golf related uses, and will support tourism and economic development in the Hilo area, in accordance with the mission of the Department and the purposes of the Lease.

Denial of the New Mortgage may have significant detrimental impact on the trust asset, as detailed in **Exhibit I**.

2. **The New Loan will resolve, not exacerbate, the current pending foreclosure.**

Contrary to the concern expressed in the Staff Recommendation, the New Loan will not be used "against" the Existing Lender, the New Loan cannot be funded until the Existing Lender is repaid to their satisfaction. The Board can condition its consent accordingly, since the New Mortgage may only be recorded if and when all pending foreclosure, litigation and all pre-existing COVID related defaults are cured and the Existing Lender releases the Existing Mortgage.

The New Loan provides the solution for all COVID-related prior issues, including resolving the foreclosure. Lessee has communicated to New Lender that the Board may condition its consent to the New Mortgage on the same.

As stated in the Term Sheet, a condition of the New Loan is that UBS is provided a "recorded and insured first priority mortgage" in respect of the leasehold interest underlying the Hotel.

In order for UBS's New Mortgage to have such a first priority security interest, the Existing Lender will have to agree to release its Existing Mortgage concurrently with the funding of the New Loan. The Existing Lender will not release its existing mortgage unless and until is it satisfied that the amounts owed to it have been satisfactorily repaid. There will only be one mortgage

¹ <https://dlnr.hawaii.gov/> (May 10, 2023).

encumbering the Leasehold Interest at any one time – the Existing Mortgage until the moment of its release, and the New Mortgage thereafter

That is, the concern expressed in the Staff Recommendation that "WHR seeks approval of this loan and mortgage . . . to somehow be used later against Wilmington Trust in the foreclosure action," Staff Recommendation at 12, is a misapprehension, because the New Loan will not be funded and the New Mortgage will not be recorded as an encumbrance on the leasehold interest underlying the Hotel unless and until the Existing Lender has been satisfied.

In order to ensure this outcome, the Board may determine to condition its consent on the New Mortgage having a first priority security interest on the leasehold interest underlying the Naniloa Hotel and/or the release of the Existing Lender's mortgage.

3. The structure of the New Loan does not present additional risks to the public trust assets underlying the Lease.

General Lease S-5844 contains certain obligations of the Lessee in favor of the State of Hawaii. *See Exhibit A.* Those obligations include payment of rent (*See* Lessee Covenant No. 1, page 7 of the Lease), a prohibition against assignment of the leasehold interest without Board consent (Lessee Covenant No. 13, pg. 9 of the Lease), and a prohibition against mortgaging the leasehold interest without the prior written consent of the Chairperson of the Board (Lessee Covenant No. 20.a, pg. 12 of the Lease.). Contrary to the concerns expressed in the Staff Recommendation, it is fundamental to Hawaii law that the protections contained in the Lease in favor of the State cannot be altered or disturbed by a later recorded instrument without the express written consent of the State. For additional protection, the Board may condition its consent accordingly.

Accordingly, the provision for new mezzanine loans contained in the draft Loan Agreement does not supersede the requirement in the Lease that the Board must consent to any mortgage encumbering the leasehold interest. Staff Recommendation at 11. Further, the term "mezzanine loan" refers to a loan in one or more of the entities that own the ultimate borrower. As such, mezzanine loans are often secured by the ownership interest in the mezzanine borrowers and not by a mortgage on real estate, as mezzanine borrowers do not directly own the real estate collateral.

The Lease also contains certain protections in favor of approved mortgage lenders, including the right a new lease in the event the Lease is terminate prior to the maturity date of the Lease, the right to foreclose on the Lessee, and the right to demand a new lease. (*See* Lessee Covenants 20.d, f, and g, pgs. 13-15 of the Lease). Accordingly, those rights already exist in favor of the Existing Lender, and the risk identified in the Staff Recommendation that a new party may step into the rights of the Lessee following a foreclosure auction are already present.

4. The structure of the New Loan is reasonable, and UBS as lender, not the Board, is in the best position to analyze the ability of Lessee to repay the New Loan.

Pursuant to the Lease, the consent of the Board "shall not be unreasonably withheld." *See* Lessee Covenant No. 20.a, pg. 12 of the Lease.

A draft version of the Loan Agreement, Promissory Note, New Mortgage, and the Form of Consent to be executed by the Chairperson is attached hereto as **Exhibits B, C, D,** and **E,** respectively.

As set out in the Collier's "Loan Snapshot" Analysis of the Commercial Features of UBS Loan, attached as **Exhibit F,** the term and conditions of the New Loan contained in the exhibits are commercially reasonable for a loan of this type and amount and under current economic conditions. Please note that specific terms of the loan are being negotiated concurrently and the Loan Agreement, Promissory Note and Mortgage are subject to change. The form of the Consent to be executed by the Chairperson is intended to be in final form, subject to any conditions imposed by the Board.

Commercial Mortgage-Backed Securitized Loans (sometimes CMBS Loans) are among the most highly scrutinized loans it is possible to obtain. UBS, as lender under the New Loan, not the Board, is in the best position to analyze the ability of Lessee to meet Lessee's financial obligations, including both repayment of the New Loan and the payments required under the Lease. Following an exhaustive due diligence investigation and underwriting evaluation, UBS has determined that Lessee can and will meet its financial obligations under the New Loan.

Accordingly, the comments in the Staff Recommendation in respect of the value of the Hotel relative to the amount of the New Loan, the scheduled payments, and/or the balance due at maturity may not be relevant because when and if UBS funds the loan, it will only do so pursuant to a determination that the cashflow from the Hotel is sufficient to repay the New Loan, make the payments required under the Lease, and to fund other required costs, such as refurbishment of the Hotel.

That is, the responsibility of the Board in respect of the current request of the Lessee should be limited to ensure that the requested mortgage of the leasehold interest underlying the Hotel does not unreasonably risk the State's fee interest, and to suitable condition such mortgage in order to address any risks the Board does recognize.

Similarly, the analysis of the interest rate applicable under the New Loan provided in the Staff Recommendation may not be appropriate. Notwithstanding the concerns expressed by the Staff Recommendation, the New Loan is a fixed rate loan. *See* "Interest Rate" as stated in the Term Sheet, and New Lender's Counsel Letter in respect of New Loan, attached hereto as **Exhibit G.** If the interest rate for the New Loan were floating, the Term Sheet would provide the timing for readjustment of the rate. To the extent the Board is concerned that the interest rate for the New Loan should be fixed, it can condition its consent on that fact.

5. Lessee denies the allegations in regarding improprieties.

The Staff Recommendation states that "Here, an auditor found among other improprieties, evidence of significant self-dealing between WHR and its affiliates at a time when loan was in default and no payments were being made to Wilmington Trust; the diversion of hotel revenues for other uses away from hotel operations and in violation of the express terms of the loan documents."

Lessee denies that any improprieties occurred, and affirms that all payments and cash flows referenced in connection with the foreclosure complaint against Lessee were used for proper purposes, including hotel operations and loan procurement expenses.

6. As a condition of the New Loan, a new manager will be appointed.

As a condition of the New Loan, Ben Rafter, an individual with decades of experience managing and operating Hawaii Hotels, will be stepping in as the controlling party of Lessee. Lessee is confident that Mr. Rafter's experience and expertise will contribute to the continued success of the Hotel. In accordance with the Lease, Lessee has initiated a request to the Board to approve Mr. Rafter as a new controlling party of Lessee. See Exhibit H.

Conclusion:

On behalf of Lessee, we request the Board consent to Lessee's recordation of the New Mortgage as security for the New Loan, subject to such reasonable conditions as the Board may require.

Very truly yours,
CASE LOMBARDI

/s/ Michael L. Lam
Michael L. Lam
Matthew A. Cohen

MLL/MAC/erh

Enclosures
cc: Client (w/enclosures)

EXHIBIT A

DOUBLE SYSTEM

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34A

101
346



L-459 STATE OF HAWAII
OFFICE OF ASSISTANT REGISTRAR
RECORDED
FEB 01, 2006 10:30 AM
Doc No(s) 3385990
on Cert(s) 108,763 & 106,776



54 2/7 Z1 R1294

/s/ CARL T. WATANABE
ASSISTANT REGISTRAR
CTax (30): \$25000.00



R-1294 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
FEB 01, 2006 10:30 AM
Doc No(s) 2006-021241



54 2/7 Z1 L459

/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

LAND COURT SYSTEM

REGULAR SYSTEM

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DEPT. OF LAND AND NATURAL RESOURCES
LAND DIVISION

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TGE: A61010048
GLEN Y AJIMINE

Total Number of Pages: 54

Tax Map Key Nos. (3) 2-1-01:12,
2-1-05:13, 16, 17, 27, 32 & 46

STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

GENERAL LEASE NO. S-5844

between

STATE OF HAWAII

and

HAWAII OUTDOOR TOURS, INC., a Hawaii corporation

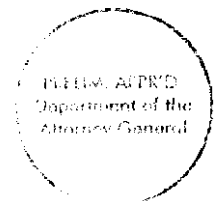
covering

Resort Site, containing an area of 6.35 acres, more or less, and
Golf Course and Allied Facilities Site, containing a gross
area of 63.775 acres, and a net area of 62.576 acres,
after exclusions

situate at Waiakea South Hilo, Island of Hawaii, Hawaii

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DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION
P.O. BOX 621
HONOLULU, HAWAII 96809



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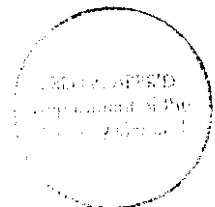


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SPECIAL CONDITIONS:

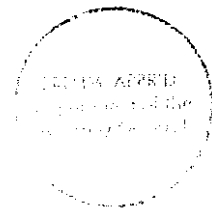
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STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

GENERAL LEASE NO. S-5844

THIS LEASE, made this 20th day of January, 2006, by and between the STATE OF HAWAII, hereinafter referred to as the "Lessor," by its Board of Land and Natural Resources, called the "Board," and HAWAII OUTDOOR TOURS, INC., a Hawaii corporation, whose address is 421 Makalika Street, Hilo, Hawaii 96720, hereinafter referred to as the "Lessee";

WITNESSETH:

The Lessor, pursuant to Sections 171-6, 171-35, and 171-61, Hawaii Revised Statutes, for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of the Lessee to be kept, observed and performed, does lease unto the Lessee, and the Lessee does lease from the Lessor the premises situate at Waiakea, South Hilo, Island of Hawaii, Hawaii, consisting of:

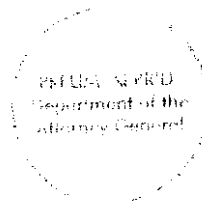
"Resort Site," containing an area of 6.35 acres, more or less, more particularly described in Exhibit "A" and as shown on the map marked Exhibit "B," attached hereto and made parts hereof, and

"Golf Course and Allied Facilities Site," containing a gross area of 63.775 acres, and a net area of 62.576 acres, after exclusions, more particularly described in Exhibit "C" and as shown on the map marked Exhibit "D," attached hereto and made parts hereof.

SUBJECT TO all encumbrances listed in Exhibits "A", "C", and "E" attached hereto and made parts hereof.

TO HAVE AND TO HOLD the leased premises unto the Lessee for the term of SIXTY FIVE (65) years, commencing on the 1st day of February, 2006, up to and including the 31st day of January, 2071, unless sooner terminated as hereinafter provided, the Lessor reserving and the Lessee yielding and paying to the Lessor at the Office of the Department of Land and Natural Resources, Honolulu, Oahu, State of Hawaii, rental as provided hereinbelow:

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A. Rent shall consist of Base Rent and Percentage Rent.

B. Base Rent.

1. Base Rent shall be an annual rental amount, payable in advance without notice or demand, in equal semi-annual installments on February 1st and August 1st of each and every year.

2. Base rent for each year during the first ten years of the lease term, up to and including the tenth (10th) year of the lease term, shall be FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00).

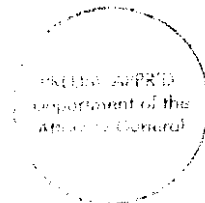
3. For the second ten years of the lease term, commencing at the beginning of the eleventh (11th) year of the lease term up to and including the twentieth (20th) year of the lease term, the annual base rent shall be an amount equal to the annual base rent for the first year of the lease term multiplied by an escalation rate of one and a half percent (1.5%), compounded annually, for each year of the first ten-year period.

4. For the third ten years of the lease term, commencing at the beginning of the twenty-first (21st) year of the lease term up to and including the thirtieth (30th) year of the lease term, the annual base rent shall be an amount equal to the annual base rent for the eleventh year of the lease term multiplied by an escalation rate of one and a half percent (1.5%), compounded annually, for each year of the second ten-year period.

C. Percentage Rent.

1. Percentage rent shall be payable annually in arrears, without notice or demand, no later than one hundred eighty (180) days after the close of each and every of Lessee's fiscal years. Each payment of percentage rent shall be accompanied by a written statement certified as correct by Lessee, or a person duly authorized by Lessee, showing in accurate detail the amount of gross receipts, by category, for the payment period, and reviewed financial statements prepared according to generally accepted accounting principles.

2. Percentage rent shall be equal to two percent (2%) of the annual gross revenue from the leased premises to the extent such amount exceeds the annual base rent.



3. The annual gross revenue shall include all revenues generated from, on, or within the leased premises, including but not limited to room revenues, food and beverage sales, retail sales, commissions, greens fees, cart and other equipment rental, club membership fees, driving range income, and the gross revenues of any sublessee or concessionaire (but not including the revenues from licensees of space for radio, television, cellular phone or other similar transmission antennas), less adjustments for:

a. Discounts, refunds and allowances made on any sale;

b. Sales and use taxes, hotel room or tourist taxes, general excise tax or other similar taxes now or in the future imposed on the sales of rooms, green and cart fees, food, beverages, merchandise or services, but only if such taxes are added to the selling price, separately stated, and collected separately from the sell price of merchandise or services, from customers;

c. Sales of fixtures, furnishings, trade fixtures or personal property that are not retail merchandise and are not sold in the ordinary course by the Lessee;

d. Charges made by credit card companies not directly or indirectly owned or controlled by the Lessee;

e. Receipts from sales of meals to employees of the Lessee consumed on the demised premises and sold to them at or below cost in the course of their employment, provided such sales are registered and recorded separately from other sales;

f. Gratuities or tips received by employees from patrons or service charges collected and turned over to employees in lieu of such employees receiving gratuities or tips from patrons;

g. Rent received from sublessees or concessionaires whose gross revenues are included in the calculation of annual gross revenue.

4. Lessee shall at all times keep and maintain accurate records of all business transactions and sales made in and from the premises. Lessor shall have the right at all reasonable times during business hours, through Lessor's duly authorized agent, attorney, or accountant, to inspect and make copies of Lessee's records, accounts, and books in any way



bearing on such sales (including copies of tax or information returns furnished any governmental authority), at the premises or at any other office of Lessee at which such books, records, and accounts may be kept, and to inspect the records, accounts and books in any way bearing on sales of any other person or firm selling goods or services in or from any part of the premises. All such information shall be held by Lessor, its agents, attorneys, and accountants in strictest confidence.

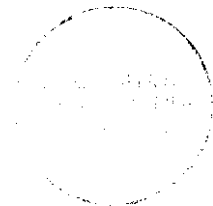
5. If an audit discloses that Lessee has underpaid the percentage rent due for any period, Lessor shall notify Lessee in writing of such deficiency and upon such notification the deficient amount shall be immediately due and payable by Lessee. If an audit by Lessor's accountant or by a licensed independent certified public accountant retained by Lessor shall disclose that rent has been underpaid by two percent (2%) or more for any period under examination, Lessor, in addition to any other remedies available in this lease or otherwise, shall be entitled to reimbursement of all costs and expenses incurred in completing any such audit in addition to any deficiency (together with applicable interest, service charge and other charges) revealed or disclosed.

6. If an audit discloses that Lessee has overpaid the percentage rent due for any period, Lessor shall notify Lessee in writing of such overpayment. Overpaid amounts shall be credited to and set off against rental amounts next due and payable following the date that such overpayment is discovered or revealed.

7. The percentage rates shall remain constant throughout the first thirty (30) years of the lease term.

D. Rental reopening. The annual base rent and percentage rent rates shall be reopened and redetermined as of the day following the expiration of the thirtieth (30th), fortieth (40th), and fiftieth (50th) years of the term.

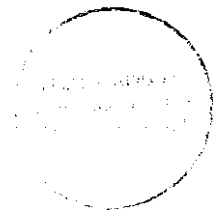
1. Determination of base rent and percentage rent upon reopening. The base rent for any ensuing period shall be the fair market rental at the time of reopening. Except as provided herein, the provisions in Hawaii Revised Statutes, Chapter 658A, shall be followed. At least six (6) months prior to the time of reopening, the fair market rental shall be determined by a staff appraisal or independent appraisal, as allowed by law, whose services shall be contracted for by the Lessor, and the Lessee shall be promptly notified by certified mail, return receipt requested, of the fair market rental as



determined by Lessor's appraiser; provided, that should the Lessee fail to notify Lessor in writing within thirty (30) days after receipt thereof that Lessee disagrees with the fair market rental as determined by Lessor's appraiser and that Lessee has appointed its own appraiser to prepare an independent appraisal report, then the fair market rental as determined by Lessor's appraiser shall be deemed to have been accepted by Lessee and shall be the fair market rental as of the date of reopening. If Lessee has notified Lessor and appointed his appraiser as stated hereinabove, Lessee's appraiser shall complete his appraisal and the two appraisers shall then exchange their reports within forty-five (45) days from the date of Lessee's appointment of the appraiser.

The two appraisers shall review each other's reports and make every effort to resolve whatever differences they may have. However, should differences still exist fourteen (14) days after the exchange, the two appraisers shall within seven (7) days thereafter appoint a third appraiser who shall also prepare an independent appraisal report based on the review of the two appraisal reports prepared and any other data. Copies thereof shall be furnished to the first two appraisers within forty-five (45) days of the appointment. Within twenty (20) days after receiving the third appraisal report, all three shall meet and determine the fair market rental in issue. The fair market rental as determined by a majority of the appraisers shall be final and binding upon both Lessor and Lessee, subject to vacation, modification or correction in accordance with the provisions of Chapter 658A, Hawaii Revised Statutes. Each party shall pay for its own appraiser and the cost of the services of the third appraiser shall be borne equally by the Lessor and the Lessee. All appraisal reports shall become part of the public record of the Lessor.

In the event that the appraisers are unable to determine the fair market rental before the reopening date, or by the foregoing prescribed time, whichever is later, the Lessee shall pay the fair market rental as determined by Lessor's new appraised value until the new rent is determined and the rental paid by Lessee shall then be subject to retroactive adjustments as appropriate to reflect the fair market rental determined as set forth hereinabove. However, Lessee or Lessee's appraiser's failure to comply with the procedures set forth above shall constitute a waiver of Lessee's right to contest the new rent, and the Lessee shall pay the rent as determined by Lessor's appraiser without any retroactive adjustments. Alternatively, Lessor may treat this failure as a breach of this lease and terminate the lease.



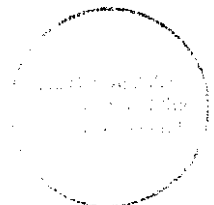
E. Interest rate and service charge. The interest rate on any and all unpaid or delinquent rentals shall be at one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) per month for each month of delinquency.

RESERVING UNTO THE LESSOR THE FOLLOWING:

1. Minerals and waters. (a) All minerals as hereinafter defined, in, on or under the premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove the minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of the minerals by any means whatsoever, including strip mining. "Minerals," as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under the land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and used in general construction in furtherance of the Lessee's permitted activities on the premises and not for sale to others. (b) All surface and ground waters appurtenant to the premises and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the premises required in the exercise of this right reserved; provided, however, that as a condition precedent to the exercise by the Lessor of the rights reserved in this paragraph, just compensation shall be paid to the Lessee for any of Lessee's improvements taken.

2. Ownership of improvements. The ownership of all improvements of whatever kind or nature, including but not limited to fences and stockwater system(s) located on the land prior to or on the commencement date of this lease, excluding those improvements listed in paragraph 48 hereunder and those improvements constructed during the term of this lease unless provided otherwise.

SUBJECT TO the rights of native tenants and to regulatory rights and ownership rights (if any) of the State of Hawaii established pursuant to state law including Chapter 6E, Hawaii Revised Statutes, over prehistoric or historic remains found in, on, or under the land.



THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

1. Payment of rent. The Lessee shall pay the rent to the Lessor at the times, in the manner and form provided in this lease and at the place specified above, or at any other place the Lessor may from time to time designate, in legal tender of the United States of America.

2. Taxes, assessments, etc. The Lessee shall pay or cause to be paid, when due, the amount of all taxes, rates, and assessments of every description as to which the premises or any part, or any improvements, or the Lessor or Lessee, are now or may be assessed or become liable by authority of law during the term of this lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only those installments, together with interest, which becomes due and payable during the term of this lease.

3. Utility services. The Lessee shall be responsible for obtaining any utility services and shall pay when due all charges, duties and rates of every description, including water, sewer, gas, refuse collection or any other charges, as to which the premises or any part, or any improvements, or the Lessor or Lessee may become liable for during the term, whether assessed to or payable by the Lessor or Lessee.

4. Covenant against discrimination. The use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

5. Sanitation. The Lessee shall keep the premises and improvements in a strictly clean, sanitary and orderly condition.

6. Waste and unlawful, improper or offensive use of premises. The Lessee shall not commit, suffer or permit to be committed any waste, nuisance, strip or unlawful, improper or offensive use of the premises or any part, nor, without the prior written consent of the Lessor, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees now growing on the premises.

7. Compliance with laws. The Lessee shall comply with all of the requirements of all municipal, state, and federal



authorities and observe all municipal, state and federal laws applicable to the premises, now in force or which may be in force.

8. Inspection of premises. The Lessee shall permit the Lessor and its agents, at all reasonable times during the lease term, to enter the premises and examine the state of its repair and condition.

9. Improvements. The Lessee shall not at any time during the term construct, place, maintain or install on the premises any building, structure or improvement of any kind and description except with the prior written approval of the Board and upon those conditions the Board may impose, including any adjustment of rent, unless otherwise provided in this lease. The Lessee shall own these improvements until the expiration or other termination of the lease, at which time the ownership shall, at the option of the Lessor, remain and become the property of the Lessor or shall be removed by Lessee at Lessee's sole cost and expense.

10. Repairs to improvements. The Lessee shall, at its own expense, keep, repair, and maintain all buildings and improvements now existing or hereafter constructed or installed on the premises in good order, condition and repair, reasonable wear and tear excepted.

11. Liens. The Lessee shall not commit or suffer any act or neglect which results in the premises, any improvement, or the leasehold estate of the Lessee becoming subject to any attachment, lien, charge, or encumbrance, except as provided in this lease, and shall indemnify, defend, and hold the Lessor harmless from and against all attachments, liens, charges, and encumbrances and all resulting expenses.

12. Character of use. The Lessee shall use or allow the premises leased, on all parcels, except the golf course parcel, to be used solely for hotel and hotel-related uses (including retail, restaurant, banquet, commercial office, and spa facilities), but excluding condominium or hotel condominium uses. The golf course parcel (tax map key no. (3) 2-1-01:12) shall be used for golf course and golf course related uses (including clubhouse, restaurant and bar, cart barn and driving range) and other recreational and parking uses as may be permitted under the county zoning ordinances or land use permits obtained from the county; provided, however, that in the event the golf course parcel is withdrawn or deleted from the lease, any rights to use the golf course parcel to serve the hotel

parcels shall terminate. The Lessee, with the consent of the Department of Land and Natural Resources, may sublease portions of the subject property for uses not permitted above (e.g., telecommunication antennas), provided that the Department of Land and Natural Resources shall have the right to revise the rent based on the rent to be charged the sublessee.

13. Assignments, etc. The Lessee shall not transfer, assign, or permit any other person to occupy or use the premises or any portion or transfer or assign this lease or any interest, either voluntarily or by operation of law, except by way of devise, bequest, or intestate succession, and any transfer or assignment made shall be null and void; provided that with the prior written approval of the Board the assignment and transfer of this lease or any portion may be made in accordance with current industry standards, as determined by the Board; provided, further, that the approval of any assignment of lease shall be subject to the Assignment of Lease Evaluation Policy adopted by the Board on December 15, 1989, as amended, a copy of which is attached hereto as Exhibit "G," except that payment of an assignment premium shall not be assessed.

If the Lessee is a partnership, joint venture or corporation, the sale or transfer of 20% or more of ownership interest or stocks by dissolution, merger or any other means shall be deemed an assignment for purposes of this paragraph. If the Lessee is a manager-managed limited liability company, any changes in the manager shall be deemed an assignment for purposes of this paragraph. If the Lessee is a member managed limited liability company, the sale or transfer of twenty percent (20%) or more of the total membership interests shall be deemed an assignment for purposes of this paragraph.

14. Subletting. Except as otherwise provided in this lease, the Lessee shall not rent or sublet the whole or any portion of the premises, without the prior written approval of the Board; provided, however, that prior to this approval, the Board shall have the right to review and approve the rent to be charged to the proposed sublessee and that in the case where the Lessee is required to pay rent based on a percentage of its gross receipts, the receipts of the sublessee or any subsequent sublessees shall be included as part of the Lessee's gross receipts, and the Board shall have the right to revise the rent of the premises based upon the rental rate charged to the sublessee including the percentage rent, if applicable, and provided, further, that the rent may not be revised downward.

15. Indemnity. The Lessee shall indemnify, defend,



and hold the Lessor harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: 1) any act or omission on the part of Lessee relating to Lessee's use, occupancy, maintenance, or enjoyment of the premises; 2) any failure on the part of the Lessee to maintain the premises and sidewalks, roadways and parking areas adjacent thereto in Lessee's use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Lessee's non-observance or non-performance of any of the terms, covenants, and conditions of this lease or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

16. Costs of litigation. In case the Lessor shall, without any fault on Lessor's part, be made a party to any litigation commenced by or against the Lessee (other than condemnation proceedings), the Lessee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the Lessor; furthermore, the Lessee shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the Lessor in enforcing the covenants and agreements of this lease, in recovering possession of the premises, or in the collection of delinquent rental, taxes, and any and all other charges.

17. Liability insurance. The Lessee shall procure and maintain, at its cost and expense and acceptable to the Lessor, in full force and effect throughout the term of this lease, commercial general liability insurance, in an amount of at least \$500,000.00 for each occurrence and \$1,000,000.00 aggregate, with an insurance company or companies licensed to do business in the State of Hawaii. The policy or policies of insurance shall name the State of Hawaii as an additional insured. The insurance shall cover the entire premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the premises in the use or control of the Lessee.

The Lessee, prior to entry and use of the premises or within fifteen (15) days from the effective date of this lease, whichever is sooner, shall furnish the Lessor with a certificate(s) showing the policy(s) to be initially in force, keep the certificate(s) on deposit during the entire lease term, and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be cancelled, limited in



scope of coverage, or nonrenewed until after thirty (30) days written notice has been given to the Lessor.

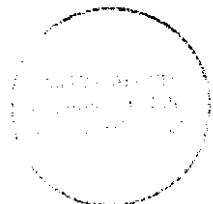
The Lessor shall retain the right at any time to review the coverage, form, and amount of the insurance required by this lease. If, in the opinion of the Lessor, the insurance provisions in this lease do not provide adequate protection for the Lessor, the Lessor may require Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Lessor's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Lessor shall notify Lessee in writing of changes in the insurance requirements and Lessee shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Lessor incorporating the changes within thirty (30) days of receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit Lessee's liability under this lease nor to release or relieve the Lessee of the indemnification provisions and requirements of this lease. Notwithstanding the policy(s) of insurance, Lessee shall be obligated for the full and total amount of any damage, injury, or loss caused by Lessee's negligence or neglect connected with this lease.

It is agreed that any insurance maintained by the Lessor will apply in excess of, and not contribute with, insurance provided by Lessee's policy.

18. Bond, performance. The Lessee shall, at its own cost and expense, within fifteen (15) days from the effective date of this lease, procure and deposit with the Lessor and thereafter keep in full force and effect during the term of this lease a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by Lessee of all the terms, conditions, and covenants of this lease, in an amount equal to two times the annual rental then payable. This bond shall provide that in case of a breach or default of any of the lease terms, covenants, conditions, and agreements, the full amount of the bond shall be paid to the Lessor as liquidated and ascertained damages and not as a penalty.

19. Lessor's lien. The Lessor shall have a lien on all the buildings and improvements owned or placed on the premises by the Lessee, on all property kept or used on the premises, whether the same is exempt from execution or not and on the rents of all improvements and buildings located on the



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premises for all Lessor's costs, attorney's fees, rent reserved, for all taxes and assessments paid by the Lessor on behalf of the Lessee, and for the payment of all money provided in this lease to be paid by the Lessee, and this lien shall continue until the amounts due are paid.

20. Mortgages.

a. Authorized Mortgages. Notwithstanding anything to the contrary contained in this lease, Lessee may from time to time with the prior written consent of the Chairperson, which consent shall not be unreasonably withheld, assign this lease by way of mortgage (an "Authorized Mortgage") to any bank, insurance company, or other lending institution legally permitted to make mortgage loans in the State of Hawaii, as mortgagee (an "Authorized Mortgagee"). Any Authorized Mortgagee and its permitted assigns may enforce the Authorized Mortgage and acquire title to the leasehold estate in any lawful way; may, pending foreclosure of the Authorized Mortgage (or pending sale of this lease in lieu of foreclosure of the Authorized Mortgage), take possession of and rent and operate the Premises; and may, upon foreclosure of the Authorized Mortgage (or upon such sale in lieu of foreclosure thereof), without further consent of Lessor, sell and assign the leasehold estate by assignment in which the assignee shall expressly assume and agree to observe and perform the terms and conditions of this lease on Lessee's part to be observed and performed; and such assignee may make a purchase money mortgage of this lease to the assignor thereof; provided, that upon the execution of such assignment or mortgage a true copy thereof shall be delivered promptly to Lessor. Nothing contained in such mortgage shall release or be deemed to relieve Lessee from full and faithful observance and performance of this lease or from any liability for the nonobservance or nonperformance hereof, nor be deemed to constitute a waiver of any rights of Lessor hereunder. In the event of a conflict between this lease and the Authorized Mortgage, the provisions of this lease shall control. The Authorized Mortgagee or its assigns of the Authorized Mortgage shall be liable to perform the obligations herein imposed on Lessee only during the period such person has possession or ownership of the leasehold estate.

b. Protection of Authorized Mortgagee. So long as there shall be in existence an Authorized Mortgage of this lease, a copy of which was delivered to Lessor, Lessor shall not terminate, cancel, surrender or accept a surrender of this lease because of any default on the part of Lessee to observe or perform any of the covenants or conditions herein contained if the Authorized Mortgagee or its assigns, within one hundred



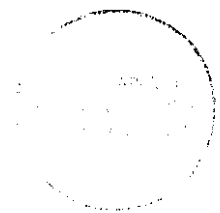
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twenty (120) days from the date written notice of such default shall have been mailed by Lessor to the Authorized Mortgagee at its last address known to Lessor, shall cure such default, if the same can be cured by the payment of money, or if such is not the case, shall undertake in writing to perform and shall thereafter pay all rent and other charges as and when due under this lease and perform all other covenants of this lease capable of performance by the Authorized Mortgagee or its assigns until such time as this lease shall be sold upon foreclosure of the Authorized Mortgage commenced promptly and completed with due diligence, and any default (i) consisting of Lessee's failure promptly to discharge any lien, charge or encumbrance against the Premises junior in priority to the Authorized Mortgage or (ii) which is otherwise not susceptible to cure by the Authorized Mortgagee except upon obtaining possession of the Premises or by foreclosure, shall be deemed to be duly cured if the Authorized Mortgage shall be foreclosed by appropriate action instituted within said one hundred twenty (120) day period and thereafter prosecuted in a timely manner. Lessor agrees that, simultaneously with mailing or delivering any notice of default or breach under or with respect to this lease to Lessee, it will mail or deliver a copy thereof to the Authorized Mortgagee at such address of which Lessor may be notified in writing.

c. Insurance Policy. Lessor agrees that the name of any Authorized Mortgagee may be added as the primary loss payee to any and all insurance policies required to be carried by Lessee under this lease.

d. New Lease with an Authorized Mortgagee. In the event of termination of this lease for any reason (including, without limitation, by reason of any default by Lessee or by reason of the disaffirmance thereof by Lessee, as a debtor-in-possession, or by a receiver, liquidator or trustee for Lessee or its property), Lessor, if requested by an Authorized Mortgagee, will enter into a new lease (the "New Lease") of the Premises with such Authorized Mortgagee and/or its designees, which New Lease shall commence as of the date of termination of this lease and shall run for the remainder of the term (as if this lease had not terminated), at the same rent, additional rent, and supplemental rent (if any) and upon the same terms, provisions, covenants and agreements, and subject to the rights, if any, of any parties then in possession of any part of the Premises, provided that:

(i) the Authorized Mortgagee shall make written request upon Lessor for the New Lease within 30 days after the date of termination;



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(ii) the Authorized Mortgagee shall pay to Lessor at the time of the execution and delivery of the New Lease any and all sums which would, at the time of the execution and delivery thereof be due and unpaid pursuant to this lease but for its termination, and in addition thereto any expenses, including reasonable attorneys' fees, to which Lessor shall have been subjected by reason of Lessee's default; and

(iii) the Authorized Mortgagee shall perform and observe all covenants in this lease to be performed and observed by Lessee, and shall further remedy any other conditions which Lessee under this terminated lease was obligated to perform under its terms, to the extent the same are curable or may be performed by the Authorized Mortgagee.

e. New Lease Prior to Fee Mortgages. Any New Lease shall be prior to any mortgage, deed of trust, or other lien, charge, or encumbrance on the fee of the Premises made subsequent to the Authorized Mortgage, and shall be accompanied by a quit-claim conveyance of title to the Improvements (free of any mortgage, deed of trust, lien, charge, or encumbrance created by Lessor after the execution of this lease) for a term of years equal to the term of the New Lease, subject to the reversion in favor of Lessor upon the expiration or earlier termination of the New Lease. Nothing herein contained shall require the Authorized Mortgagee to enter into a New Lease nor to cure any default of Lessee.

f. Foreclosure Without Lessor's Consent. Neither foreclosure of any Authorized Mortgage (or any sale thereunder), whether by judicial proceedings or by virtue of any power contained in any such Authorized Mortgage, nor any conveyance of Lessee's leasehold interest to the Authorized Mortgagee or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall require the consent of Lessor or constitute a breach of any provision of, or a default under, this lease, and upon such foreclosure, sale or conveyance, Lessor shall recognize the purchaser or other transferee in connection therewith as the lessee under the lease. If the Authorized Mortgagee or any designee of it becomes the lessee under this lease or under any New Lease, the Authorized Mortgagee or its designee shall be liable for the obligations of Lessee under this lease or the New Lease only to the extent that such liabilities arise during the period of time that the Authorized Mortgagee or its designee constitutes the actual beneficial holder of the leasehold interest.



g. Authorized Mortgagee's Liability Under New Lease; Restriction on Subleases. If the Authorized Mortgagee shall elect to demand a New Lease, Lessor agrees, at the request of, on behalf of and at the expense of the Authorized Mortgagee, upon a guaranty, indemnity and/or other assurance from the Authorized Mortgagee reasonably satisfactory to Lessor, to institute and pursue diligently to conclusion the appropriate legal remedy or remedies to oust or remove Lessee from occupying the Premises, but not any subtenant actually occupying the Premises or any part thereof. Unless and until Lessor has received notice from the Authorized Mortgagee that the Authorized Mortgagee elects not to demand a New Lease, or until the period therefor has expired, Lessor shall not cancel or agree to the termination or surrender of any existing subleases nor enter into any new subleases hereunder without the prior written consent of the Authorized Mortgagee.

21. Breach. Time is of the essence in this agreement. If the Lessee shall fail to pay the rent, or any part thereof, at the times and in the manner provided in this lease and this failure shall continue for a period of more than thirty (30) days after delivery by the Lessor of a written notice of breach or default and demand for cure, by personal service, registered mail or certified mail to the Lessee and to each holder of record having a security interest in the premises, or if the Lessee shall become bankrupt, or shall abandon the premises, or if this lease and premises shall be attached or taken by operation of law, or if any assignment is made of the Lessee's property for the benefit of creditors, or if Lessee shall fail to observe and perform any of the covenants, terms, and conditions contained in this lease and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) days after delivery by the Lessor of a written notice of breach or default and demand for cure, by personal service, registered mail or certified mail to the Lessee at its last known address and to each holder of record having a security interest in the premises, the Lessor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter the premises, or any part, and upon or without the entry, at its option, terminate this lease without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of termination, at the option of the Lessor, all buildings and improvements shall remain and become the property of the Lessor or shall be removed by Lessee; furthermore, Lessor shall retain all rent paid in advance to be applied to any damages.

22. Condemnation. If at any time, during the term of

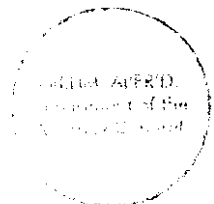


this lease, any portion of the premises should be condemned, or required for public purposes by any county or city and county, the rental shall be reduced in proportion to the value of the portion of the premises condemned. The Lessee shall be entitled to receive from the condemning authority (a) the value of growing crops, if any, which Lessee is not permitted to harvest and (b) the proportionate value of the Lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of the lease; provided, that the Lessee may, in the alternative, remove and relocate its improvements to the remainder of the premises occupied by the Lessee. The Lessee shall not by reason of the condemnation be entitled to any claim against the Lessor for condemnation or indemnity for leasehold interest and all compensation payable or to be paid for or on account of the leasehold interest by reason of the condemnation shall be payable to and be the sole property of the Lessor. The foregoing rights of the Lessee shall not be exclusive of any other to which Lessee may be entitled by law. Where the portion taken renders the remainder unsuitable for the use or uses for which the premises were leased, the Lessee shall have the option to surrender this lease and be discharged and relieved from any further liability; provided, that Lessee may remove the permanent improvements constructed, erected and placed by it within any reasonable period allowed by the Lessor.

23. Right to enter. The Lessor or the County and their agents or representatives shall have the right to enter and cross any portion of the premises for the purpose of performing any public or official duties; provided, however, in the exercise of these rights, the Lessor or the County shall not interfere unreasonably with the Lessee or Lessee's use and enjoyment of the premises.

24. Inspection by prospective bidders. The Lessor shall have the right to authorize any person or persons to enter upon and inspect the premises at all reasonable times following a published notice for its proposed disposition for purposes of informing and apprising that person or persons of the condition of the lands preparatory to the proposed disposition; provided, however, that any entry and inspection shall be conducted during reasonable hours after notice to enter is first given to the Lessee, and shall, if the Lessee so requires, be made in the company of the Lessee or designated agents of the Lessee; provided, further, that no authorization shall be given more than two years before the expiration of the term of this lease.

25. Acceptance of rent not a waiver. The acceptance of rent by the Lessor shall not be deemed a waiver of any breach

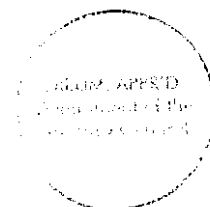


by the Lessee of any term, covenant, or condition of this lease, nor of the Lessor's right of re-entry for breach of covenant, nor of the Lessor's right to declare and enforce a forfeiture for any breach, and the failure of the Lessor to insist upon strict performance of any term, covenant, or condition, or to exercise any option conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option.

26. Extension of time. Notwithstanding any provision contained in this lease, when applicable, the Board may for good cause shown, allow additional time beyond the time or times specified in this lease for the Lessee to comply, observe, and perform any of the lease terms, conditions, and covenants.

27. Justification of sureties. Any bonds required by this lease shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business in the State of Hawaii, or by not less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in Section 78-20, Hawaii Revised Statutes; provided, however, the Lessee may furnish a bond in like amount, conditioned as aforesaid, executed by it alone as obligor, if, in lieu of any surety or sureties, it shall also furnish and at all times thereafter keep and maintain on deposit with the Lessor security in certified checks, certificates of deposit (payable on demand or after a period the Lessor may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to the Lessor a deed or deeds of trust of real property, all of a character which is satisfactory to Lessor and valued in the aggregate at not less than the principal amount of the bond. It is agreed that the value of any securities which may be accepted and at any time thereafter held by the Lessor shall be determined by the Lessor, and that the Lessee may, with the approval of the Lessor, exchange other securities or money for any of the deposited securities if in the judgment of the Lessor the substitute securities or money shall be at least equal in value to those withdrawn. It is further agreed that substitution of sureties or the substitution of a deposit of security for the obligation of a surety or sureties may be made by the Lessee, but only upon the written consent of the Lessor and that until this consent is granted, which shall be discretionary with the Lessor, no surety shall be released or relieved from any obligation.

28. Waiver, modification, reimposition of bond and liability insurance provisions. Upon substantial compliance by the Lessee of the terms, covenants, and conditions contained in



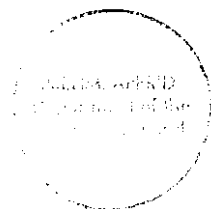
this lease on its part to be observed or performed, the Lessor at its discretion may in writing, waive or suspend the performance bond and/or improvement bond requirements or may, in writing, modify the particular bond(s) or liability insurance requirements by reducing its amount; provided, however, that the Lessor reserves the right to reactivate the bonds or reimpose the bond(s) and/or liability insurance in and to their original tenor and form at any time throughout the term of this lease.

29. Quiet enjoyment. The Lessor covenants and agrees with the Lessee that upon payment of the rent at the times and in the manner provided and the observance and performance of these covenants, terms, and conditions on the part of the Lessee to be observed and performed, the Lessee shall and may have, hold, possess, and enjoy the premises for the term of the lease, without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through, or under it.

30. Surrender. The Lessee shall, at the end of the term or other sooner termination of this lease, peaceably deliver unto the Lessor possession of the premises in a clean and orderly condition, together with all improvements existing or constructed thereon or Lessee shall remove such improvements, at the option of the Lessor. Furthermore, upon the expiration, termination, and/or revocation of this lease, should the Lessee fail to remove any and all of Lessee's personal property from the premises, after notice thereof, the Board may remove any and all personal property from the premises and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Lessee, and the Lessee does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination of the lease.

31. Non-warranty. The Lessor does not warrant the conditions of the premises, as the same are being leased as is.

32. Hazardous materials. Lessee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Lessee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the premises any such materials except to use in the ordinary course of Lessee's business, and then only after written notice is given to Lessor of the identity of such materials and upon Lessor's consent which consent may be withheld at Lessor's sole and absolute discretion. If any lender or governmental agency



shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Lessee, then the Lessee shall be responsible for the reasonable costs thereof. In addition, Lessee shall execute affidavits, representations and the like from time to time at Lessor's request concerning Lessee's best knowledge and belief regarding the presence of hazardous materials on the premises placed or released by Lessee.

Lessee agrees to indemnify, defend, and hold Lessor harmless, from any damages and claims resulting from the release of hazardous materials on the premises occurring while Lessee is in possession, or elsewhere if caused by Lessee or persons acting under Lessee. These covenants shall survive the expiration or earlier termination of the lease.

For the purpose of this lease "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

33. Hawaii law. This lease shall be construed, interpreted, and governed by the laws of the State of Hawaii.

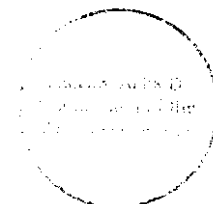
34. Exhibits - Incorporation in lease. All exhibits referred to are attached to this lease and hereby are deemed incorporated by reference.

35. Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe or limit the scope or intent of any provision of this lease.

36. Partial invalidity. If any term, provision, covenant or condition of this lease should be held to be invalid, void or unenforceable, the remainder of this lease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

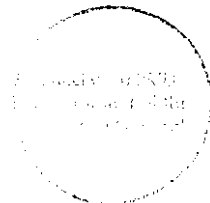
37. Time is of the essence. Time is of the essence in all provisions of this lease.

38. Archaeological sites. In the event any unanticipated historic, prehistoric, or archaeological sites or



remains such as shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings, or walls are found on the premises, the Lessee and the Lessee's agents, employees and representatives shall immediately stop all land utilization and/or work and contact the Historic Preservation Office in compliance with Chapter 6E, Hawaii Revised Statutes.

39. Incorporation by reference. References in this lease to various parcels of land are in accordance with those designated in the Notice of Sale and the Conduct of Sale which, together with the Special Notice to Bidders, are incorporated and made a part of this lease. The terms of this lease shall govern where there is any inconsistency between the lease terms and the terms contained in the Special Notice to Bidders.



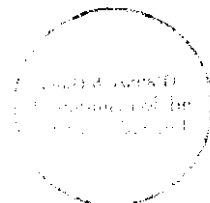
SPECIAL CONDITIONS

40. Improvements. The Lessee shall, at its own cost and expense, within three (3) years after the commencement date of the lease, complete the renovation of the existing hotel, at a cost of not less than FIVE MILLION AND NO/100 DOLLARS (\$5,000,000.00), in accordance with plans and specifications submitted by the Lessee to and approved in writing by the Chairperson and in full compliance with all applicable laws, ordinances, rules and regulations. Said amount shall represent hard costs only (including furniture, fixtures and equipment and landscaping improvements) and shall not include soft costs such as design, architectural, planning, and permitting costs. Said improvements shall be in accordance with plans submitted to the Chairperson for approval prior to construction.

41. Bond, improvement. The Lessee, upon submittal and written approval of the construction plan shall within sixty (60) days procure and deposit with the Lessor a surety bond in the amount of FIVE MILLION AND NO/100 DOLLARS (\$5,000,000.00), acceptable to the Chairperson, which bond shall name the State as obligee, conditioned upon the faithful observance and performance of the building requirement contained in this lease, the completion of the building and improvements on or before the specified date of completion free from all liens and claims, and that the Lessee shall hold the State harmless from all liens, suits, actions or damages arising out of, caused from or attributable to the work performed pursuant to the building requirement.

42. Fire and extended coverage insurance. The Lessee, at its cost and expense, shall procure and maintain at all times during the term of this lease, fire and extended coverage insurance with an insurance company(s) licensed to do business in the State of Hawaii, insuring all buildings and improvements erected on the land leased in the joint names of Lessor and Lessee, with the standard mortgage clause for Mortgagee, if any, as their interest may appear, in an amount equal to the replacement cost of the facilities and shall pay the premiums at the time and place required under the policy.

In the event of total or partial loss, any proceeds derived from the policy(s) shall be used by the Lessee for rebuilding, repairing, or otherwise reinstating the same buildings in a good and substantial manner according to plans and specifications approved in writing by the Board; provided, however, that with the approval of the Lessor, the Lessee may



surrender this lease and pay the balance owing on any mortgage and the Lessee shall then receive that portion of the proceeds which the unexpired term of this lease at the time of the loss or damage bears to the whole of the term, the Lessor to be paid the balance of the proceeds.

The Lessee shall furnish the Lessor on or before the commencement date of this lease, a certificate showing the policy(s) to be in full force and effect and shall furnish a like certificate upon each renewal of the policy(s). Each certificate(s) shall contain or be accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(s) until after thirty (30) days written notice has been given to the Lessor.

All rights or claims of subrogation against the State of Hawaii, its officers, employees, and agents are waived.

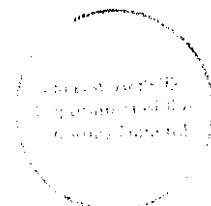
43. Phase one (1) hazardous waste evaluation. Prior to the termination of this lease or the assignment of the leasehold, Lessee shall conduct a Phase One (1) Hazardous Waste Evaluation and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency and the Department of Land and Natural Resources. Any assignment or voluntary termination by the Lessee will not be approved by the Board of Land and Natural Resources unless this evaluation and abatement provision has been executed. This provision shall survive and continue in effect after termination of this lease.

44. Survey and boundary stakeout. The Lessee shall be solely responsible for any survey and boundary stakeout of the leased premises.

45. Environmental assessment. The Lessee shall be responsible for compliance with Chapter 343, Hawaii Revised Statutes, with respect to any improvements or increased development of the property to be undertaken by Lessee.

46. Subordination of existing subleases. This lease is subject to subleases Nos. 1 through 5, inclusive, as more particularly described in Exhibit "A" of the Board of Land and Natural Resources submittal dated April 12, 2002, item D-29, more particularly described in Exhibit "F," attached hereto and made a part hereof, as subordinate encumbrances to this lease.

47. Reserved.

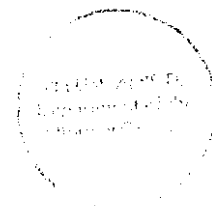


48. Existing improvements. The premises has existing improvements of a 391-room mid-rise hotel and golf course, including one outdoor swimming pool, two restaurants, three cocktail lounges, six banquet rooms, a hair salon, a gift shop, and a spa facility. The improvements were originally constructed between 1965 and 1969, and renovated in the late 1980's and early 1990's.

49. Hunting. No hunting shall be allowed on the premises during the term of the lease.

50. Audit and examination of books, etc. The Lessee shall, at all reasonable times, permit the Lessor and/or its authorized agents and employees, upon reasonable notice given by the Lessor, to audit, examine and to make copies of all books, accounts, records and receipts of the Lessee concerning its operations under this lease.

51. Environmental regulations. Lessee shall comply with all applicable federal, state and county environmental impact regulations, including but not limited to Chapter 343, Hawaii Revised Statutes, as amended, and regulations governing historic preservation.



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Definitions.

1. The use of any gender shall include all genders, and if there is more than one lessee, then all words used in the singular shall extend to and include the plural.

2. As used in this lease, unless clearly repugnant to the context:

(a) "Chairperson" means the Chairperson of the Board of Land and Natural Resources of the State of Hawaii or his successor.

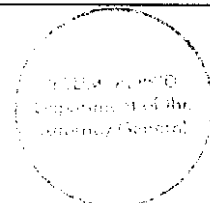
(b) "Lessee" means and includes the Lessee, its officers, employees, invitees, successors or permitted assigns.

(c) "Holder of record of a security interest" means a person who is the owner or possessor of a security interest in the land leased and who has filed with the Department of Land and Natural Resources and with the Bureau of Conveyances of the State of Hawaii a copy of this interest.

(d) "Premises" means the land leased and all buildings and improvements now or hereinafter constructed and installed on the land leased.

(e) "Waste" includes, but is not limited to, (1) permitting the premises, or any portion, to become unduly eroded or failure to take proper precautions or make reasonable effort to prevent or correct the erosion; (2) permitting a substantial increase in noxious weeds in uncultivated portions of the premises; and (3) failure to employ all of the usable portions of the premises.

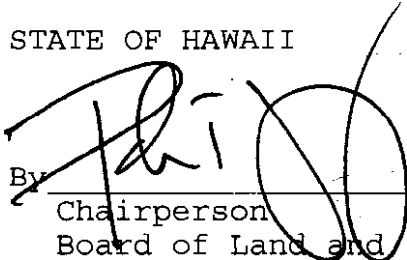
(f) "Days" shall mean calendar days, unless otherwise specified. _____



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IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused these presents to be executed the day, month and year first above written.

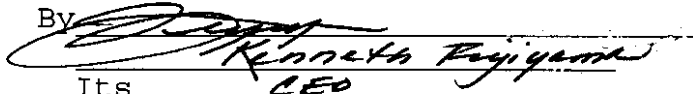
STATE OF HAWAII

By 
Chairperson
Board of Land and
Natural Resources

Approved by the Board of Land and Natural Resources at its meetings held on December 14, 2001, April 12, 2002, June 13, 2003, and July 9, 2004.

LESSOR

HAWAII OUTDOOR TOURS, INC., a
Hawaii corporation

By 
Its CEO

By _____
Its _____

LESSEE

APPROVED AS TO FORM:


Deputy Attorney General

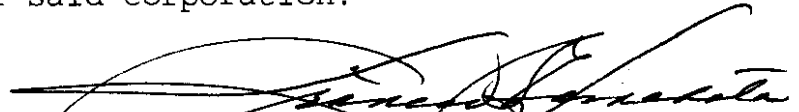
Dated: 1/23/06



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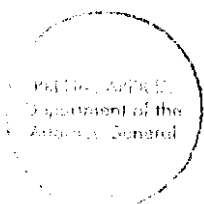
STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 18th day of January, 2006,
before me appeared Kenneth Fujiyama and _____
_____, to me personally known, who, being by me duly
sworn, did say that ~~they are~~ the CEO
~~and~~ _____, respectively of HAWAII
OUTDOOR TOURS, INC., a Hawaii corporation, and that said
instrument was signed in behalf of said corporation by authority
of its Board of Directors, and the said Kenneth Fujiyama
~~and~~ _____ acknowledged said instrument to be
the free act and deed of said corporation.



Notary Public, State of Hawaii
Frances S. Hamabata

My commission expires: 7-16-06



YA



STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES

HONOLULU

C.S.F. No. 23,963

January 26, 2005

(REVISED – JANUARY 2005)
RESORT SITE

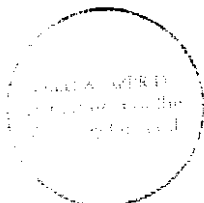
Waiakea, South Hilo, Island of Hawaii, Hawaii

Comprising the following:

- A. Portion of the Government (Crown) Land of Waiakea including all of Lots 5 (Revised), 6 (Revised), 7 and 8 of Ocean View Lots, Lot A and Remnant A-1 of Government Remnants.
- B. All of Land Court Application 1300, as shown on Map 1, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii covered by Transfer Certificate of Title 108,763 issued to the State of Hawaii (Land Office Deed S-24138).

Beginning at the southwest corner of this parcel of land and on the north side of Banyan Drive, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HALAI" being 4324.00 feet North and 10,813.61 feet East, thence running by azimuths measured clockwise from True South:-

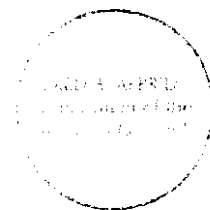
- 1. 128° 28' 442.42 feet along Government Remnants B-1 and Lot B, Lot 4 (Revised) of Ocean View Lots and the remainder of the Government (Crown) Land of Waiakea to highwater mark at seashore;



2. Thence along highwater mark at seashore, the direct azimuth and distance between points near highwater mark at seashore being:
168° 52' 122.30 feet;
3. 308° 28' 106.82 feet along the remainder of the Government (Crown) Land of Waiakea;
4. 228° 21' 30" 168.68 feet along the remainder of the Government (Crown) Land of Waiakea;
5. 145° 38' 26.93 feet along the remainder of the Government (Crown) Land of Waiakea to highwater mark at seashore;

Thence along highwater mark at seashore for the next four (4) courses, the direct azimuths and distances between points near highwater mark at seashore being:

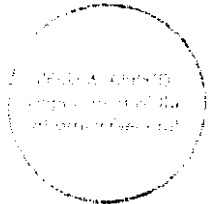
6. 205° 04' 95.08 feet;
7. 257° 47' 224.00 feet;
8. 306° 20' 258.57 feet;
9. 291° 02' 30" 184.28 feet;
10. 52° 35' 362.20 feet along Grant 10119 to Harriet Blanche Rose;
11. 4° 13' 145.30 feet along Grant 10377 to Harriet Blanche Rose and Government Remnant 10377-A;



12. Thence along the north side of Banyan Drive on a curve to the left with a radius of 370.00 feet, the chord azimuth and distance being:
85° 46' 48" 166.08 feet
to the point of beginning and containing
an AREA OF 6.35 ACRES, MORE OR
LESS.

SUBJECT, HOWEVER, to the following easements as shown on plan attached hereto and made a part hereof:

1. Easement for Switching Transclosure in favor of Hilo Electric Light Co., Ltd.
2. Sewer Right-of-Way (3.00 ft. wide) in favor of the State of Hawaii, its successors and assigns.
3. Gas Line Easement (5.00 ft. wide) in favor of Honolulu Gas Co.
4. Sanitary Sewer Line Easement (5.00 ft. wide) in favor of the County of Hawaii.
5. Underground Electric Power Line Easement (5.00 ft. wide) in favor of Hilo Electric Light Co., Ltd.
6. Underground Telephone Line Easement (5.00 ft. wide) in favor of Hawaiian Telephone Co.
7. Water Pipe Line Easement (10.00 ft. wide) in favor of County of Hawaii.
8. Road Easement (30.00 ft. wide) in favor of the State of Hawaii, its successors and assigns.
9. Water Pipe Line Easement (5.00 ft. wide) in favor of County of Hawaii.



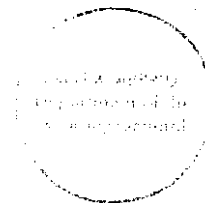
SUBJECT, ALSO, to all encumbrances that may be noted on Transfer Certificate of Title 108,763 issued to the State of Hawaii.

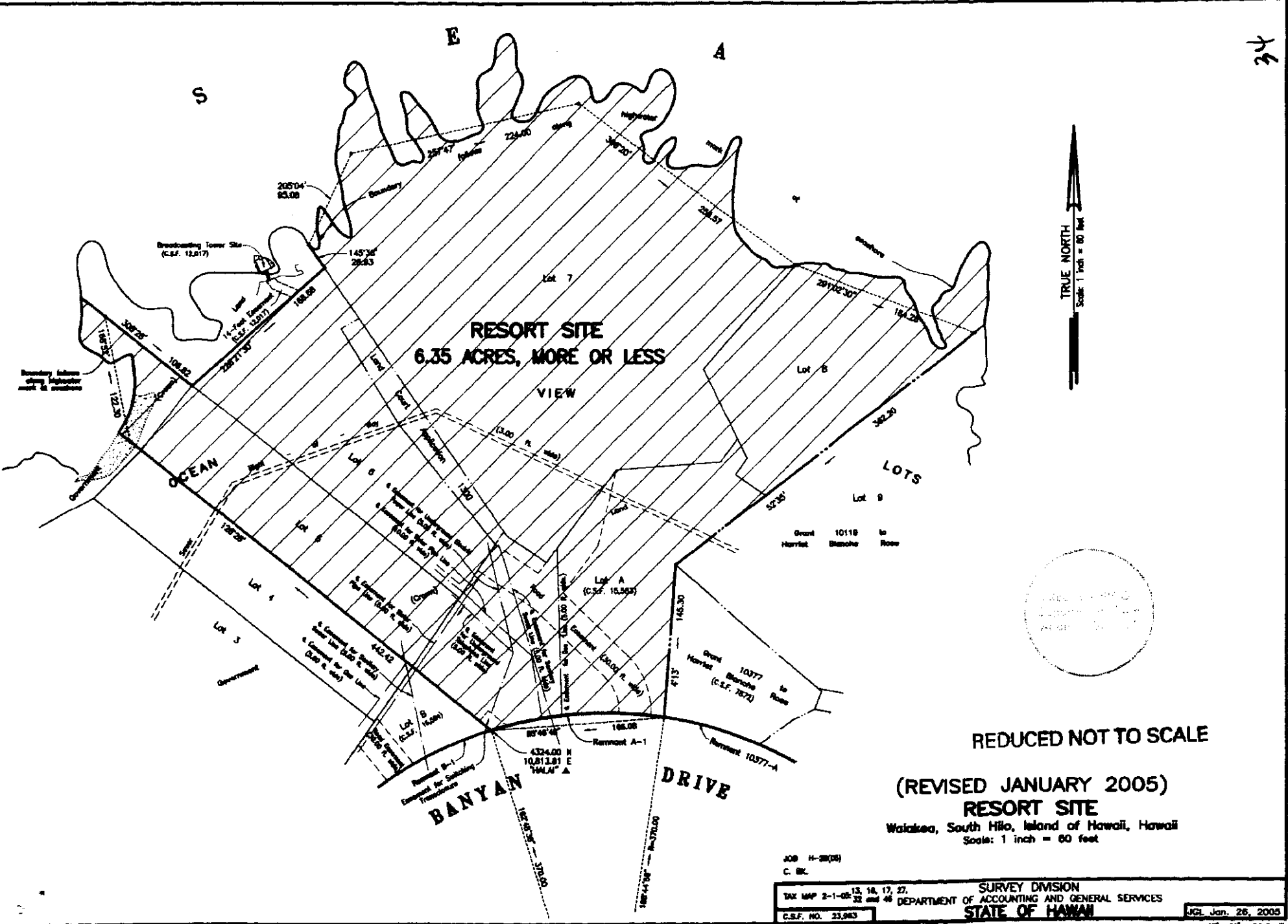
Reserving to the State of Hawaii, its successors and assigns, easement to any existing trail along seacoast within the above-described Resort Site. Said easement to be designated by the Chairman of the Board of Land and Natural Resources at such time and for such width as deemed proper and necessary.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: Glenn J. Kodani
Glenn J. Kodani
Land Surveyor gm

Compiled from CSF 23223
and other Govt. Survey Records.





REDUCED NOT TO SCALE

(REVISED JANUARY 2005)
RESORT SITE
 Waialea, South Hilo, Island of Hawaii, Hawaii
 Scale: 1 inch = 60 feet

JOB H-28(05)
 C. BK.

13, 14, 17, 27,
 TAX MAP 2-1-05 32 and 46
 SURVEY DIVISION
 DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
 STATE OF HAWAII

C.S.F. NO. 23,983

JGL Jan. 26, 2005

1" = 21' = 22 sq. ft.



STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES

HONOLULU

C.S.F. No. 23,964
H.S.S. Plat 942-B

January 26, 2005

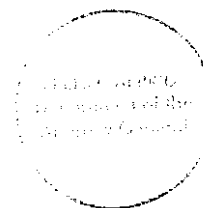
(REVISED – JANUARY 2005)
GOLF COURSE AND ALLIED FACILITIES SITE

Bounded by Kamehameha Avenue, Lihikai Street and Banyan Drive

Waiakea, South Hilo, Island of Hawaii, Hawaii

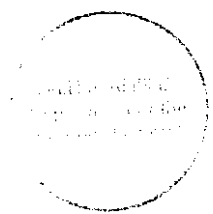
Comprising the following:

- a. Portion of the Government (Crown) Land of Waiakea.
- b. Lot 1-A as shown on Map 2 and Lots 2 and 3 as shown on Map 1 of Land Court Application 1748 covered by Transfer Certificate of Title 106,776 issued to the State of Hawaii.
- c. Lot 2 as shown on Map 1, Lot 3-B as shown on Map 2, Lot 6-A as shown on Map 4 and Lot 8 as shown on Map 2 of Land Court Application 1626 covered by Transfer Certificate of Title 106,776 issued to the State of Hawaii.
- d. Lot 1-A as shown on Map 4 of Land Court Application 428 covered by Transfer Certificate of Title 106,776 issued to the State of Hawaii.
- e. Land Commission Awards, Grants and Deeds acquired by the State of Hawaii from the Hawaii Redevelopment Agency identified by Land Office Deeds as listed on Government Survey Registered Map H.S.S. Plat 942-A attached hereto and made a part hereof.

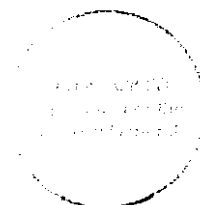


Beginning at the southeast corner of this parcel of land, at the west corner of Grant 7521 to H. V. Patten, Trustee and on the north side of Kamehameha Avenue, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HALAI" being 2197.00 feet North and 10,747.67 feet East, thence running by azimuths measured clockwise from True South:-

1. 90° 00' 422.50 feet along the north side of Kamehameha Avenue;
2. 90° 00' 626.78 feet along the north side of Parcel 1 of Kamehameha Avenue, Wailoa Bridge Replacement and Approaches, Federal Aid Project No. BR-019-2(25);
3. 180° 00' 39.74 feet along Parcel 9 of Kamehameha Avenue, Wailoa Bridge Replacement and Approaches, Federal Aid Project No. BR-019-2(25);
4. Thence along Parcel 9 of Kamehameha Avenue, Wailoa Bridge Replacement and Approaches, Federal Aid Project No. BR-019-2(25) on a curve to the left with a radius of 9060.00 feet, the chord azimuth and distance being:
86° 28' 11" 253.96 feet;
5. 85° 40' 209.17 feet along Parcel 9 of Kamehameha Avenue, Wailoa Bridge Replacement and Approaches, Federal Aid Project No. BR-019-2(25);



6. Thence along Parcel 9 of Kamehameha Avenue, Wailoa Bridge Replacement and Approaches, Federal Aid Project No. BR-019-2(25) on a curve to the right with a radius of 40.00 feet, the direct azimuth and distance being:
130° 40' 56.57 feet;
7. 175° 40' 3.33 feet along Parcel 9 of Kamehameha Avenue, Wailoa Bridge Replacement and Approaches, Federal Aid Project No. BR-019-2(25);
8. 175° 40' 519.23 feet along Parcels 9-A, 10, 11 and 12 of Kamehameha Avenue, Wailoa Bridge Replacement and Approaches, Federal Aid Project No. BR-019-2(25);
9. Thence along Parcel 12 of Kamehameha Avenue, Wailoa Bridge Replacement and Approaches, Federal Aid Project No. BR-019-2(25) on a curve to the right with a radius of 50.00 feet, the chord azimuth and distance being:
222° 50' 73.33 feet;
10. 270° 00' 458.98 feet along the south side of Banyan Drive;
11. Thence along the southeast side of Banyan Drive on a curve to the left with a radius of 350.00 feet, the chord azimuth and distance being:
231° 49' 30" 432.65 feet;
12. 193° 39' 632.46 feet along the southeast side of Banyan Drive;
13. Thence along the southeast side of Banyan Drive on a curve to the right with a radius of 190.00 feet, the chord azimuth and distance being:
215° 19' 30" 140.35 feet;
14. 237° 00' 428.33 feet along the southeast side of Banyan Drive;



15. Thence along the southeast side of Banyan Drive on a curve to the left with a radius of 350.00 feet, the chord azimuth and distance being:
233° 07' 37.5" 47.28 feet;
16. 229° 15' 15" 153.94 feet along the southeast side of Banyan Drive;
17. Thence along the south side of Banyan Drive on a curve to the right with a radius of 270.00 feet, the chord azimuth and distance being:
279° 32' 07.5" 415.36 feet;
18. 329° 49' 160.00 feet along the southwest side of Banyan Drive;
19. Thence along the southwest side of Banyan Drive on a curve to the right with a radius of 1081.80 feet, the chord azimuth and distance being:
340° 47' 30" 411.91 feet;
20. 351° 46' 484.32 feet along the southwest side of Banyan Drive;
21. 81° 46' 55.00 feet along Waiakea Peninsula Pump Station Site, Governor's Executive Order 2381;
22. 351° 46' 55.00 feet along Waiakea Peninsula Pump Station Site, Governor's Executive Order 2381;
23. 261° 46' 55.00 feet along Waiakea Peninsula Pump Station Site, Governor's Executive Order 2381;
24. 351° 46' 16.54 feet along the southwest side of Banyan Drive;
25. Thence along the west side of Banyan Drive on a curve to the right with a radius of 300.00 feet, the chord azimuth and distance being:
18° 38' 271.15 feet;



- 26. 45° 30' 218.64 feet along the northwest side of Banyan Drive;
- 27. Thence along the northwest side of Banyan Drive on a curve to the left with a radius of 450.00 feet, the chord azimuth and distance being:
31° 19' 01" 220.52 feet;
- 28. 56° 02' 48" 19.54 feet along Grant 7521 to W. H. Patten, Trustee;
- 29. 146° 02' 48" 120.00 feet along the remainder of the Government (Crown) Land of Waiakea;
- 30. 56° 02' 48" 248.91 feet along the remainder of the Government (Crown) Land of Waiakea;
- 31. 360° 00' 144.67 feet along the remainder of the Government (Crown) Land of Waiakea;
- 32. 56° 02' 48" 69.44 feet along Grant 7521 to H. V. Patten, Trustee to the point of beginning and containing a GROSS AREA OF 63.775 ACRES and a NET AREA OF 62.576 ACRES, after excluding therefrom the following:

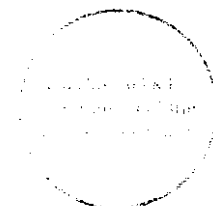
EXCLUSION:

<u>Lot</u>	<u>Map</u>	<u>Land Court Application</u>	<u>Area</u>
1-B	4	428	0.525 Acre
3-A	2	1626	0.006 Acre
4	1	1626	0.096 Acre
7	2	1626	<u>0.572 Acre</u>
TOTAL AREA OF EXCLUSION			1.199 Acres



The above-described Golf Course and Allied Facilities Site is subject, however, to the following as shown on plan attached hereto and made a part hereof:

1. Easements A and B as shown on Map 3 and Easement C as shown on Map 4 of Land Court Application 1626.
2. Easement C as shown on Map 5 and Easement D as shown on Map 6 of Land Court Application 428.
3. Easement A as shown on Map 3 of Land Court Application 1748.
4. Perpetual Non-Exclusive Easement for Underground Fuel Oil Pipeline covered by Grant of Easement: State of Hawaii to Hawaii Electric Light Co., Inc. dated April 22, 1976 and recorded in Liber 11536, Page 85 (Land Office Deed S-26734).
5. Perpetual Non-Exclusive Easement for Underground Power Line Purposes covered by Grant of Easement: State of Hawaii to Hawaii Electric Light Co., Inc. dated April 22, 1976 and recorded in Liber 11536, Page 85 (Land Office Deed S-26734).
6. Clear Zone Easements of Hilo Airport (General Lyman Field) Extension of Runway 8-26 covered by Governor's Executive Order 2151.
7. Perpetual Non-Exclusive Easement for Drainage Purposes covered by Grant of Easement: State of Hawaii to Hawaii Electric Light Co., Inc. dated November 14, 2003 and recorded as Document No. 2003-256145 (Land Office Deed S-28684).
8. Perpetual Non-Exclusive Easements 1, 2, 3 and 6 for Transmission Line and Anchor Purposes covered by Grant of Easement: State of Hawaii to Hawaii Electric Light Co., Inc. and Verizon Hawaii, Inc. dated December 1, 2003 and recorded as Document No. 2003-272342 (Land Office Deed S-28657).



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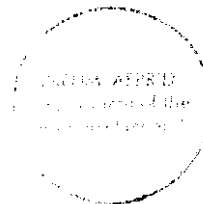
9. Proposed Road Widening along Kamehameha Avenue as shown on plan attached hereto and made a part hereof.

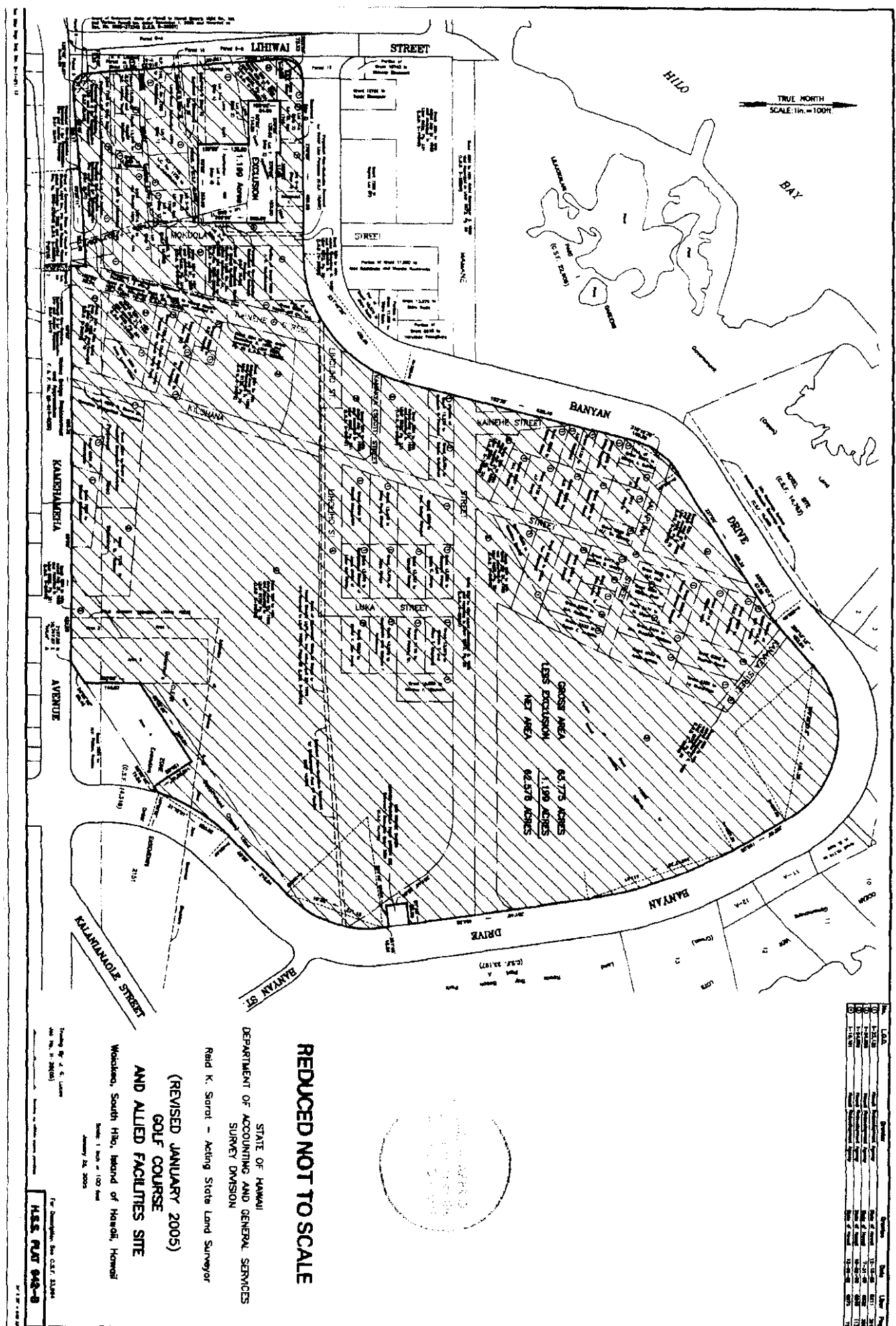
Reserving, to the State of Hawaii, its successors and assigns Perpetual Non-Exclusive Easement for Sewer Line Purposes as shown on plan attached hereto and made a part hereof.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: Glenn J. Kodani
Glenn J. Kodani
Land Surveyor gm

Compiled from CSF 23425
and other Govt. Survey Records.





Lot	Area	Owner	Area	Owner
1	1.196	State of Hawaii	1	State of Hawaii
2	1.196	State of Hawaii	2	State of Hawaii
3	1.196	State of Hawaii	3	State of Hawaii
4	1.196	State of Hawaii	4	State of Hawaii
5	1.196	State of Hawaii	5	State of Hawaii
6	1.196	State of Hawaii	6	State of Hawaii
7	1.196	State of Hawaii	7	State of Hawaii
8	1.196	State of Hawaii	8	State of Hawaii
9	1.196	State of Hawaii	9	State of Hawaii
10	1.196	State of Hawaii	10	State of Hawaii
11	1.196	State of Hawaii	11	State of Hawaii
12	1.196	State of Hawaii	12	State of Hawaii
13	1.196	State of Hawaii	13	State of Hawaii
14	1.196	State of Hawaii	14	State of Hawaii
15	1.196	State of Hawaii	15	State of Hawaii
16	1.196	State of Hawaii	16	State of Hawaii
17	1.196	State of Hawaii	17	State of Hawaii
18	1.196	State of Hawaii	18	State of Hawaii
19	1.196	State of Hawaii	19	State of Hawaii
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REDUCED NOT TO SCALE

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
SURVEY DIVISION

Roid K. Siroi - Acting State Land Surveyor

(REVISED JANUARY 2005)
GOLF COURSE
AND ALLIED FACILITIES SITE

Waialeale, South Hilo, Island of Hawaii, Hawaii

Scale: 1 inch = 100 feet
January 15, 2005

Tracing by: J. S. Luman
Map No. 11-2005(1)

H.S.S. PLAN 948-B

EXHIBIT "D"

ADDITIONAL ENCUMBRANCES

In addition to the easements and encumbrances listed in Exhibit "C" of the Lease, the "Golf Course and Allied Facilities Site" is also subject to the following encumbrances:

1. Reservation contained in deed dated August 12, 1963, filed as Land Court Doc. No. 319847 and recorded in Liber 4632, Page 263.
2. Amended Urban Renewal Plan for the Kaiko'o Project, dated June 25, 1965, filed as Land Court Document No. 370175 and recorded in Liber 5157, Page 574.
3. Declaration of Restrictions Affecting Redevelopment Sites in the Kaiko'o Project Designated for Open Area Uses dated October 9, 1965, filed as Land Court Document No. 372717 and recorded in Liber 5166, Page 528; and dated July 1, 1963, recorded in Liber 4555, Page 17.
4. Disposition Redevelopment Agreement dated December 10, 1965, filed as Land Court Doc. No. 377384 and recorded in Liber 5211, Page 269; as amended by Amendatory Agreement dated July 22, 1966, filed as Land Court Doc 451264.
5. Covenants contained in instruments dated December 15, 1965, filed as Land Court Doc. 377875 and recorded in Liber 5211, Page 391; dated October 13, 1967, recorded in Liber 5834, page 211; dated October 2, 1969, recorded in Liber 6249, Page 113; and dated July 31, 1969, recorded in Liber 6632, Page 356.



EXHIBIT "E"

LIST OF APPROVED SUBLEASES

1. Commercial Lease dated June 1, 1995 between Nakano Co., Ltd. and Pearl Kang dba Ben & Company for approximately 792 square feet of commercial space located within the Hawaii Naniloa Hotel.
2. Sublease dated December 22, 1995 between Nakano Co., Ltd. and Fairy Islands International, Corporation for approximately 3,024 square feet of commercial space located within the Hawaii Naniloa Hotel.
3. Rooftop Site License with Option dated October 3, 1996 between Nakano Co., Ltd. and Voicestream PCS II Corporation (formerly known as Western PCS II Corporation) for a portion of TMK (3) 2-1-05:17 consisting of approximately 128 square feet on the roof of the Hawaii Naniloa Hotel.
4. Lease and Agreement Regarding Transmission Facilities dated August 27, 1998 between Nakano Co., Ltd. and Hearst-Argyle Stations, Inc. (successor to Hawaii Hearst-Argyle Television, Inc.) for approximately 304 square feet on the roof of the Hawaii Naniloa Hotel.
5. Site Agreement dated August 23, 2000 between Nakano Co., Ltd. and SprintCom, Inc. for a portion of TMK (3) 2-1-05:16 consisting of approximately 300 square feet on the roof of the Hawaii Naniloa Hotel.



ASSIGNMENT OF LEASE EVALUATION POLICY

1. Enabling Statute.

Act 104, effective May 24, 1989, amended Chapter 171-36(a) (5) to read in part:

"... provided further that prior to the approval of any assignment of lease, the board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of the lease on payment by the lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee;" (revision underlined)

2. Qualifying Leases.

This policy shall be applicable to the subject lease.

3. Prior Approval.

Prior to giving its consent to an assignment, DLNR must receive (i) the name, legal composition and address of any proposed assignee, (ii) a complete copy of the purchase agreement and the proposed assignment agreement, including the total consideration to be paid by the assignee for the assignment whether by cash, credit or otherwise, and (iii) the best available financial statement or balance sheet no older than 1 year prior to date of purchase agreement of the proposed assignee or any other such statement, audited or certified as correct by a financial officer of the proposed assignee.

Assignments of lease shall not be entered into until the Attorney General has reviewed the proposed assignment and the Land Board have given their approval. Such assignments shall be entertained only if they meet the criteria set forth in Section 171-36(a) (5), HRS.

4. Qualifications of Assignee.

If qualification was required of a lessee as a pre-condition of the lease, the prospective assignee must also be qualified to assume the lease.

EXHIBIT "G"



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5. Consideration to be Paid.

Prior to review by the Attorney General and approval by the Land Board, the lessee (assignor) must present with written evidence of the consideration to be paid by the assignee and any other cost data that the state may require.

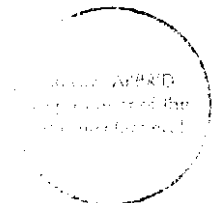
6. Payment of Premium.

The act permits the state to receive from the lessee (assignor) a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee. The value of the inventory of merchandise and any other tangible assets in the sale of a business shall be deducted from the consideration paid. The appropriate cost index is then applied to determine the adjusted depreciated cost.

All lessees shall be required to furnish the state with the actual costs of construction of all improvements and renovations within 30 calendar days after its completion as well as the purchase costs of all trade fixtures acquired for the lessee's operation on the premises within 30 calendar days after their purchase. Lessees shall be required to furnish evidence of the actual costs by copy of the construction contract, receipts or otherwise. Lessees shall also be required to furnish an inventory of all personal property placed on the premises. Records of all costs incurred by the lessee for construction of improvements or renovations as well as trade fixtures submitted by the lessee shall be maintained in the lease file and shall include the Construction Cost Index for Apartments, Hotels, Office Buildings (CCI) and the Honolulu Consumer Price Index for All Urban Consumers (CPI) as published by the U.S. Department of Labor, Bureau of Labor Statistics for the year construction is completed.

The replacement cost for improvements or renovations is calculated by using the CCI for the evaluation year divided by the CCI for the year in which the improvements or renovations were completed (base year). The result is then multiplied by the original cost of the improvements or renovations. For trade fixtures, the cost is similarly calculated by using the CPI for the purchase year (base year) and the evaluation year.

Depreciation of improvements and trade fixtures will be determined on a straight line basis. Depreciation of improvements or renovations will be determined in the same proportion that the expired term of the improvements or renovations bear to the whole term. The whole term will be



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from the date the construction of the improvements or renovations are completed until the termination date of the lease. Depreciation of trade fixtures will be determined in the same manner, except that the whole term will be the anticipated life of the trade fixture.

The premium will be a maximum of 50% of the excess. The percentage will decrease by 5% after every 5 years of the term has elapsed in accordance with Schedule C. The sliding scale will encourage long term occupancy and prevent speculation as well as recognize the investment, effort, and risk of the lessee.

In cases where the lessee is unable to furnish the Department of Land and Natural Resources with evidence of the actual cost of construction of improvements because the lessee has performed the work itself, the State may determine the cost or the lessee shall have the option of paying for an appraiser, to be selected by the Department of Land and Natural Resources, to determine what the improvements would have cost if the labor had been performed by a third party rather than the lessee. The lessee shall exercise its option by giving written notice to the lessor within thirty (30) calendar days after completion of construction of the improvements. If the lessee fails to exercise its option within this period, the lessor shall have the right to determine the cost of the improvements.

Schedule D attached provides a typical example of the evaluation calculations using Schedule A to calculate the replacement cost for improvements or renovations and depreciation, Schedule B to calculate the cost and depreciation for trade fixtures, and Schedule C to obtain the premium percentage.

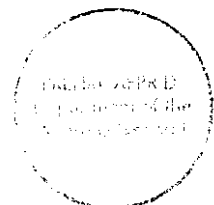
7. Non-qualifying Deductions.

The statute only recognizes tangible items. Intangibles such as "goodwill", business name recognition, etc., are not deductible.

8. Subsequent Assignments.

If the consideration for any subsequent assignment includes the purchase of existing tenant owned improvements, the evaluation will be conducted in a similar manner as the first assignment. An example is shown on Schedule E.

Using Schedule E, the consideration the assignor paid less included inventory and any premiums will be used to obtain the adjusted depreciated cost of improvements and trade fixtures. Also, the Base Year is redefined to be the date



the assignor received the Consent of the Board to occupy the premises. The holding period (redefined Base Year to assignment date), or actual occupancy of the assignor, is used in place of the "expired term" when calculating depreciation. Depreciation will be calculated by dividing the holding period by the whole term of the lease (The whole term will remain unchanged).

The change in the CCI will be reflected by comparing the CCI for the redefined base year to the most current CCI.

The holding period will be the basis for determining the appropriate premium percentage. Subtracting the included inventory and any premiums from the consideration the assignor paid will result in a reassessment of the market value of the improvements. If additional improvements were constructed by the assignor, they will be treated in the same manner as improvements constructed by an original lessee.

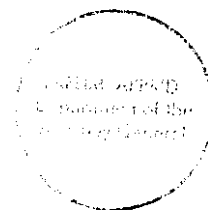
The excess of subtracting the adjusted depreciated consideration the assignor paid and the adjusted depreciated cost of additional improvements, if any, from the consideration the assignor received will be used against the appropriate premium percentage to determine the amount payable to the state.

9. Rights of Holders of Security Interest-Agricultural Leases only.

In the event of foreclosure or sale, the premium, if any, shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid.

10. When state-owned improvements are included in the leased premises, improvement renovation requirements shall be recognized as being tenant-owned improvements for evaluation in the policy.

In other words, the total expenditure of the lessee to fulfill the requirement would be treated as though a new improvement was constructed.



SCHEDULE A. Adjusted Depreciated Cost of Improvements or Renovations

1. Adjusted Cost of Improvements or Renovations.

Multiply the actual cost of the improvements or renovations by the most recent U.S. Construction Cost Index for Apartments, Hotels, Office Buildings (CCI)* and divide the result by the CCI of the year construction was completed (base year) to get the adjusted cost of improvements or renovations.

2. Depreciation

Determine the depreciation percentage on a straight-line basis by dividing the expired term of the improvements or renovations by the whole term of the improvements or renovations, the whole term beginning on the date the improvements or renovations are completed to the expiration date of the lease. Multiply the adjusted cost of the improvements or renovations by the depreciation percentage to determine the depreciation.

3. Depreciated Cost of Improvements or Renovations

Subtract the depreciation from the adjusted cost of improvements or renovations. The balance is the depreciated cost of improvements or renovations.

*As published by the U.S. Department of Labor, Bureau of Labor Statistics

<u>Example</u>	Actual cost:	\$500,000
	CCI (most recent):	121.1
	CCI (base year):	102.3
1. Adjusted Cost of Improvements or Renovations	Expired term:	57 mos.
	Whole term:	408 mos.

$$\text{Actual Cost} \times \frac{\text{CCI (most recent)}}{\text{CCI (base year)}}$$

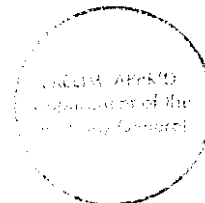
$$\$500,000 \times \frac{121.1}{102.3} = \$591,887$$

2. Depreciation

$$\$591,887 \times \frac{57 \text{ mos.}}{408 \text{ mos.}} = \$82,690$$

3. Adjusted Depreciated Cost of Improvements or Renovations

$$\$591,887 - \$82,690 = \underline{\$509,197}$$



SCHEDULE B. Adjusted Depreciated Cost of Trade Fixtures

1. Adjusted Cost of Trade Fixture.

Multiply the actual cost of the trade fixture by the most recent Honolulu Consumer Price Index for All Urban Consumers (CPI)* and divide the result by the CPI of the year in which the purchase was made (base year).

2. Depreciation.

Determine the depreciation percentage on a straight-line basis by dividing the expired term of the trade fixture by its anticipated life. Multiply the adjusted cost of the trade fixture by the depreciation percentage to determine the depreciation.

3. Depreciated Cost of Trade Fixtures.

Subtract the depreciation from the adjusted cost of the trade fixture. The balance is the depreciated cost of the trade fixture.

*As published by the U.S. Department of Labor, Bureau of Labor Statistics

Refrigerator

Example

1. Adjusted Cost of Trade
Fixture

Actual cost: \$1,510
CPI (most recent): 118.1
CPI (base year): 104.6
Expired term: 57 mos.
Whole term: 96 mos.
(Anticipated life)

Actual Cost X $\frac{\text{CPI (most recent)}}{\text{CPI (base year)}}$

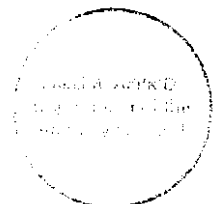
$$\$1,510 \times \frac{118.1}{104.6} = \$1,705$$

2. Depreciation

$$\$1,705 \times \frac{57 \text{ mos.}}{96 \text{ mos.}} = \$1,012$$

3. Adjusted Depreciated Cost of Trade Fixture

$$\$1,705 - \$1,012 = \$ 693$$



SCHEDULE C. Premium Percentages

1. For the first 5 years, the premium is 50% of the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee. The percentage will decrease by 5% after every 5 years of the total term has elapsed.

<u>Years</u>	<u>Percentage</u>
1 - 5	50%
6 - 10	45%
11 - 15	40%
16 - 20	35%
21 - 25	30%
26 - 30	25%
31 - 35	20%
36 - 40	15%
41 - 45	10%
46 - 50	5%
51 -	0%

As an example, if a 55 year lease was assigned after 57 months, the premium percentage would be 50%. If the assignment occurs after 130 months (10+ years), the percentage would be 40%.

2. The Board of Land and Natural Resources may impose a ten percent (10%) surcharge if the assignor has not performed lease covenants to improve or use the property.



SCHEDULE D. Assignment of Lease Calculations

1. Subtract from the consideration for the assignment that amount, if any, that is attributable to inventory.
2. Calculate the Adjusted Depreciated Cost of Improvements or Renovations (see Schedule A).
3. Calculate the Adjusted Depreciated Cost of Trade Fixtures (see Schedule B).
4. Calculate the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee by subtracting the amounts derived by no. 2 and 3 from the amount in no. 1 above.
5. Determine the appropriate premium percentage (see Schedule C). Multiply by the excess, if any, derived by no. 4.

Example

A lease is being assigned 57 months after completion of the improvements at a consideration of \$600,000.

The initial cost of the improvements was \$500,000 while the current year CCI and base year CCI were 121.1 and 102.3, respectively. The whole term for the improvements is 408 months.

For the trade fixtures, the initial cost was \$1,510 with the current year CPI and base year CPI being 118.1 and 104.6, respectively. The total life expectancy is 96 months.

1.	Net Consideration:		\$600,000
2.	Adj Cost Imp/Ren:	\$591,887	
	Depreciation:	<u>- 82,690</u>	
	Adj Dep Cost Imp/Ren:		-509,197
3.	Adj Cost Trade Fixtures:	1,705	
	Depreciation:	<u>- 1,012</u>	
	Adj Dep Cost Trade Fixtures:		- <u>693</u>
4.	Excess:		\$ 90,110
5.	Premium:	Percentage: 50%	\$ 45,055



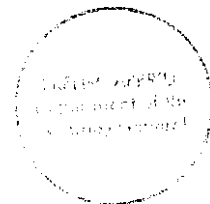
SCHEDULE E. Subsequent Assignment of Lease Calculations

1. Subtract from the consideration the assignor received for the assignment that amount, if any, that is attributable to inventory to derive the net consideration received.
2. Subtract from the consideration the assignor previously paid for the assignment that amount, if any, that was attributable to inventory. Also, subtract from the consideration the assignor previously paid for the assignment that amount, if any, that was attributable to premiums. The net consideration paid is now defined to be the value of improvements as of the date of the occupancy by the assignor.
3. Using the result from no. 2, calculate the Adjusted Depreciated Value of Improvements or Renovations (see Schedule A).
4. Subtract the amount derived by no. 3 from the amount in no. 1 to determine the amount by which the consideration received for the assignment, whether by cash, credit, or otherwise, exceeds the adjusted depreciated value of improvements being transferred to the assignee.
5. Determine the appropriate premium percentage (see Schedule C). Multiply by the excess, if any, derived by no. 4.

Example

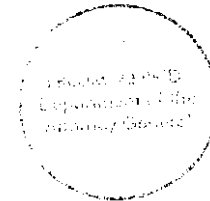
An assignor is assigning a lease 107 months after receiving the consent of the Board. Occupancy or the holding period is defined to be 107 months. The consideration received is \$1,000,000.

The consideration paid by the assignor was \$600,000 while the current year CCI and redefined base year CCI were 156.4 and 121.1, respectively. The whole term was 408 months.



No inventory was included in either consideration. However, a premium of \$45,055 was paid to the state by the previous occupant from the \$600,000 consideration.

1.	Net Consideration <u>Received</u> :		\$1,000,000
2.	Consideration <u>Paid</u> :	\$600,000	
	Premium:	<u>- 45,055</u>	
	Net Consideration <u>Paid</u> :		\$554,945
3.	Adj Value Consideration (improvements):		
	\$554,945 X <u>156.4</u>	=	\$716,708
			<u>121.1</u>
	Depreciation:		
	\$716,708 X <u>107 mos.</u>	=	<u>-187,960</u>
			<u>408 mos.</u>
	Adj Dep Value Consideration:		- <u>528,748</u>
4.	Excess:		\$ 471,252
5.	Premium:	Percentage: 45%	<u>\$ 212,063</u>



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EXHIBIT B

LOAN AGREEMENT

Dated as of [April ____], 2023

Between

UBS AG, BY AND THROUGH ITS BRANCH OFFICE
AT 1285 AVENUE OF THE AMERICAS, NEW YORK, NEW YORK,
A U.S. BRANCH OF A SWISS BANKING CORPORATION,
as Lender

and

WHR LLC, a
Hawaii limited liability company,
as Borrower

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Initial PIP Work **]
Updated Information

LOAN AGREEMENT

THIS LOAN AGREEMENT, dated as of [April ____], 2023 (as amended, this “**Agreement**”), between **UBS AG**, by and through its branch office at 1285 Avenue of the Americas, New York, New York, a U.S. branch of a Swiss banking corporation, having an address at 1285 Avenue of the Americas, New York, New York 10019 (together with its successors and assigns, collectively, “**Lender**”), and **WHR LLC**, a Hawaii limited liability company, having an address at 93 Banyan Drive, Hilo, Hawaii 96720 (together with its permitted successors and assigns, collectively, “**Borrower**”).

All capitalized terms used herein shall have the respective meanings set forth in Article I.

WITNESSETH:

WHEREAS, Borrower desires to obtain the Loan from Lender; and

WHEREAS, subject to and in accordance with the Loan Documents and based upon the representations, warranties, covenants and undertakings of Borrower herein and therein contained, Lender is willing to make the Loan to Borrower.

NOW, THEREFORE, in consideration of the provisions set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree, represent and warrant as follows:

I. DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1. Definitions.

For all purposes of this Agreement, except as otherwise expressly provided:

“**Acceptable Accounting Basis**” shall mean the Uniform System of Accounts, reconciled with GAAP or such other accounting basis reasonably acceptable to Lender, which is used by Borrower and Guarantor for the purposes of financial reporting under the Loan Documents and is consistently applied throughout the periods covered by the applicable financial statements.

“**Adjusted NOI**” shall mean, for any period, the NOI (excluding interest on credit accounts and, with respect to any item of Op Ex that consists of a recurring expense not paid monthly (e.g., Taxes and Insurance Premiums), using the applicable prorated amount for the relevant period based on the annualized amount for such item of Op Ex) for such period, without deduction for (a) actual franchise fees, management fees or similar fees incurred in connection with the operation of the Property during such period or (b) actual amounts paid to the Reserve Funds during such period, less (i) franchise fees, management fees or similar fees equal to the greater of (A) assumed franchise fees, management fees or similar fees of [** ____ percent (__)% **] of the Gross Income for such period and (B) the actual franchise fees, management fees or similar fees incurred during such period, and (ii) capital expenditures for such period based on an assumed annual amount equal to [** \$____ **] per hotel room at the Property.

“**Affiliate**” shall mean, as to any Person, any other Person that (i) directly or indirectly, owns ten percent (10%) or more of the legal, beneficial or economic interests in such Person, (ii) is in Control of, is Controlled by or is under common ownership or Control with such Person, (iii) is a director or officer of such Person or of an Affiliate of such Person, and/or (iv) is the spouse, issue or parent of such Person or of an Affiliate of such Person.

“**Affiliate Loan**” shall mean a loan made by a Person with a direct or indirect ownership interest in Borrower or an affiliate of such Person to or for the benefit of Borrower or any other Person with a direct or indirect ownership interest in Borrower, with respect to which the principal or interest due or payable thereunder is anticipated, intended or required to be paid, in whole or in part, with the cash flows generated by the Property or the proceeds from a sale, other transfer or financing of the Property or any portion thereof or interest therein.

“**Affiliated Franchisor**” shall mean any Franchisor that is an Affiliate of Borrower, any SPC Party, Key Principal or Guarantor.

“**Affiliated Manager**” shall mean any Manager that is an Affiliate of Borrower, any SPC Party, any Key Principal or any Guarantor.

“**Affiliated Tenant**” shall mean any Tenant that is an Affiliate of Borrower, any SPC Party, any Key Principal or any Guarantor.

“**Agreement**” shall have the meaning set forth in the introductory paragraph.

“**Alteration Threshold**” shall mean three percent (3%) of the Outstanding Principal Balance.

“**Annual Budget**” shall mean the operating and capital budget for the Property prepared by or on behalf of Borrower in accordance with Section 4.1.6(e) for the applicable period.

“**Appraisal**” shall mean an appraisal of the Property in its then “as is” condition, prepared not more than ninety (90) days prior to the Closing Date (or other relevant date with respect to an Appraisal or updated Appraisal) by a member of the American Institute of Real Estate Appraisers selected by Lender, which appraisal shall (i) meet the minimum appraisal standards for national banks promulgated by the Comptroller of the Currency pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), and (ii) otherwise be in form and substance satisfactory to Lender in its sole and absolute discretion.

“**Approved Annual Budget**” shall have the meaning set forth in Section 4.1.6(e).

“**Assignment of Leases**” shall mean that certain first priority Assignment of Leases and Rents, made by Borrower to Lender.

“**Assignment of Management Agreement**” shall mean that certain Assignment of Management Agreement and Subordination of Management Fees, among Lender, Borrower and Manager.

“**Award**” shall mean any compensation paid by any Governmental Authority in connection with a Condemnation.

“**Bail-In Action**” shall have the meaning set forth in Section 11.15.

“**Bankruptcy Action**” shall mean, with respect to any Person, (i) such Person filing a voluntary petition, case or proceeding under the Bankruptcy Law; (ii) the filing of an involuntary petition, case or proceeding against such Person under the Bankruptcy Law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition, case or proceeding against such Person under the Bankruptcy Law; (iii) such Person filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition, case or proceeding filed against it, by any other Person under the Bankruptcy Law; (iv) such Person consenting to or acquiescing in or joining in an application for the appointment of a Bankruptcy Official for such Person or any portion of its property; (v) such Person making an assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due; (vi) if a Bankruptcy Official is appointed for such Person or any portion of its property; or (vii) if such Person is adjudicated as bankrupt or insolvent.

“**Bankruptcy Law**” shall mean the U.S. Bankruptcy Code and any other federal, state, or foreign law relating to bankruptcy, insolvency, reorganization, dissolution, liquidation and/or creditors’ rights.

“**Bankruptcy Official**” shall mean a receiver, liquidator, assignee, trustee, sequestrator, custodian, or any similar official appointed in connection with a Bankruptcy Action.

“**Borrower**” shall have the meaning set forth in the introductory paragraph.

“**Borrower Party**” shall mean Borrower, any SPC Party, Guarantor and any Borrower Related Party.

“**Borrower Related Party**” shall mean any member, partner, shareholder, principal, officer, director, employee, agent, representative or affiliate of Borrower or Guarantor.

“**Borrower’s Certificate and Agreement**” shall mean that certain Borrower’s Certificate and Agreement made by Borrower for the benefit of Lender.

“**Borrower’s Recourse Liabilities**” shall have the meaning set forth in Section 11.22(a).

“**Broker**” shall have the meaning set forth in Section 11.21.

“**Business Day**” shall mean any day other than a Saturday, a Sunday or a legal holiday on which national banks are not open for general business in (i) the State of New York, (ii) the state where the corporate trust office of the Trustee is located, or (iii) the state where the servicing offices of the Servicer are located.

“**Cap Ex**” shall mean, for any period, the amounts expended for items required to be capitalized in accordance with the Acceptable Accounting Basis (including expenditures for FF&E, replacements, building improvements, major repairs, and alterations).

“**Cap Ex Account**” shall mean the account in which Cap Ex Funds are held by Lender.

“**Cap Ex Funds**” shall mean the amounts deposited pursuant to Section 6.4.1.

“**Cap Ex Work**” shall mean any labor performed or materials provided or installed in connection with any Cap Ex.

“**Cash Management Account**” shall have the meaning set forth in Section 2.7.2.

“**Cash Management Activation Notice**” shall mean a written notice from Lender or Servicer to Clearing Bank stating that a Cash Management Trigger Event has occurred and instructing Clearing Bank to transfer all available funds in the Clearing Account to the Cash Management Account in accordance with the Clearing Account Agreement.

“**Cash Management Agreement**” shall mean that certain Cash Management Agreement among Lender, Borrower, and Cash Management Bank.

“**Cash Management Bank**” shall mean PNC Bank, National Association, or any successor Eligible Institution acting as Cash Management Bank under the Cash Management Agreement.

“**Cash Management De-Activation Notice**” shall mean a written notice from Lender or Servicer to Clearing Bank stating that a Cash Management Trigger Event Cure has occurred and instructing Clearing Bank to transfer all available funds in the Clearing Account to an account designated by Borrower in accordance with the Clearing Account Agreement.

“**Cash Management DSCR Trigger Event**” shall mean that, as of any date on which Lender determines the DSCR, the DSCR is less than 1.20 to 1.0.

“**Cash Management Trigger Event**” shall mean the occurrence of:

- (i) an Event of Default;
- (ii) any Bankruptcy Action of Borrower, any SPC Party, Guarantor or Key Principal;
- (iii) any Bankruptcy Action of Manager;
- (iv) a Cash Management DSCR Trigger Event;
- (v) a Property Management Trigger Event; or
- (vi) a Franchise Trigger Event.

“**Cash Management Trigger Event Cure**” shall mean:

- (i) if the Cash Management Trigger Event is caused solely by an Event of Default, a cure of such Event of Default that is accepted or waived in writing by Lender; provided that Lender shall not have exercised any of its rights

under Section 10.2 to accelerate the Loan, move to appoint a Bankruptcy Official or commence a foreclosure action;

- (ii) if the Cash Management Trigger Event is caused solely by any Bankruptcy Action of Borrower, any SPC Party, Guarantor or Key Principal and such Bankruptcy Action is solely a result of the filing of an involuntary petition, case or proceeding against Borrower, any SPC Party, Guarantor or Key Principal with respect to which none of Borrower, any SPC Party, Guarantor, Key Principal or any Affiliate of Borrower, any SPC Party, Guarantor or Key Principal solicited or caused to be solicited petitioning creditors or consented to or otherwise acquiesced or joined in, upon the same being discharged or dismissed within forty-five (45) days of such filing; provided that (A) such filing (after discharge or dismissal) does not (1) materially increase Borrower's, any SPC Party's, Guarantor's and/or Key Principal's, as applicable, monetary or material non-monetary obligations, (2) materially and adversely affect Guarantor's and/or Key Principal's, as applicable, ability to perform any of its respective obligations under the Loan Documents or (3) materially and adversely affect Guarantor's and/or Key Principal's, as applicable, ability to exercise (or carry out its respective responsibilities pursuant to) any authority granted to Guarantor and/or Key Principal, as applicable, pursuant to any Organizational Documents of Borrower, any SPC Party or any Person that Controls Borrower or any SPC Party, and (B) Borrower is not in Default of the SPE Provisions or Article VIII;
- (iii) if the Cash Management Trigger Event is caused solely by the occurrence of any Bankruptcy Action of Manager, (A) upon the replacement of Manager with a Qualified Manager pursuant to a Replacement Management Agreement in accordance with this Agreement or (B) if such Cash Management Trigger Event is solely as a result of the filing of an involuntary petition, case or proceeding against Manager with respect to which neither Manager nor any Affiliate of Manager solicited or caused to be solicited petitioning creditors or consented to or otherwise acquiesced or joined in, upon the same being discharged or dismissed within forty-five (45) days of such filing; provided that such filing (after discharge or dismissal) does not materially and adversely affect Manager's ability to perform its obligations under the Management Agreement or any Loan Document to which it is a party;
- (iv) if the Cash Management Trigger Event is caused solely by the occurrence of a Cash Management DSCR Trigger Event, once the DSCR is equal to or greater than 1.25 to 1.0 for each of two (2) consecutive calendar quarters;
- (v) if the Cash Management Trigger Event is caused solely by a Property Management Trigger Event, (A) the dismissal of the applicable indictment with prejudice, (B) the acquittal of each applicable Person with respect to the related charge(s), or (C) the replacement of such Affiliated Manager or

third party manager, as applicable, with a third party Qualified Manager pursuant to a Replacement Management Agreement in accordance with this Agreement; and

- (vi) if the Cash Management Trigger Event is caused solely by a Franchise Trigger Event, the occurrence of a Franchise Trigger Event Cure;

provided that each Cash Management Trigger Event Cure shall be subject to the following conditions: (1) after giving effect to such Cash Management Trigger Event Cure with respect to any applicable Cash Management Trigger Event, no other Cash Management Trigger Event shall exist and (2) Borrower shall have paid all of Lender's costs incurred in connection with the Cash Management Trigger Event Cure (including Lender's reasonable attorneys' fees).

"Cash Management Trigger Event Period" shall mean any period commencing on the occurrence of a Cash Management Trigger Event and continuing until the earlier of (i) the Monthly Payment Date following the occurrence of the applicable Cash Management Trigger Event Cure, as determined by Lender, and (ii) the payment in full of the Debt.

"Cash Sweep DSCR Trigger Event" shall mean that, as of any date on which Lender determines the DSCR, the DSCR is less than 1.20 to 1.0.

"Cash Sweep Trigger Event" shall mean the occurrence of:

- (i) an Event of Default;
- (ii) any Bankruptcy Action of Borrower, any SPC Party, Guarantor or Key Principal;
- (iii) any Bankruptcy Action of Affiliated Manager; or
- (iv) a Cash Sweep DSCR Trigger Event.

"Cash Sweep Trigger Event Cure" shall mean:

- (i) if the Cash Sweep Trigger Event is caused solely by an Event of Default, a cure of such Event of Default that is accepted or waived in writing by Lender; provided that Lender shall not have exercised any of its rights under Section 10.2 to accelerate the Loan, move to appoint a Bankruptcy Official or commence a foreclosure action;
- (ii) if the Cash Sweep Trigger Event is caused solely by any Bankruptcy Action of Borrower, any SPC Party, Guarantor or Key Principal and such Bankruptcy Action is solely a result of the filing of an involuntary petition, case or proceeding against Borrower, any SPC Party, Guarantor or Key Principal with respect to which none of Borrower, any SPC Party, Guarantor, Key Principal or any Affiliate of Borrower, any SPC Party, Guarantor or Key Principal solicited or caused to be solicited petitioning creditors or consented to or otherwise acquiesced or joined in, upon the

same being discharged or dismissed within forty-five (45) days of such filing; provided that (A) such filing (after discharge or dismissal) does not (1) materially increase Borrower's, any SPC Party's, Guarantor's and/or Key Principal's, as applicable, monetary or material non-monetary obligations, (2) materially and adversely affect Guarantor's and/or Key Principal's, as applicable, ability to perform any of their respective obligations under the Loan Documents or (3) materially and adversely affect Guarantor's and/or Key Principal's, as applicable, ability to exercise (or carry out their respective responsibilities pursuant to) any authority granted to Guarantor and/or Key Principal, as applicable, pursuant to any Organizational Documents of Borrower, any SPC Party, or any Person that Controls Borrower or any SPC Party, and (B) Borrower is not in Default of the SPE Provisions or Article VIII;

- (iii) if the Cash Sweep Trigger Event is caused solely by any Bankruptcy Action of Affiliated Manager, (A) the replacement of such Affiliated Manager with a third party Qualified Manager pursuant to a Replacement Management Agreement in accordance with this Agreement or (B) if such Cash Sweep Trigger Event is solely as a result of the filing of an involuntary petition, case or proceeding against Affiliated Manager with respect to which neither Affiliated Manager nor any Affiliate of Affiliated Manager solicited or caused to be solicited petitioning creditors or consented to or otherwise acquiesced or joined in, upon the same being discharged or dismissed within forty-five (45) days of such filing; provided that such filing (after discharge or dismissal) does not materially and adversely affect Affiliated Manager's ability to perform its obligations under the Management Agreement or any Loan Document to which it is a party; and
- (iv) if the Cash Sweep Trigger Event is caused solely by a Cash Sweep DSCR Trigger Event, once the DSCR is equal to or greater than 1.25 to 1.0 for each of two (2) consecutive calendar quarters;

provided that each Cash Sweep Trigger Event Cure shall be subject to the following conditions: (X) after giving effect to such Cash Sweep Trigger Event Cure with respect to any applicable Cash Sweep Trigger Event, no other Cash Sweep Trigger Event shall exist and (Y) Borrower shall have paid all of Lender's costs incurred in connection with the Cash Sweep Trigger Event Cure (including Lender's reasonable attorneys' fees).

"Cash Sweep Trigger Event Period" shall mean any period commencing on the occurrence of a Cash Sweep Trigger Event and continuing until the earlier of (i) the Monthly Payment Date following the occurrence of the applicable Cash Sweep Trigger Event Cure, as determined by Lender, and (ii) the payment in full of the Debt.

"Casualty" shall mean any casualty, damage or injury, by fire or otherwise, to the Property or any part thereof.

"Casualty Consultant" shall have the meaning set forth in Section 5.3.2(c).

“**Casualty Retainage**” shall have the meaning set forth in Section 5.3.2(d).

“**Clearing Account**” shall have the meaning set forth in Section 2.7.1.

“**Clearing Account Agreement**” shall mean that certain Deposit Account Control Agreement, among Lender, Borrower and Clearing Bank.

“**Clearing Bank**” shall mean PNC Bank, National Association, or any successor Eligible Institution acting as clearing bank under the Clearing Account Agreement.

“**Closing Date**” shall mean the date hereof.

“**Closing Rent Roll**” shall mean the rent roll attached to the Borrower’s Certificate and Agreement.

“**Code**” shall mean the Internal Revenue Code of 1986, any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

“**Comfort Letter**” shall mean (i) that certain [**** INSERT NAME OF COMFORT LETTER: _____ ****], among Lender, Borrower and Franchisor or (ii) any other “comfort letter” entered into after the Closing Date in accordance with this Agreement.

“**Condemnation**” shall mean a temporary or permanent taking by any Governmental Authority as the result or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain, of all or any part of the Property, or any of Borrower’s interest therein or right accruing thereto, including any right of access thereto or any change of grade affecting the Property or any part thereof.

“**Constituent Owner**” shall mean, as to any Person, any other Person that owns a direct and/or indirect ownership interest in such Person.

“**Control**” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise, and the terms “Controlled” and “Controlling” shall have correlative meanings.

“**Credit Card Company**” shall have the meaning set forth in Section 2.7.1(b).

“**Credit Card Company Direction Letter**” shall have the meaning set forth in Section 2.7.1(b).

“**Crowd Funded Entity**” shall mean a Person that is capitalized through the practice of syndication, advertising, or general or broad solicitation, which capitalization is achieved (A) in reliance upon Regulation Crowdfunding promulgated by the Securities and Exchange Commission pursuant to the Securities Act of 1933 and/or (B) through internet-mediated registries, platforms or similar portals, mail-order subscriptions, benefit events and/or other similar methods.

“**DBRS**” shall mean DBRS, Inc. and its successor-in-interest.

“**Debt**” shall mean the Outstanding Principal Balance, together with all interest accrued and unpaid thereon, and all other sums or amounts due and payable under any Loan Document.

“**Debt Service**” shall mean, with respect to any particular period of time, the aggregate amount of scheduled principal and interest payments due and payable under the Note and this Agreement.

“**Debt Yield**” shall mean, for any period, the ratio, as determined by Lender, in which:

- (i) the numerator is the applicable Adjusted NOI; and
- (ii) the denominator is the Outstanding Principal Balance as of the last day of such period.

Except as otherwise set forth in this Agreement (including Section 5.3.2(a)), the Debt Yield shall be determined by Lender with respect to the trailing twelve (12) month period ending with the last full calendar month preceding the date of such determination provided that, for purposes of such determination, the Gross Income and the NOI determined in accordance with clause (ii) in the respective definition thereof shall be deemed to be a determination with respect to such trailing twelve (12) month period.

“**Default**” shall mean the occurrence of any event under any Loan Document which, but for the giving of notice or passage of time, or both, would be an Event of Default.

“**Default Rate**” shall mean, with respect to the Loan, an interest rate per annum equal to the lesser of (i) the Maximum Legal Rate or (ii) five percent (5%) above the Interest Rate.

“**Defeasance Collateral**” shall mean, in connection with the Defeasance Event, U.S. Obligations which provide payments (i) on or prior to, but as close as possible to, the Business Day immediately preceding all scheduled Monthly Payment Dates and other scheduled payment dates, if any, under this Agreement or the Note after the Defeasance Date through and including the last day of the Defeasance Period and (ii) in amounts equal to the scheduled payments due on such Monthly Payment Dates or other scheduled payment dates under this Agreement or the Note through and including the last day of the Defeasance Period (including scheduled payments of principal, interest, servicing fees (if any), and any other amounts due under the Loan Documents on such Monthly Payment Dates or other scheduled payment dates), together with the payment in full of the Outstanding Principal Balance as of the last day of the Defeasance Period (such scheduled payments, collectively, the “**Scheduled Defeasance Payments**”).

“**Defeasance Collateral Account**” shall have the meaning set forth in Section 2.5.2.

“**Defeasance Date**” shall have the meaning set forth in Section 2.5.1(a).

“**Defeasance Event**” shall have the meaning set forth in Section 2.5.1.

“Defeasance Lockout Expiration Date” shall mean the date that is two (2) years from the “startup day” within the meaning of Section 860G(a)(9) of the Code for the Securitization Vehicle established in connection with the last Securitization involving any portion of the Loan.

“Defeasance Period” shall mean the period beginning on the Business Day following the Defeasance Lockout Expiration Date and ending on the Open Prepayment Date.

“Defeasance Security Agreement” shall mean a pledge and security agreement in form and substance that would be reasonably satisfactory to a prudent lender, pursuant to which Borrower grants Lender a perfected, first priority security interest in the Defeasance Collateral Account and the Defeasance Collateral.

“Disclosure Documents” shall mean, collectively, any written materials used or provided to any prospective investors and/or NRSROs in connection with any public offering or private placement in connection with or relating to a Securitization (including a prospectus, prospectus supplement, private placement memorandum, offering memorandum, offering circular, term sheet, road show presentation materials or other offering documents, marketing materials or information provided to prospective investors), in each case in preliminary or final form and including any amendments, supplements, exhibits, annexes and other attachments thereto.

“DSCR” shall mean, for any period, the ratio, as determined by Lender, in which:

- (i) the numerator is the applicable Adjusted NOI; and
- (ii) the denominator is the aggregate Debt Service calculated by Lender to be due and payable during the twelve (12) month period immediately succeeding the date of such determination (assuming that the Term extends beyond such twelve (12) month period, the interest only period has expired and Borrower is paying a constant monthly payment of principal and interest based on an interest rate per annum equal to the Interest Rate and an amortization schedule of thirty (30) years during the entirety of such twelve (12) month period).

Except as otherwise set forth in this Agreement (including Section 5.3.2(a)), the DSCR shall be determined by Lender with respect to the trailing twelve (12) month period ending with the last full calendar month preceding the date of such determination, provided that, for purposes of such determination, the Gross Income and the NOI determined in accordance with clause (ii) in the respective definition thereof shall be deemed to be a determination with respect to such trailing twelve (12) month period.

“Eligible Account” shall mean a separate account from all other funds held by the holding institution that is either (i) an account or accounts (or subaccounts thereof) maintained with a federal or state-chartered depository institution or trust company which complies with the definition of Eligible Institution or (ii) a segregated trust account or accounts (or subaccounts thereof) maintained with a federal or state chartered depository institution or trust company acting in its fiduciary capacity that has a Moody’s rating of at least “Baa3” and that, in the case of a state chartered depository institution or trust company, is subject to regulations substantially similar to 12 C.F.R. §9.10(b), having, in either case, a combined capital and surplus of at least \$50,000,000

and subject to supervision or examination by federal and state authority. An Eligible Account shall not be evidenced by a certificate of deposit, passbook or other instrument.

“Eligible Institution” shall mean a depository institution insured by the Federal Deposit Insurance Corporation, the short term unsecured debt obligations or commercial paper of which are rated at least “A-1” by S&P, “P-1” by Moody’s and “F-1” by Fitch (in the case of accounts in which funds are held for thirty (30) days or less) or the long term unsecured debt obligations or commercial paper of which are rated at least “A” by S&P, “A2” by Moody’s and “A” by Fitch (in the case of letters of credit or accounts in which funds are held for more than thirty (30) days). Notwithstanding the foregoing, no such depository institution shall be an “Eligible Institution” if it has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Bankruptcy Law, (ii) had appointed for it a Bankruptcy Official or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity, or (iii) become the subject of a Bail-In Action.

“Environmental Indemnity” shall mean that certain Environmental Indemnity Agreement, made by Borrower and Guarantor for the benefit of Lender.

“Environmental Law” shall have the meaning set forth in the Environmental Indemnity.

“Equipment” shall have the meaning set forth in the Security Instrument.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974.

“Event of Default” shall have the meaning set forth in Section 10.1(a). An Event of Default shall be deemed to “exist”, “be continuing”, and “remain outstanding”, notwithstanding the fact that such Event of Default may be, is caused by or relates to a one-time, non-recurring event as long as Lender has not accepted a cure or expressly waived such Event of Default in writing.

“Excess Cash” shall have the meaning set forth in Section 2.7.2(b).

“Excess Cash Account” shall mean the account in which Excess Cash Funds are held by Lender.

“Excess Cash Funds” shall mean amounts deposited pursuant to Section 6.7.1.

“Exchange Act” shall mean the Securities and Exchange Act of 1934.

“Exchange Act Filing” shall mean a filing pursuant to the Exchange Act in connection with or relating to a Securitization.

“Executive Order” shall mean an Executive Order of the President of the United States of America.

“Extraordinary Expense” shall have the meaning set forth in Section 4.1.6(e).

“FF&E” shall mean, collectively, furnishings, Fixtures and Equipment located in the guest rooms, hallways, lobbies, restaurants, lounges, meeting and banquet rooms, parking facilities, public areas or otherwise in any portion of the Property, including all beds, chairs, bookcases, tables, carpeting, drapes, couches, luggage carts, luggage racks, bars, bar fixtures, radios, television sets, intercom and paging equipment, electric and electronic equipment, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air-conditioning systems, elevators, escalators, stoves, ranges, refrigerators, laundry machines, tools, machinery, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, cabinets, lockers, shelving, dishwashers, garbage disposals, washers, dryers and all other customary hotel and casino resort equipment and other tangible property owned by Borrower or in which Borrower has or shall have an interest, now or hereafter located at the Property and usable in connection with the present or future operation and occupancy of the Property; provided, however, that FF&E shall not include (i) fixed asset supplies, including linen, china, glassware, tableware, uniforms, other hotel inventory and similar items, whether used or usable in connection with guest rooms, hallways, lobbies, restaurants, lounges, meeting and banquet rooms, parking facilities, public areas or otherwise in any portion of the Property or (ii) items owned by hotel guests, tenants or third party operators.

“Final I/O Debt Service Monthly Payment Date” shall mean the Monthly Payment Date occurring in [May] 2025.

“FIRRMA” shall mean, collectively, the Defense Production Act of 1950, all rules and regulations promulgated thereunder and all mandates, requirements, powers and similar requirements imposed or exercised thereunder (including the Foreign Investment Risk Review Modernization Act and any of the foregoing implemented by and/or otherwise relating to the Committee on Foreign Investment in the United States of America), together with any successor statutes.

“FIRRMA Document” shall mean any agreement, document or declaration or any notice, correspondence or other communication relating to FIRRMA; provided, that, if the communication is oral, “FIRRMA Document” shall mean a written summary thereof prepared by Borrower.

“FIRRMA Prohibited Filing Event” shall mean an event which shall be deemed to have occurred if (i) any mandatory filing or declaration relating to FIRRMA is required and/or (ii) any Governmental Authority requires (or recommends to the President of the United States of America) forfeiture, divestiture or abandonment of all or any portion of the Property and/or imposes any mitigation measures on Borrower, any Constituent Owner of Borrower and/or the Property, in each case, related to FIRRMA.

“FIRRMA Prohibited Transfer” shall mean any Transfer of the Property or any portion thereof or interest therein or any Transfer of an interest in any Restricted Party, in each case, which (i) triggers a mandatory filing or declaration requirement with respect to FIRRMA, (ii) makes advisable a voluntary filing or declaration with respect to FIRRMA or (iii) increases the likelihood of (A) forfeiture, divestiture or abandonment of all or any portion of the Property relating to FIRRMA or (B) any mitigation measures being imposed by any Governmental Authority on Borrower, any Constituent Owner of Borrower and/or the Property, in each case, related to FIRRMA.

“Fitch” shall mean Fitch Ratings, Inc. and its successor-in-interest.

“Fixtures” shall have the meaning set forth in the Security Instrument.

“Franchise Agreement” shall mean that certain Franchise Agreement, dated as of March 12, 2015, between Borrower and Franchisor or a Replacement Franchise Agreement, in each case, as the same may be amended in accordance with this Agreement.

“Franchise Extension Event” shall mean an extension of the Franchise Agreement upon terms and conditions reasonably acceptable to Lender.

“Franchise Replacement Event” shall mean a replacement of Franchisor under the Franchise Agreement with a Qualified Franchisor pursuant to a Replacement Franchise Agreement.

“Franchise Trigger Event” shall mean:

- (i) if Franchisor gives written notice to Borrower of its intention to terminate or not extend the Franchise Agreement;
- (ii) if, on or prior to the date that is twelve (12) months prior to the then-applicable expiration date under the Franchise Agreement, the Franchise Agreement is not extended on terms and conditions reasonably acceptable to Lender;
- (iii) if an event of default by Borrower or an Affiliate of Borrower occurs under the Franchise Agreement;
- (iv) subject to clause (v) below, if an event of default by Franchisor occurs under the Franchise Agreement;
- (v) any Bankruptcy Action of Franchisor;
- (vi) if the Franchise Agreement is terminated (in whole or in part) or is no longer in full force and effect; or
- (vii) if Franchisor requires Borrower to perform or otherwise satisfy (or cause to be performed or otherwise satisfied) any Other PIP Work.

“Franchise Trigger Event Cure” shall mean:

- (i) if the Franchise Trigger Event is caused solely by the occurrence of clause (i), (ii) or (vi) of the definition of “Franchise Trigger Event”, (A) a Franchise Extension Event occurs or (B) a Franchise Replacement Event occurs, provided that, in each case, the PIP Work Conditions shall have been satisfied as reasonably determined by Lender;
- (ii) if the Franchise Trigger Event is caused solely by the occurrence of clause (i) of the definition of “Franchise Trigger Event” and the conditions of clause (i) in this definition are not satisfied, the unconditional revocation or rescission by Franchisor

of all termination or non-extension notices with respect to the Franchise Agreement;

- (iii) if the Franchise Trigger Event is caused solely by the occurrence of clause (iii) of the definition of “Franchise Trigger Event”, (A) a cure of the applicable event of default under the Franchise Agreement, which cure is accepted by Franchisor and accepted by Lender in its reasonable discretion, or (B) an unconditional waiver of such event of default in writing by Franchisor; provided that (1) such waiver is accepted by Lender in its sole and absolute discretion and (2) Lender shall not have exercised any of its rights under Section 10.2 to accelerate the Loan, move to appoint a Bankruptcy Official or commence a foreclosure action;
- (iv) if the Franchise Trigger Event is caused solely by the occurrence of clause (iv) of the definition of “Franchise Trigger Event”, (A) a cure of the applicable event of default under the Franchise Agreement, as determined by Lender in its reasonable discretion, or (B) a Franchise Replacement Event, provided that the Franchise Replacement Conditions shall have been satisfied;
- (v) if the Franchise Trigger Event is caused solely by the occurrence of clause (v) of the definition of “Franchise Trigger Event”, (A) a Franchise Replacement Event, provided that the Franchise Replacement Conditions shall have been satisfied, or (B) if such Franchise Trigger Event is solely as a result of an involuntary petition, case or proceeding against Franchisor with respect to which neither Franchisor nor any Affiliate of Franchisor solicited or caused to be solicited petitioning creditors or consented or otherwise acquiesced or joined in, upon the same being discharged or dismissed within forty-five (45) days of such filing; provided that such filing (after discharge or dismissal) does not materially and adversely affect Franchisor’s ability to perform its obligations under the Franchise Agreement; and
- (vi) if the Franchise Trigger Event is caused solely by the occurrence of clause (vii) of the definition of “Franchise Trigger Event”, the PIP Work Conditions with respect to the Other PIP Work shall have been satisfied;

provided that each Franchise Trigger Event Cure shall be subject to the following conditions: (1) after giving effect to such Franchise Trigger Event Cure, no Franchise Trigger Event shall exist and (2) Borrower shall have paid all of Lender’s costs incurred in connection with such Franchise Trigger Event Cure (including reasonable attorneys’ fees).

“Franchise Trigger Event Excess Cash” shall have the meaning set forth in Section 2.7.2.

“Franchise Trigger Event Period” shall mean any period commencing on the occurrence of a Franchise Trigger Event and continuing until the earlier of (i) the Monthly Payment Date following the occurrence of a Franchise Trigger Event Cure, as determined by Lender and (ii) the payment in full of the Debt.

“Franchisor” shall mean Doubletree Franchise LLC or, if the context requires, a Qualified Franchisor pursuant to a Replacement Franchise Agreement.

“**GAAP**” shall mean generally accepted accounting principles in the United States of America as of the date of determination.

“**Government Lists**” shall mean (i) the Specially Designated Nationals and Blocked Persons Lists maintained by OFAC, (ii) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC, and (iii) any similar lists maintained by the U.S. Department of State, the U.S. Department of Commerce or any other Governmental Authority or pursuant to any Executive Order.

“**Governmental Authority**” shall mean any court, agency, board, bureau, commission, council, department, division, office, or other authority of any nature whatsoever of any governmental unit (foreign, federal, state, county, district, municipal, city, or otherwise) whether now or hereafter in existence.

“**Grantor Trust**” shall mean a grantor trust under Subpart E of Part 1 of Subchapter J of the Code.

“**Gross Income**” shall mean, for any period, all sustainable income, computed in accordance with the Acceptable Accounting Basis, derived from the ownership and operation of the Property from whatever source during such period, including (without duplication) Rents, income and proceeds from the rental of rooms, commercial space and meeting, conference and/or banquet space within the Property (including net parking revenue), income and proceeds received from food and beverage operations and from catering services conducted from the Property, utility charges, escalations, forfeited security deposits, interest on credit accounts, service fees or charges, license fees, parking fees, and other pass-through or reimbursements paid by tenants under the Leases of any nature (and with respect to any such item that is not paid monthly (e.g., percentage rent or reimbursements), using for purposes of calculating DSCR or Debt Yield, the applicable prorated amount for the relevant period based on the annualized amount for such item), but excluding (a) Rents from tenants that are in monetary or material non-monetary default under their Leases, month-to-month tenants, tenants that are included as debtors in any Bankruptcy Action, tenants whose lease guarantors are included as debtors in any Bankruptcy Action, tenants that have given notice of their intention to terminate or not extend their Leases (unless, subsequent to such notice, the applicable tenant has extended its Lease or entered into a new Lease or unconditionally rescinded such notice in writing), or tenants that have “gone dark”, vacated, ceased to occupy or discontinued their operations at the Property (other than a temporary cessation of operations in connection with remodeling, renovation or restoration of their leased premises); (b) Lease Payments; (c) excise, sales, use, occupancy, or other taxes on receipts required to be accounted for by Borrower to any Governmental Authority; (d) rent concessions, credits, free rent, and refunds; (e) uncollectible accounts; (f) proceeds from the sale of FF&E; (g) Net Proceeds (other than business income insurance proceeds to the extent that Lender elects to characterize such proceeds as Rents in accordance with [Section 5.2.3](#)); (h) any security deposits, utility, and other similar deposits; (i) any disbursements to Borrower from the Reserve Funds, if any; (j) tips, gratuities or service charges with respect to food, beverage, banquet or other guest services paid to employees (whether of Manager or any Tenant) working at the Property; (k) gross receipts received by lessees, licensees or concessionaires of the Property; (l) consideration received at the Property for hotel accommodations, goods and services to be provided at other hotels, although arranged by, for or on behalf of Borrower or Manager; and (m) any non-recurring credits or refunds made to

customers, guests or patrons in the form of allowances or adjustments to previously recorded revenues.

“**Ground Lease**” shall mean State of Hawaii Department of Land and Natural Resources General Lease No. S-5844, as assigned and hereafter amended.

“**Ground Lessor**” shall mean the State of Hawaii, together with its successors and assigns, as lessor under the Ground Lease.

“**Ground Rent**” shall mean any rent, additional rent or other charge payable by the tenant under the Ground Lease.

“**Ground Rent Account**” shall have the meaning set forth in Section 6.6.1 hereof.

“**Ground Rent Funds**” shall have the meaning set forth in Section 6.6.1 hereof.

“**Guarantor**” shall mean **EDWARD BUSHOR**, an individual, **STUART MILLER**, an individual, **MICHAEL PAULIN**, an individual, and **BEN RAFTER**, an individual, individually and collectively as the context may require.

“**Guaranty**” shall mean that certain Guaranty of Recourse Obligations made by Guarantor for the benefit of Lender.

“**Hazardous Substances**” shall have the meaning set forth in the Environmental Indemnity.

“**Hotel Agreement Termination Fee**” shall mean, with respect to any Franchise Agreement, all termination fees, exit fees, other similar fees, costs, penalties, judgments, damages and other amounts due in connection with the termination, rejection or other cessation of such Franchise Agreement.

“**Hotel Agreement Termination Trigger Event**” shall mean (i) any Event of Default, (ii) any Bankruptcy Action of Franchisor or (iii) if an event of default by Franchisor occurs under the Franchise Agreement.

“**Hotel Operating Agreement**” shall mean any brand, trademark, tradename, license, franchise, reservation system, logotype, mark, listing system, hotel operating system or any agreement and/or right to use any of the foregoing (by law, contract or otherwise), in each case, as would be commonly subsumed into a hotel franchise agreement.

“**Immediate Family Members**” shall mean, with respect to any natural person, such person’s parents, siblings, spouse, children and grandchildren.

“**Improvements**” shall have the meaning set forth in the Security Instrument.

“**Indebtedness**” shall mean, for any Person, without duplication: (i) all indebtedness or liability (including indebtedness in the form of mezzanine debt or preferred equity, amounts drawn under a letter of credit or deferred purchase price of property or services (including trade

obligations)) for which such Person is or its assets are directly or indirectly liable, (ii) all unfunded amounts under a loan agreement, letter of credit, or other credit facility for which such Person would be liable (or to which its assets would be subject) if such amounts were advanced thereunder, (iii) all amounts required to be paid by such Person pursuant to any agreement to purchase, to provide funds for payment, to supply funds, or to invest in any Person, (iv) all indebtedness or liabilities guaranteed by such Person, directly or indirectly, (v) all obligations of such Person under capital leases, (vi) all obligations of such Person under interest rate swaps, caps, floors, collars and other interest hedge agreements, and (vii) any Affiliate Loan.

“**Indemnified Liabilities**” shall have the meaning set forth in Section 11.13(b).

“**Initial PIP Work**” shall mean all PIP Work required to be performed or otherwise satisfied (or caused to be performed or otherwise satisfied) by Borrower pursuant to any PIP in place on the Closing Date.

“**Insolvency Opinion**” shall mean (i) that certain non-consolidation opinion letter, dated as of the Closing Date, rendered by [** _____ **] and/or (ii) any other non-consolidation opinion letter delivered to Lender, in each case, in connection with the Loan.

“**Insurance Account**” shall mean the account in which Insurance Funds are held by Lender.

“**Insurance Funds**” shall mean the amounts deposited pursuant to Section 6.3.1.

“**Insurance Premiums**” shall have the meaning set forth in Section 5.1.1(b).

“**Insurance Proceeds**” shall mean the amount of all insurance proceeds paid under the Policies.

“**Intellectual Property**” shall have the meaning set forth in Section 3.1.43.

“**Interest Period**” shall mean, with respect to any Monthly Payment Date, the period commencing on the eleventh (11th) day of the preceding calendar month and terminating on the tenth (10th) day of the calendar month in which such Monthly Payment Date occurs; provided, however, that the initial Interest Period shall begin on the Closing Date and shall end on the immediately following tenth (10th) day of the immediately succeeding calendar month.

“**Interest Rate**” shall mean an interest rate per annum equal to [** _____ percent (___%) **].

“**Key Principal**” shall mean Guarantor.

“**Kroll**” shall mean Kroll Bond Rating Agency, Inc. and its successor-in-interest.

“**Labor and Material Costs**” shall have the meaning set forth in Section 4.1.2.

“**Lease**” shall have the meaning set forth in the Security Instrument; provided that, for purposes of this Agreement, the term “Lease” shall exclude any Transient Lease. Notwithstanding the foregoing, the Ground Lease shall not constitute a Lease.

“**Lease Payments**” shall mean all amounts paid to Borrower or Manager in connection with (i) any amendment of any Lease, (ii) any consent (including any consent to an assignment or sublease of any Lease) or waiver by Borrower of any term, condition or provision under any Lease, (iii) any settlement of claims of Borrower against third parties in connection with any Lease, (iv) any rejection, termination, surrender, cancellation or buy-out of any Lease (in whole or in part) (including in connection with the exercise of any contraction option or any Bankruptcy Action and including any payment relating to unamortized tenant allowances, tenant improvements and/or leasing commissions), and (v) any other extraordinary event pursuant to which Borrower or Manager receives payment (in whatever form) derived from or generated by the use, ownership or operation of the Property not otherwise covered by the Loan Documents, in each case, net of reasonable, out-of-pocket costs, if any, incurred by Borrower in connection with obtaining any such amounts.

“**Legal Requirements**” shall mean all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees, demands and injunctions of Governmental Authorities affecting the Loan, any Secondary Market Transactions, Borrower, any SPC Party, Guarantor or the Property or any part thereof or interest therein or the ownership, construction, alteration, zoning, use, occupancy or operation of the Property or any part thereof or interest therein, whether now or hereafter enacted and/or in force; all permits, licenses, authorizations and regulations relating thereto; and all covenants, agreements, restrictions, and encumbrances contained in any instruments, whether of record or not, at any time in force affecting Borrower, any SPC Party, Guarantor or the Property or any part thereof or interest therein.

“**Lender**” shall have the meaning set forth in the introductory paragraph.

“**Lender Indemnitees**” shall mean (i) Lender, (ii) any affiliate of Lender that has filed any registration statement relating to a Securitization or has acted as the issuer, sponsor or depositor in connection with such Securitization, (iii) any affiliate of Lender that acts as an underwriter, placement agent or initial purchaser in connection with a Securitization, (iv) any other co-underwriters, co-placement agents or co-initial purchasers in connection with a Securitization, (v) each Person who “controls” within the meaning of Section 15 of the Exchange Act any Person described in any of the foregoing clauses, (vi) any Person who is or will have been involved in the origination or servicing of the Loan, (vii) any Person in whose name the Lien created by any Loan Document is or will be recorded or filed, (viii) any Person who may hold or acquire or will have held any interest in the Loan at any time (including investors or prospective investors in the Securities, as well as custodians, trustees and other fiduciaries who hold or have held any interest in the Loan for the benefit of third parties), (ix) any Person who holds or acquires or will have held a participation or other interest in the Loan at any time (including following a foreclosure of the Loan), (x) any successors by merger, consolidation or acquisition of all or a substantial portion of Lender’s assets and business, and (xi) the respective officers, directors, Constituent Owners, employees, agents, representatives, contractors, subcontractors, Affiliates, participants, successors and assigns (other than a third-party purchaser at foreclosure or an assignee by deed-in-lieu of

foreclosure that is not Lender or an affiliate of Lender) of any Person described in any of the foregoing clauses.

“**Lien**” shall mean any mortgage, deed of trust, security instrument, lien, pledge, hypothecation, assignment, security interest, easement, covenant, preference, conditional sale or other title retention agreement, financing lease, financing statement, mechanic’s, materialman’s or other similar liens, or any other encumbrance (other than a Permitted Encumbrance), charge or transfer of, or any agreement to enter into or create any of the foregoing, affecting (i) all or any portion of the Property or any interest therein, (ii) any direct or indirect interest in Borrower or any SPC Party, or (iii) any other collateral securing the Obligations.

“**Loan**” shall mean the loan in the original principal amount of **[** FIFTY-FOUR MILLION AND 00/100 DOLLARS (\$54,000,000.00) **]** made by Lender to Borrower pursuant to this Agreement and the other Loan Documents.

“**Loan Documents**” shall mean, collectively, this Agreement, the Note, the Security Instrument, the Assignment of Leases, the Guaranty, the Environmental Indemnity, the O&M Agreement, the Assignment of Management Agreement, the Comfort Letter, the Clearing Account Agreement, the Cash Management Agreement, the Borrower’s Certificate and Agreement, **[** the Post Closing Agreement, **]** and all other documents, agreements, certificates and instruments now or hereafter executed and/or delivered in connection with the Loan. **[** LIST TO BE CONFORMED TO TRANSACTION **]**

“**LTV Ratio**” shall mean a ratio, as determined by Lender as of a particular date, in which: (i) the numerator is equal to the Outstanding Principal Balance and (ii) the denominator is equal to the value of the Property based on an Appraisal.

“**Management Agreement**” shall mean that certain **[** _____**, dated as of _____, ****]** between Borrower and Manager, pursuant to which Manager is to provide management and other services with respect to the Property or a Replacement Management Agreement, in each case, as the same may be amended in accordance with this Agreement.

“**Manager**” shall mean **[** _____ **]** or, if the context requires, a Qualified Manager pursuant to a Replacement Management Agreement.

“**Material Adverse Effect**” shall mean any material adverse effect upon (i) the business operations, economic performance, assets, condition (financial or otherwise), equity, contingent liabilities, prospects, material agreements or results of operations of Borrower, Guarantor or the Property, (ii) the ability of Borrower or Guarantor to perform its obligations under any Loan Document, (iii) the enforceability of any Loan Document, the perfection or priority of any Lien created by any Loan Document or the rights, interests and remedies of Lender under any Loan Document, or (iv) the value, use or operation of the Property.

“**Material Agreements**” shall mean (i) each franchise, management, brokerage or leasing agreement (other than the Franchise Agreement or the Management Agreement), (ii) any Transient Lease or third party booking arrangement relating to the availability of rooms for future reservations, which, in each case, (x) has a term of more than **[** ____ **]** days and (y) covers more than **[** ____ **]** rooms (unless cancellable on thirty (30) days or less notice without

requiring the payment of a termination fee or payments of any kind), and (iii) any cleaning, maintenance, service or other contract or agreement (other than the Leases and the Transient Leases) of a material nature (materiality for purposes of this definition shall include any contract with a term longer than one year or any contract that is not terminable on thirty (30) days' or less notice without the payment of any termination fee or payments of any kind), in either case relating to the ownership, development, leasing, management, use, operation, maintenance, repair, improvement or restoration of the Property.

“Maturity Date” shall mean the date on which the final payment of principal of the Note becomes due and payable as therein or herein provided, whether at the Stated Maturity Date, by declaration of acceleration, or otherwise.

“Maximum Legal Rate” shall mean the maximum non-usurious interest rate, if any, that may be contracted for, taken, reserved, charged or received on the indebtedness evidenced by the Note and as provided for in the Loan Documents, pursuant to applicable Legal Requirements.

“Minimum Disbursement Amount” shall mean Ten Thousand and 00/100 Dollars (\$10,000.00).

“Monthly Cap Ex Deposit” shall have the meaning set forth in Section 6.4.1.

“Monthly Debt Service Payment Amount” shall mean (i) with respect to each Monthly Payment Date occurring on or prior to the Final I/O Debt Service Monthly Payment Date, an amount equal to interest which is scheduled to accrue on the Loan through the last day of the Interest Period relating to such Monthly Payment Date and (ii) with respect to each Monthly Payment Date thereafter, a constant monthly payment amount of [** \$_____ **].

“Monthly Ground Rent Deposit” shall have the meaning set forth in Section 6.6.1 hereof.

“Monthly Insurance Deposit” shall have the meaning set forth in Section 6.3.1.

[*****“Monthly Net Cash Flow”** shall mean, for any calendar month during the term of the Loan, an amount equal to (i) the Gross Income from Operations (without exclusion, however, for income and proceeds received by Borrower or Manager with respect to items described in clause (b) in the definition thereof) for such calendar month, less (ii) the sum of (a) the Operating Expenses for such calendar month incurred in accordance with the applicable Approved Annual Budget or otherwise approved by Lender in writing, (b) the Debt Service due and payable in such calendar month, (c) the deposits required to be made by Borrower to the Reserve Funds (other than the Seasonality Reserve Funds) during such calendar month and (d) any other amounts due and payable by Borrower pursuant to the terms of the Loan Documents during such calendar month.***]

[*****“Monthly Net Cash Flow Shortfall”** shall mean, for any calendar month during the term of the Loan, (i) if the Monthly Net Cash Flow during such calendar month is less than \$0 (such calendar month, a **“Seasonality Shortfall Month”**), an amount equal to the product of (a) minus 1 (-1) and (b) the Monthly Net Cash Flow for such calendar month and (ii) if the Monthly Net Cash Flow during such calendar month is not less than \$0.***]

“**Monthly Payment Date**” shall mean, subject to Section 2.3.4, the sixth (6th) day of every calendar month occurring during the Term commencing with [June] 6, 2023; provided that (i) Lender shall have the right to change the Monthly Payment Date to any other day of a calendar month selected by Lender, in its sole and absolute discretion upon notice to Borrower (in which event, such change shall then be deemed effective), (ii) if Lender shall change the Monthly Payment Date, Lender shall also adjust the Interest Period accordingly and (iii) if requested by Lender, Borrower shall promptly execute an amendment to this Agreement to evidence such changes.

[** REVISE AS NEEDED: “**Monthly Seasonality Deposit**” shall mean
_____ **TO BE DETERMINED IN UNDERWRITING **]**

“**Monthly Tax Deposit**” shall have the meaning set forth in Section 6.2.1.

“**Moody’s**” shall mean Moody’s Investors Service, Inc. and its successor-in-interest.

“**Morningstar**” shall mean Morningstar Credit Ratings, LLC and its successor-in-interest.

“**NCF**” shall mean, for any period, the amount obtained by subtracting Op Ex and Cap Ex for such period from Gross Income for such period.

“**Net Proceeds**” shall mean: (i) the net amount of all Insurance Proceeds, after deduction of reasonable costs (including reasonable attorneys’ fees), if any, actually incurred by or on behalf of Borrower in collecting such Insurance Proceeds; provided that, for purposes of Section 5.3, “Net Proceeds” shall mean such net amount of Insurance Proceeds to the extent received by Lender pursuant to the Policies required under Sections 5.1.1(a)(i), (iv), (vi), (xi) and (xii) as a result of the applicable Casualty or (ii) the net amount of the Award, after deduction of reasonable costs (including reasonable attorneys’ fees), if any, actually incurred by or on behalf of Borrower in collecting such Award.

“**Net Proceeds Deficiency**” shall have the meaning set forth in Section 5.3.2(e).

“**New Mezzanine Borrower**” shall have the meaning set forth in Section 11.29.

“**New Mezzanine Loan**” shall have the meaning set forth in Section 11.29.

“**New Mezzanine Option**” shall have the meaning set forth in Section 11.29.

“**New Mortgage Borrower**” shall have the meaning set forth in Section 11.29.

“**New Mortgage Loan**” shall have the meaning set forth in Section 11.29.

“**NOI**” shall mean, for any period, the amount obtained by subtracting the applicable Op Ex from the applicable Gross Income.

“**Note**” shall mean that certain Promissory Note in the stated principal amount of [** **FIFTY-FOUR MILLION AND 00/100 DOLLARS (\$54,000,000.00)** **], made by Borrower in favor of Lender.

“**Notice**” shall have the meaning set forth in Section 11.6.

“**NRSRO**” shall mean any credit rating agency that has elected to be treated as a nationally recognized statistical rating organization for purposes of Section 15E of the Exchange Act, without regard to whether or not such credit rating agency has been engaged by Lender or other Securitization Parties in connection with, or in anticipation of, a Securitization.

“**O&M Agreement**” shall mean that certain Asbestos Operations and Maintenance Agreement made by Borrower in favor of Lender.

“**Obligations**” shall mean, collectively, Borrower’s obligations for the payment of the Debt and the performance of the Other Obligations.

“**Obligor Party**” shall have the meaning set forth in Section 9.1(c).

“**OFAC**” shall mean the Office of Foreign Assets Control or, if the context requires, any successor Governmental Authority.

“**Officer’s Certificate**” shall mean a certificate delivered by Borrower to Lender that is signed by a duly qualified and authorized officer of Borrower or a SPC Party.

“**Open Prepayment Date**” shall mean the Monthly Payment Date that occurs six (6) months prior to the Stated Maturity Date.

“**Operating Agreements**” shall mean, collectively, the REA and any other covenants, restrictions or agreements of record relating to the construction, operation or use of the Property.

“**Op Ex**” shall mean, for any period, the total of all expenditures, computed in accordance with the Acceptable Accounting Basis, of whatever kind during such period relating to the operation, maintenance and management of the Property that are incurred on a regular monthly or other periodic basis, including (a) utilities, (b) ordinary repairs and maintenance, (c) insurance, (d) license fees, (e) property taxes and assessments, (f) advertising expenses, (g) management and franchise fees, (h) computer processing charges, (i) operational equipment or other lease payments as approved by Lender, (j) the cost of all food and beverages sold or consumed, (k) the cost of all necessary chinaware, glassware, linens, flatware, uniforms, utensils and other items of a similar nature, including such items bearing the name or identifying characteristics of the hotel as Borrower and/or Manager shall reasonably consider appropriate (collectively, “**Operating Equipment**”) and paper supplies, cleaning materials and similar consumable items (collectively, “**Operating Supplies**”) placed in use (other than reserve stocks thereof in storerooms). Operating Equipment and Operating Supplies shall be considered to have been placed in use when they are transferred from the storerooms of the Property to the appropriate operating departments, (l) salaries and wages of personnel of the Property, including costs of payroll taxes and employee benefits (which benefits may include, without limitation, a pension plan, medical insurance, life insurance, travel accident insurance and an executive bonus program), (m) the cost of all other goods and services obtained by Borrower or Manager in connection with its operation of the Property including, without limitation, heat and utilities, office supplies and all services performed by third parties, including leasing expenses in connection with telephone and data processing equipment, and all existing and any future installations necessary for the operation of the

Improvements for hotel purposes (including, without limitation, heating, lighting, sanitary equipment, air conditioning, laundry, refrigerating, built-in kitchen equipment, telephone equipment, communications systems, computer equipment and elevators), Operating Equipment and existing and any future furniture, furnishings, wall coverings, fixtures and hotel equipment necessary for the operation of the building for hotel purposes which shall include all equipment required for the operation of kitchens, bars, laundries (if any) and dry cleaning facilities (if any), office equipment, cleaning and engineering equipment and vehicles, and (n) the cost of any reservations system, any accounting services or other group benefits, programs or services from time to time made available to properties in Borrower's system, but excluding depreciation and amortization, Debt Service, Cap Ex, and contributions to the Reserve Accounts.

“Organizational Documents” shall mean, as to any Person, the organizational or governing documents of such Person.

“Other Charges” shall mean all maintenance charges, impositions and any other charges, but excluding Taxes.

“Other Obligations” shall mean all obligations of Borrower under any Loan Document, excluding, in each case, Borrower's obligation for the payment of the Debt.

“Other PIP Work” shall mean, as of the date of determination, all PIP Work required to be performed or otherwise satisfied (or caused to be performed or otherwise satisfied) by Borrower pursuant to any PIP (other than a PIP in place on the Closing Date).

“Outstanding Principal Balance” shall mean, as of any date, the outstanding principal balance of the Loan.

“PACE Loan” shall mean any Property Assessed Clean Energy loan or similar indebtedness.

“Patriot Act” shall mean, collectively, all laws relating to terrorism or money laundering, including Executive Order No. 13224 on Terrorist Financing (effective September 24, 2001) and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56).

“Patriot Act Offense” shall mean (i) any violation of the laws of the United States of America or of any of the several states, or any act or omission that would constitute a violation of such laws if committed within the jurisdiction of the United States of America or any of the several states, relating to terrorism or money laundering, including any offense under (A) the laws against terrorism, (B) the laws against money laundering, (C) the Bank Secrecy Act, (D) the Money Laundering Control Act of 1986, or (E) the Patriot Act, or (ii) the conspiracy to commit, or aiding and abetting another to commit, any violation of any such laws.

“Permitted Encumbrances” shall mean, collectively, (i) the Liens created by the Loan Documents, (ii) all Liens set forth on Schedule A or Schedule B of the Title Insurance Policy, (iii) Liens, if any, for Taxes or Other Charges imposed by any Governmental Authority not yet due or delinquent (other than Liens securing any PACE Loan), (iv) any workers', mechanics' or other similar Lien on the Property or any portion thereof, provided that such Lien is (A) fully

bonded by a surety company acceptable to Lender and the Rating Agencies to the satisfaction of Lender and the Rating Agencies and discharged of record or otherwise discharged of record within thirty (30) days after Borrower first receives written notice of such Lien or (B) being contested in good faith in accordance with this Agreement, and (v) such other title and survey exceptions as Lender has approved or may approve in writing in Lender's sole discretion.

"Permitted Investments" shall have the meaning set forth in the Cash Management Agreement.

"Permitted Release Date" shall mean the earlier to occur of (i) the third (3rd) anniversary of the first (1st) Monthly Payment Date and (ii) the Defeasance Lockout Expiration Date.

"Person" shall mean any natural person, corporation, partnership, limited liability company, estate, trust, unincorporated association, any other entity, any Governmental Authority or any fiduciary acting in such capacity on behalf of any of the foregoing.

"PIP" shall mean any property improvement plan, capital improvement, expenditure plan or similar requirement (including any requirement to perform any alteration, remodeling or renovation at the Property) under or pursuant to the Franchise Agreement (including any Replacement Franchise Agreement).

"PIP Account" shall mean the account in which PIP Funds are held by Lender.

"PIP Funds" shall amounts deposited pursuant to Section 6.11.1.

"PIP Work" shall mean any work, term, condition or other obligation required to be performed or otherwise satisfied under any PIP. The term "PIP Work" shall include the Initial PIP Work and any Other PIP Work.

"PIP Work Conditions" shall mean each of the following: (i) all PIP Work required to be performed or otherwise satisfied (or caused to be performed or otherwise satisfied) by Borrower shall have been performed or otherwise satisfied in accordance with the Franchise Agreement (including any Replacement Franchise Agreement) and this Agreement, (ii) all other conditions required by Franchisor under the Franchise Agreement (including any Replacement Franchise Agreement) shall have been satisfied, (iii) all costs and expenses in connection with such PIP Work shall have been paid in full, (iv) the satisfaction of the Reserve Disbursement Conditions described in clauses (iii), (iv), (v), (vi), (vii), (ix) and (x) in the definition thereof (it being understood and agreed that, for purposes of this clause (iv), such Reserve Disbursement Conditions shall apply regardless of whether or not there has been any payment, or request for payment, of the PIP Funds or any other Reserve Funds in connection with the PIP Work), (v) Borrower shall have delivered to Lender such evidence as Lender may reasonably require that evidences the satisfaction of the foregoing conditions and is in form and substance reasonably acceptable to Lender, (vi) the absence of an existing Franchise Trigger Event, and (vii) Borrower shall have paid all costs incurred by Lender in connection with such PIP Work (including costs incurred by Lender to review any related plans, specifications and shop drawings and to inspect the Property).

"Policies" or **"Policy"** shall have the meaning set forth in Section 5.1.1(b).

[** **“Post Closing Agreement”** shall mean that certain Post-Closing Agreement made by Borrower for the benefit of Lender. **]

“Prepayment Date” shall mean the date, prior to the Maturity Date, on which the Loan is prepaid in accordance with the terms hereof.

“Prohibited Entity” shall mean any Person that (i)(A) is a Crowd Funded Entity or (B) owns (or, in connection with a proposed assumption of the Loan or a proposed Transfer, proposes to own) any direct or indirect ownership interest in Borrower, any prospective transferee or the Property through a Crowd Funded Entity, (ii) is a statutory trust or similar Person or (iii) owns (or, in connection with a proposed assumption of the Loan or a proposed Transfer, proposes to own) any direct or indirect ownership interest in Borrower, any prospective transferee or the Property through a tenancy-in-common or other similar form of ownership.

“Prohibited Person” shall mean any Person (i) listed in the Annex to, or is otherwise subject to the prohibitions of, Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism or any other similar prohibitions contained in the rules and regulations of OFAC or in any enabling legislation or other Executive Orders; (ii) that is owned or Controlled by, or acting for or on behalf of, any Person that is listed in the Annex to, or is otherwise subject to the prohibitions of, Executive Order No. 13224; (iii) with whom Lender is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering law, including Executive Order No. 13224; (iv) who commits, threatens, conspires to commit or supports “terrorism” as defined in Executive Order No. 13224; (v) that is named as a “specially designated national and blocked person” on the most current list maintained by OFAC or other replacement official publication of such list; (vi) that is subject to trade restrictions under United States law, including the Patriot Act, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder; (vii) that is listed on any Government List; (viii) that has been previously indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any Patriot Act Offense; (ix) that is currently under investigation by any Governmental Authority for alleged criminal activity; or (x) who is an Affiliate of any Person that is described by or that satisfies any of clauses (i) through (ix) above.

“Property” shall mean the parcel of real property demised under the Ground Lease, the Improvements now or hereafter erected, situated or installed thereon and all personal property owned by Borrower and encumbered by the Security Instrument, together with all rights pertaining to such property (real and personal) and the Improvements, all as more particularly described in the Security Instrument.

“Property Condition Report” shall mean that certain property condition report with respect to the Property delivered to Lender in connection with the origination of the Loan.

“Property Management Trigger Event” shall mean (i) an indictment of Borrower, Guarantor, Key Principal, an Affiliated Manager or any director or officer of any such Person for fraud or misappropriation of funds or (ii) an indictment of a third party Manager or any director or officer of a third party Manager for fraud or misappropriation of funds related to the Property.

“Property Zoning Report” shall mean that certain zoning report with respect to the Property delivered to Lender in connection with the origination of the Loan.

“Qualified Franchisor” shall mean a reputable and experienced franchisor which, in the reasonable judgment of Lender, possesses experience in flagging hotel properties similar in location, size, class, use, operation and value as the Property; provided, that Borrower shall have obtained: (A) if required by Lender, a Rating Agency Confirmation and (B) if such Person is an Affiliate of Borrower, a new bankruptcy non-consolidation opinion letter reasonably acceptable to Lender and acceptable to the Rating Agencies in their sole discretion.

“Qualified Manager” shall mean a reputable and experienced management organization reasonably acceptable to Lender; provided, that Borrower shall have obtained: (A) if required by Lender, a Rating Agency Confirmation and (B) if such Person is an Affiliate of Borrower, a new bankruptcy non-consolidation opinion letter reasonably acceptable to Lender and acceptable to the Rating Agencies in their sole discretion.

“Rating Agencies” shall mean (i) prior to the Securitization of the entire Loan, each of S&P, Moody’s, Fitch, Morningstar, DBRS, Kroll or any other nationally recognized statistical rating agency designated by Lender and (ii) after the Securitization of the entire Loan, any of the foregoing that has rated any of the Securities.

“Rating Agency Confirmation” shall mean, collectively, a written affirmation from each of the Rating Agencies that the rating of the Securities (or any class thereof) by such Rating Agency immediately prior to the occurrence of the event with respect to which such Rating Agency Confirmation is sought will not be qualified, downgraded or withdrawn as a result of the occurrence of such event, which affirmation may be granted or withheld in such Rating Agency’s sole and absolute discretion. If, at any given time, no Rating Agency has elected to consider whether to grant or withhold such affirmation, then “Rating Agency Confirmation” shall be deemed instead to require Lender’s prior approval based on its good faith determination of whether the Rating Agencies would issue a Rating Agency Confirmation; provided that the foregoing requirement shall not apply if Lender has an independent approval right in respect of the matter at issue pursuant to this Agreement.

“REA” shall mean **[** (i) [** that / those **] certain [** agreement / agreements **]** described on Schedule 1.1 and (ii) ****] any reciprocal easement agreement, declaration of covenants and/or restrictions or other similar agreement relating to the Property or any portion thereof that is entered into after the Closing Date in accordance with this Agreement, in each case, as the same may be amended in accordance with this Agreement.**

“Real Estate Taxes” shall have the meaning set forth in the definition of “Taxes”.

“Regulation AB” shall mean Regulation AB under the Securities Act and the Exchange Act.

“Regulation S-K” means Regulation S-K of the Securities Act.

“Regulation S-X” means Regulation S-X of the Securities Act.

“Related Loan” shall mean any loan (i) made to an Affiliate of Borrower or Guarantor or secured by a Related Property that is included in a Securitization with the Loan or any portion thereof or interest therein or (ii) that is cross-collateralized or cross-defaulted with the Loan.

“Related Property” shall mean a parcel of real property, together with improvements thereon and personal property related thereto, that is “related” within the meaning of “Significant Obligor” to the Property.

“REMIC Trust” shall mean a “real estate mortgage investment conduit” within the meaning of Section 860D of the Code that holds the Note or any portion thereof or interest therein.

“Rents” shall mean (without duplication) all rents (including percentage rents and all other amounts payable as rent under any Lease or other agreements relating to the Property), rent equivalents, moneys payable as damages (including payments by reason of the rejection of a Lease in a Bankruptcy Action) or in lieu of rent or rent equivalents, Lease Payments, royalties (including all oil and gas or other mineral royalties and bonuses), income, fees, receivables, receipts, revenues, deposits (including security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other payment and consideration of whatever form or nature received by or paid to or for the account of or the benefit of Borrower, Manager or any of their respective agents or employees from any and all sources arising from or attributable to the Property, including all hotel receipts, revenues and credit card receipts collected from guest rooms, restaurants, bars, meeting rooms, banquet rooms and recreational facilities, receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of the Property or rendering of services by Borrower, Manager, any of their respective agents or employees, or any other operator or manager of the hotel or acquired from others (including from the rental of any office space, retail space, guest rooms or other space and deposits securing reservations of such space), and concession fees and rentals, health club membership fees, food and beverage wholesale and retail sales, service charges, vending machine sales and the Insurance Proceeds from business income insurance.

“Replacement Franchise Agreement” shall mean, collectively, (i) a franchise, trademark and license agreement with a Qualified Franchisor, which franchise, trademark and license agreement shall be in form and substance reasonably acceptable to Lender (including with respect to the applicable flag provided for thereunder); provided, that, if required by Lender, Borrower shall have obtained a Rating Agency Confirmation, and (ii) a “comfort letter” that (a) shall permit Lender the right to directly (or to require Borrower to) terminate such Replacement Franchise Agreement upon the occurrence of any Hotel Agreement Termination Trigger Event without the payment of any Hotel Agreement Termination Fees and (b) shall otherwise be in form and substance reasonably acceptable to Lender, in each case, executed and delivered to Lender by Borrower and such Qualified Franchisor.

“Replacement Management Agreement” shall mean, collectively, (i)(A) a management agreement with a Qualified Manager substantially in the same form and substance as the Management Agreement, or (B) a management agreement with a Qualified Manager, which management agreement shall be in form and substance reasonably acceptable to Lender; provided, that, with respect to this clause (B), if required by Lender, Borrower shall have obtained a Rating

Agency Confirmation, and (ii) an assignment of management agreement and subordination of management fees substantially in the form then used by Lender (or in such other form and substance reasonably acceptable to Lender), in each case, executed and delivered to Lender by Borrower and such Qualified Manager.

“Required Repair Account” shall mean the account in which the Required Repair Funds are held by Lender.

“Required Repair Funds” shall mean the amounts deposited pursuant to Section 6.8.1.

“Required Repairs” shall mean the repairs at the Property as more particularly set forth on Schedule 6.8.1.

“Reserve Accounts” shall mean, collectively, the Required Repair Account, the Tax Account, the Insurance Account, the Cap Ex Account, the Excess Cash Account, the PIP Account, the Seasonality Account, and any other escrow or reserve account established in accordance with the Loan Documents.

“Reserve Disbursement Conditions” shall mean, in connection with a disbursement of all or any portion of the Required Repair Funds, the Cap Ex Funds, or the PIP Funds:

- (i) with respect to each of the applicable Reserve Funds, Borrower shall submit a written request for payment to Lender at least thirty (30) days prior to the date on which Borrower requests such disbursement be made and specifies each Reserve Item to be paid or reimbursed with such Reserve Funds (and, if applicable, the particular stage of completion by Borrower with respect to such Reserve Item);
- (ii) on the date such request is received by Lender and on the date such disbursement is to be made, no Event of Default or monetary or material non-monetary Default shall exist;
- (iii) in connection with any PIP Work to be funded by the requested disbursement, Lender shall have received and approved a budget for such PIP Work;
- (iv) Lender shall have received an Officer’s Certificate (A) stating that each Required Repair, Cap Ex Work, or PIP Work to be paid or reimbursed by the requested disbursement has been fully completed (or, if applicable, has been completed to the applicable stage of completion specified in such Officer’s Certificate) in a good and workmanlike manner and in accordance with the Franchise Agreement, all applicable plans and specifications, all applicable insurance requirements, and all applicable Legal Requirements, such Officer’s Certificate to be accompanied by a copy of any license, permit or other approval required by any Governmental Authority in connection with such Reserve Item (as of, if applicable, the particular stage of completion), (B) identifying each Person that supplied materials or labor in connection with each Required Repair, Cap Ex Work, or PIP Work to be paid or reimbursed by the requested disbursement, (C) stating that each such Tenant or other Person has been paid in full or will be paid in full upon such disbursement (or, in connection with a progress payment, such progress payment has been paid

in full or will be paid in full upon such disbursement), such Officer's Certificate to be accompanied by lien waivers, conditional lien waivers (conditioned only upon payment from the requested disbursement) or other evidence of payment satisfactory to Lender, (D) stating that no Reserve Item (including, if applicable, any progress payment relating thereto) to be funded by the requested disbursement has been the subject of a previous disbursement, and (E) if any such Required Repair or PIP Work has not been fully completed, but has been completed to a particular stage of completion (i.e., further work is required to achieve completion thereof), stating that the then remaining balance of the applicable Reserve Funds (after giving effect to the requested disbursement) is sufficient to pay for all costs necessary to achieve completion of all incomplete Reserve Items;

- (v) if the disbursement for any Required Repair, Cap Ex Work, or PIP Work will exceed Fifty Thousand and 00/100 Dollars (\$50,000.00), Lender may require a title search for the Property indicating that the Property is free from all Liens other than Permitted Encumbrances;
- (vi) if the disbursement for any Required Repair, Cap Ex Work, or PIP Work will exceed One Hundred Thousand and 00/100 Dollars (\$100,000.00), Lender may require an inspection of the Property by an independent professional selected by Lender prior to such disbursement in order to verify completion (or the applicable stage of completion) in a good and workmanlike manner and in accordance with the Franchise Agreement, all applicable plans, specifications and shop drawings, all applicable insurance requirements, and all applicable Legal Requirements;
- (vii) in connection with the final disbursement for any Required Repair, Cap Ex Work, or PIP Work, Lender may require a certificate of completion by an independent professional selected by Lender prior to such disbursement in order to verify completion in a good and workmanlike manner and in accordance with the applicable Lease, all applicable plans and specifications, all applicable insurance requirements, and all applicable Legal Requirements;
- (viii) intentionally omitted;
- (ix) all Required Repairs, Cap Ex Work, and PIP Work and all materials, equipment, fixtures, or any other item comprising a part thereof shall be performed, constructed, installed or completed, as applicable, free and clear of all Liens other than Permitted Encumbrances;
- (x) Borrower shall permit Lender and its agents, consultants and representatives (including Lender's architect or engineer or such other independent professional selected by Lender) to enter onto the Property during normal business hours (upon prior notice to Borrower (except during the continuance of an Event of Default) and subject to the rights of Tenants under their Leases) to inspect the progress of any Required Repair, Cap Ex Work, or PIP Work and all materials being used in connection therewith and to examine all plans and specifications relating to any such Reserve Items; and

- (xi) Lender shall have received such other evidence as Lender may reasonably require to confirm that all of the applicable Reserve Disbursement Conditions have been satisfied.

“Reserve Funds” shall mean, collectively, the Required Repair Funds, the Tax Funds, the Insurance Funds, the Cap Ex Funds, the Excess Cash Funds, the PIP Funds, the Seasonality Funds, and any other escrow or reserve fund established in accordance with the Loan Documents.

“Reserve Item” shall mean any Required Repair, Cap Ex Work, or PIP Work.

“Restoration” shall mean the repair and restoration of the Property after a Casualty or Condemnation as nearly as possible to the condition the Property was in immediately prior to such Casualty or Condemnation, with such alterations as may be reasonably approved by Lender.

“Restoration Threshold” shall mean three percent (3%) of the Outstanding Principal Balance.

“Restricted Party” shall mean, collectively, (i) Borrower, any SPC Party, Guarantor, any Affiliated Manager, or any Affiliated Franchisor, and (ii) any shareholder, partner, member, non-member manager or any other direct or indirect owner of Borrower, any SPC Party, Guarantor, any Affiliated Manager, any Affiliated Franchisor, or any non-member manager.

“S&P” shall mean S&P Global Ratings and its successor-in-interest.

“Scheduled Defeasance Payments” shall have the meaning set forth in the definition of “Defeasance Collateral”.

[**“Seasonality Account”** shall mean the account in which Seasonality Funds are held by Lender.]

[**“Seasonality Funds”** shall mean the amounts deposited pursuant to Section 6.12.1.]

[**“Seasonality Funds Deposit Month”** shall mean each of the calendar months of [____], [____], [____], and [____], as such calendar months may be adjusted by Lender.]

[**“Seasonality Funds Disbursement Month”** shall mean each of the calendar months of [____], [____], [____], and [____], as such calendar months may be adjusted by Lender.]

[*****“Seasonality Shortfall Month”** shall have the meaning ascribed thereto in the definition of the term “Monthly Net Cash Flow Shortfall”.***]

“Secondary Market Transaction” shall have the meaning set forth in Section 9.1(a).

“Securities” shall have the meaning set forth in Section 9.1(a).

“Securities Act” shall mean the Securities Act of 1933.

“Securitization” shall have the meaning set forth in Section 9.1(a).

“Securitization Liabilities” shall mean, collectively, any liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, and costs to which any Securitization Party may become subject, but only insofar as the Securitization Liabilities arise out of or are based upon (i) any untrue statement or alleged untrue statement of any material fact contained in the information provided to Lender by Borrower, any Affiliate of Borrower or any of their respective agents, counsel or representatives or (ii) the omission or alleged omission to state therein a material fact required to be stated in such information or necessary in order to make the statements in such information, in light of the circumstances under which they were made, not misleading.

“Securitization Parties” shall mean, collectively, Lender, UBS 1285 Branch, any Affiliate of UBS 1285 Branch that has filed any registration statement relating to a Securitization or has acted as the issuer, sponsor or depositor in connection with a Securitization, any Affiliate of UBS 1285 Branch that acts as an underwriter, placement agent or initial purchaser of the Securities issued in connection with a Securitization, any other issuers, depositors, underwriters, placement agents or initial purchasers of the Securities issued in connection with a Securitization, and each of their respective directors, officers, partners, employees, representatives, agents and Affiliates, and each Person that controls any such Person within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act.

“Securitization Vehicle” shall mean each REMIC Trust or Grantor Trust into which all or a portion of the Loan or an interest therein has been transferred.

“Security Instrument” shall mean that certain first priority Leasehold Mortgage, Security Agreement, Financing Statement and Fixture Filing executed and delivered by Borrower as security for the Loan and encumbering the Property.

“Servicer” shall have the meaning set forth in Section 11.24(a).

“Servicing Agreement” shall have the meaning set forth in Section 11.24(a).

“Severed Loan Documents” shall have the meaning set forth in Section 10.2(c).

“Significant Obligor” shall have the meaning set forth in Item 1101(k) of Regulation AB under the Securities Act.

“SPC Party” shall have the meaning set forth in the Borrower’s Certificate and Agreement [**, which, as of the Closing Date, shall mean [_____], a [_____] **].

“SPE” shall mean a Person whose Organizational Documents contain, and who covenants that such Person shall comply or cause compliance with, provisions substantially similar to the SPE Provisions.

“SPE Provisions” shall have the meaning set forth in the Borrower’s Certificate and Agreement.

“**Special Member**” shall have the meaning set forth in the Borrower’s Certificate and Agreement.

“**Springing Recourse Event**” shall have the meaning set forth in Section 11.22(b).

“**State**” shall mean the State or Commonwealth in which the Property or any part thereof is located.

“**Stated Maturity Date**” shall mean, subject to Section 2.3.4, [May] 6, 2028; provided, however, that, if Lender changes the Monthly Payment Date in accordance with this Agreement, the Stated Maturity Date shall also be deemed to have been changed such that the Stated Maturity Date and the Monthly Payment Date shall occur on the same calendar day and, if requested by Lender, Borrower shall promptly execute an amendment to this Agreement to evidence such change.

“**Successor Borrower**” shall have the meaning set forth in Section 2.5.3.

“**Survey**” shall mean that certain land survey of the Property certified and in form and substance acceptable to Lender and delivered to Lender in connection with the closing of the Loan.

“**Tax Account**” shall mean the account in which the Tax Funds are held by Lender.

“**Tax Funds**” shall mean the amounts deposited pursuant to Section 6.2.1.

“**Taxes**” shall mean (i) all real estate property taxes, assessments, water rates, and sewer rates (all Taxes referred to in this clause (i), “**Real Estate Taxes**”), (ii) all excise, sales, use, occupancy or other taxes on receipts required to be accounted for by Borrower to any Governmental Authority and (iii) all personal property taxes and other governmental impositions, including vault charges and license fees for the use of areas adjoining the Property, in any case, now or hereafter levied, assessed or imposed against the Property or any part thereof, together with all interest and penalties thereon.

“**Tenant**” shall mean any Person obligated by contract or otherwise to pay monies (including a percentage of gross income, revenue or profits) under any Lease now or hereafter affecting all or any part of the Property.

“**Tenant Direction Letter**” shall have the meaning set forth in Section 2.7.1(b).

“**Term**” shall mean the term of the Loan.

“**Title Insurance Policy**” shall mean the title insurance policy accepted by Lender in connection with the closing of the Loan with respect to the Property and insuring the Lien of the Security Instrument.

“**Transfer**” shall have the meaning set forth in Section 8.1(a).

“**Transferee**” shall have the meaning set forth in Section 8.3.

“Transferee SPE Constituent Entity” shall mean, with respect to any Transferee, any of its Constituent Owners that, in accordance with criteria then established by the Rating Agencies, should be an SPE (including, if such Transferee is a limited partnership, the general partner of such Transferee and, if such Transferee is a multi-member limited liability company, the managing member of such Transferee).

“Transferee Sponsors” shall mean, with respect to any Transferee, such Transferee’s shareholders, general partners or managing members that, directly or indirectly, (i) own fifty-one percent (51%) or more of legal, beneficial and economic interests in such Transferee or (ii) are in Control of such Transferee.

“Transient Lease” shall mean any lease, license or other agreement for the rental of hotel rooms to transient hotel guests and the temporary, transient rental of conference rooms, banquet halls, meeting space and outdoor space for special events, in each case, in the ordinary course of business at the Property.

“Treasury Note Rate” shall mean, at the time of the prepayment, as applicable, the rate of interest per annum equal to the yield to maturity (converted by Lender to the equivalent monthly yield using Lender’s then system of conversion) of the United States Treasury obligations selected by the holder of the Note having maturity dates closest to, but not exceeding, the remaining term to the Open Prepayment Date.

“Trustee” shall mean any trustee of a Securitization Vehicle.

“UBS 1285 Branch” shall mean UBS AG, by and through its branch office at 1285 Avenue of the Americas, New York, New York, a U.S. branch of a Swiss banking corporation, and its successors-in-interest.

“Uniform System of Accounts” shall mean the most recent edition of the Uniform System of Accounts for the Lodging Industry, as adopted by the American Hotel and Lodging Association.

“Union Agreements” shall mean, collectively, (i) any collective bargaining agreements, union agreements and/or other labor agreements to which Borrower is a party or by which Borrower or the Property or any portion thereof is or may be bound, (ii) any employment, profit sharing, deferred compensation, bonus, stock option, stock purchase, pension, retainer, consulting, retirement, health, welfare or incentive plans and/or contracts to which Borrower is a party or by which Borrower or the Property or any portion thereof is or may be bound, and (iii) any plans and/or agreements pursuant to which “fringe benefits” (including vacation, dental or medical plans or programs) are afforded to employees of Borrower or the Property or any portion thereof.

“Updated Information” shall have the meaning set forth in Section 9.1(b)(i).

“U.S. Bankruptcy Code” shall mean Title 11 of the United States Code entitled “Bankruptcy”, all rules and regulations promulgated thereunder, and any successor statutes.

“U.S. Obligations” shall mean (i) direct full faith and credit obligations of the United States of America that are not subject to prepayment, call or early redemption or (ii) to the extent

acceptable to the Rating Agencies, other “government securities” within the meaning of Treasury Regulations Section 1.860G-2(a)(8)(ii) that are not subject to prepayment, call or early redemption.

“Yield Maintenance Premium” shall mean an amount equal to the greater of: (i)(A) if no Event of Default is outstanding as of the date and time of prepayment, one percent (1%) of the principal amount of the Loan being prepaid or (B) if an Event of Default is outstanding as of the date and time of prepayment, five percent (5%) of the principal amount of the Loan being prepaid and (ii) the excess, if any, of (A) the present value (determined using a discount rate equal to the Treasury Note Rate at such time) of all payments of principal and interest payable in respect of the principal amount of the Loan being prepaid (including the payment of principal and interest due on the Stated Maturity Date in respect of the amount of the Loan being prepaid); provided that the Note shall be deemed, for purposes of this definition, to be due and payable on the Open Prepayment Date, over (B) the principal amount of the Loan being prepaid.

Section 1.2. Principles of Construction.

All references to Articles, Sections, Exhibits and Schedules are to Articles, Sections, Exhibits and Schedules in or to this Agreement, unless otherwise specified. All titles or headings of Articles, Sections, Exhibits and Sections are for reference purposes only and shall not be given any effect in construing the meanings of substantive provisions of this Agreement. Any Exhibits and Schedules attached to or referred to in this Agreement are incorporated into this Agreement and shall have the same effect as if set forth in the body of this Agreement. In this Agreement, all uses of the word or words: (a) “including” or “include” shall mean “including, without limitation,” or “include, without limitation,”; (b) “as amended” or “as modified” shall mean “as amended, restated, replaced, supplemented, extended, renewed or otherwise modified from time to time”; (c) “as the same may be amended” or “as the same may be modified” shall mean “as the same may be amended, restated, replaced, supplemented, extended, renewed or otherwise modified from time to time”; (d) “amendment” or “modification” shall mean and/or include “amendment, restatement, replacement, supplement, waiver, extension or other modification”; (e) “ownership interest” shall mean “legal, beneficial and/or economic ownership interest”; (f) “costs” shall mean “fees, costs and expenses”; (g) “Lender’s prior consent” shall mean “Lender’s prior written consent”; and (h) “Lender’s prior approval” shall mean “Lender’s prior written approval”. Unless otherwise specified, (i) the words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement; (ii) all meanings attributed to defined terms herein shall be equally applicable to both the singular and plural forms of such terms; and (iii) unless otherwise expressly stated, each Loan Document is dated as of the Closing Date. In addition, (A) any reference in this Agreement to this Agreement or any other Loan Document shall mean this Agreement or such other Loan Document as amended and as the same may be amended; and (B) any reference in this Agreement to any statute, law, rule, order, regulation, ordinance or similar Legal Requirement shall mean such statute, law, rule, order, regulation, ordinance or similar Legal Requirement as amended and as the same may be amended.

II. THE LOAN

Section 2.1. The Loan.

2.1.1 Agreement to Lend and Borrow. Subject to the terms and conditions set forth herein, Lender shall make the Loan to Borrower and Borrower shall accept the Loan from Lender on the Closing Date.

2.1.2 Single Disbursement to Borrower. Borrower shall receive only one (1) borrowing hereunder in respect of the Loan and any amount borrowed and repaid hereunder in respect of the Loan may not be reborrowed.

2.1.3 The Note. The Loan shall be evidenced by the Note and shall be repaid in accordance with this Agreement and the Note.

2.1.4 Use of Proceeds. Borrower shall use the proceeds of the Loan to (a) acquire or refinance the Property, (b) pay all past due Taxes, Other Charges and Insurance Premiums, if any, in respect of the Property, (c) deposit the Reserve Funds into the Reserve Accounts in accordance with this Agreement, (d) pay costs incurred in connection with the closing of the Loan, as approved by Lender, (e) fund any working capital requirements of the Property, as approved by Lender, and (f) distribute the balance of the proceeds in accordance with its Organizational Documents.

Section 2.2. Interest Rate.

2.2.1 Interest Rate. Interest on the Outstanding Principal Balance shall accrue at the Interest Rate and be payable from and including the Closing Date through and including the last day of the Interest Period in which the Maturity Date occurs (or, if the Maturity Date occurs on a Monthly Payment Date, through and including the last day of the Interest Period relating to such Monthly Payment Date).

2.2.2 Default Rate. If, and for so long as, any Event of Default exists, the Outstanding Principal Balance and, to the extent permitted by law, overdue interest in respect of the Loan, shall accrue interest at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods contained herein.

2.2.3 Interest Calculation. Interest on the Outstanding Principal Balance shall be calculated by multiplying (a) the actual number of days in the applicable period for which the calculation is being made by (b) a daily rate based on a three hundred sixty (360) day year (that is, the Interest Rate or the Default Rate, as then applicable, expressed as an annual rate divided by 360) by (c) the Outstanding Principal Balance.

2.2.4 Usury Savings. The Loan Documents are subject to the express condition that at no time shall Borrower be required to pay interest on the principal balance of the Loan at a rate that could subject Lender to either civil or criminal liability as a result of being in excess of the Maximum Legal Rate. If, at any time, the Loan Documents require Borrower to pay interest on the principal balance due hereunder at a rate in excess of the Maximum Legal Rate, the Interest Rate or the Default Rate, as applicable, shall be deemed to be immediately reduced to the Maximum Legal Rate and all prior payments in excess of the Maximum Legal Rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the sums due under the Loan shall, to the extent permitted by Legal Requirements, be amortized,

prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the Maximum Legal Rate for so long as the Loan is outstanding.

Section 2.3. Loan Payments.

2.3.1 Payment Before Maturity Date. Borrower shall make a payment to Lender of interest only on the Closing Date for the initial Interest Period. Borrower shall make a payment to Lender equal to the Monthly Debt Service Payment Amount on each Monthly Payment Date until the Debt shall be paid in full in accordance with the Loan Documents.

2.3.2 Payment on Maturity Date. Borrower shall pay to Lender on the Maturity Date (a) the Outstanding Principal Balance, (b) all interest that would accrue through and including the last day of the Interest Period in which the Maturity Date occurs (or, if the Maturity Date occurs on a Monthly Payment Date, through and including the last day of the Interest Period relating to such Monthly Payment Date) and (c) all other amounts due under the Loan Documents.

2.3.3 Late Payment Charge. If any principal, interest or any other sum due under the Loan Documents (other than the Outstanding Principal Balance due and payable on the Maturity Date) is not paid by Borrower on the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of (a) five percent (5%) of such unpaid sum or (b) the maximum amount permitted by applicable law in order to defray the costs incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment. Any such amount shall be secured by the Loan Documents to the extent permitted by applicable law.

2.3.4 Method and Place of Payment.

(a) Except as otherwise specifically provided herein, all payments and prepayments under the Loan Documents shall be made to Lender not later than 2:00 P.M., Eastern Time, on the date when due and shall be made in lawful money of the United States of America in immediately available funds as directed by Lender, and any funds received by Lender after such time shall be deemed to have been paid on the next succeeding Business Day.

(b) Whenever any payment to be made under any Loan Document shall be stated to be due on a day that is not a Business Day, the due date thereof shall be the first (1st) Business Day that immediately precedes such due date (notwithstanding such adjustment of due dates, Borrower shall not be entitled to any deduction of interest due under any Loan Document). All payments required to be made by Borrower under any Loan Document shall be made irrespective of, and without deduction for, any setoff, claim or counterclaim and shall be made irrespective of any defense thereto.

Section 2.4. Prepayments.

2.4.1 Voluntary Prepayments. Except as otherwise set forth herein, Borrower shall not have the right to prepay the Loan in whole or in part. Subject to Section 2.4.3 and Section 2.4.4, on and after the Open Prepayment Date, Borrower may, at its option and upon thirty (30) days' prior notice to Lender (which notice shall specify the proposed Prepayment Date), prepay

the Loan in whole (but not in part), on any Business Day. Notwithstanding the foregoing, Borrower may revoke its notice of prepayment tendered pursuant to this Section 2.4.1 no later than two (2) Business Days prior to the proposed Prepayment Date set forth in such notice to Lender; provided, however, that Borrower shall pay all costs (including reasonable attorneys' fees) incurred by Lender in connection with actions taken as a result of its receipt of the notice of prepayment and the revocation thereof. Any prepayment received by Lender shall be accompanied by (a) all interest on the amount of the Loan to be prepaid through and including the last day of the Interest Period relating to the Monthly Payment Date next occurring following the date of such prepayment (or, if such prepayment occurs on a Monthly Payment Date, through and including the last day of the Interest Period relating to such Monthly Payment Date), (b) all costs incurred by Lender in connection with such prepayment, and (c) all other sums due and payable under the Loan Documents. Subject to Borrower's right to revoke a notice of prepayment in accordance with this Section 2.4.1, if a notice of prepayment is given by Borrower to Lender pursuant to this Section 2.4.1, the amount designated for prepayment and all other sums required under this Section 2.4.1 shall be due and payable on the proposed Prepayment Date.

2.4.2 Mandatory Prepayments.

(a) If Lender actually receives any Net Proceeds and is not obligated to, and elects in accordance with this Agreement not to, make such Net Proceeds available to Borrower, Borrower shall, at Lender's option, prepay (or authorize Lender to apply such Net Proceeds towards prepayment of) all or a portion of the Debt in an amount equal to one hundred percent (100%) of such Net Proceeds; provided that, if an Event of Default exists, Lender may apply such Net Proceeds to the payment of the Debt in any order, proportion and priority as Lender may determine in its sole and absolute discretion. Any prepayment received by Lender pursuant to this Section 2.4.2(a) shall be (i) accompanied by (A) all interest on the amount of the Loan to be prepaid through and including the last day of the Interest Period relating to the Monthly Payment Date next occurring following the date of such prepayment (or, if such prepayment occurs on a Monthly Payment Date, through and including the last day of the Interest Period relating to such Monthly Payment Date), (B) all costs incurred by Lender in connection with such prepayment, and (C) all other sums due and payable under the Loan Documents and (ii) subject to Section 2.4.3.

(b) Notwithstanding anything to the contrary contained herein, in the event that Lender applies Net Proceeds to the Debt pursuant to Section 2.4.2(a) above, Borrower at any time during the three (3) month period following such determination by Lender (even if such three (3) month period occurs or expires prior to the Open Prepayment Date) may, at its option and upon fifteen (15) days' prior notice to Lender (which notice shall specify the proposed Prepayment Date), prepay the remaining Debt in whole (but not in part) on any Business Day. Notwithstanding the foregoing, Borrower may revoke its notice of prepayment tendered pursuant to this Section 2.4.2(b) no later than two (2) Business Days prior to the proposed Prepayment Date set forth in such notice to Lender; provided, however, that Borrower shall pay all costs (including reasonable attorneys' fees) incurred by Lender in connection with actions taken as a result of its receipt of the notice of prepayment and the revocation thereof. Any prepayment received by Lender pursuant to this Section 2.4.2(b) shall be accompanied by (A) all interest which would have accrued on the amount of the Loan to be prepaid through and including the last day of the Interest Period relating to the Monthly Payment Date next occurring following the date of such prepayment (or, if such prepayment occurs on a Monthly Payment Date, through and including the last day of the Interest

Period relating to such Monthly Payment Date), (B) all costs incurred by Lender in connection with such prepayment and (C) all other sums due and payable under the Loan Documents (which, except as set forth in Section 2.4.3 hereof, shall not include the Yield Maintenance Premium or any other prepayment fee or premium). Subject to Borrower's right to revoke a notice of prepayment in accordance with this Section 2.4.2(b), if a notice of prepayment is given by Borrower to Lender pursuant to this Section 2.4.2(b), the amount designated for prepayment and all other sums required under this Section 2.4.2(b) shall be due and payable on the proposed Prepayment Date.

2.4.3 Prepayments After Default. If, during the continuance of any Event of Default, prepayment of all or any part of the Debt is tendered by Borrower (which tender Lender may reject to the extent permitted by applicable Legal Requirements), a purchaser at foreclosure or any other Person, then Borrower, such purchaser at foreclosure or such other Person shall pay, in addition to the amount of the Loan to be prepaid, (a) an amount equal to the Yield Maintenance Premium, (b) all interest on the amount of the Loan to be prepaid through and including the last day of the Interest Period relating to the Monthly Payment Date next occurring following the date of such prepayment (or, if such prepayment occurs on a Monthly Payment Date, through and including the last day of the Interest Period relating to such Monthly Payment Date), (c) all costs incurred by Lender in connection with such prepayment, and (d) all other sums due and payable under the Loan Documents.

2.4.4 Prepayment Prior to Defeasance Lockout Expiration Date. If the Permitted Release Date has occurred but the Defeasance Lockout Expiration Date has not occurred, Borrower may, at its option and upon thirty (30) days' prior notice to Lender which notice shall specify the proposed Prepayment Date (it being understood and agreed that such notice may be given prior to the Permitted Release Date and the applicable proposed Prepayment Date may be the Permitted Release Date), prepay the Debt in whole (but not in part) on any Business Day; provided that (a) no Event of Default exists and (b) such prepayment shall be accompanied by (i) the Yield Maintenance Premium, (ii) all interest on the amount of the Loan to be prepaid through and including the last day of the Interest Period relating to the Monthly Payment Date next occurring following the date of such prepayment (or, if such prepayment occurs on a Monthly Payment Date, through and including the last day of the Interest Period relating to such Monthly Payment Date), (iii) all costs incurred by Lender in connection with such prepayment, and (iv) all other sums due and payable under the Loan Documents. Following its receipt of such notice from Borrower, Lender shall notify Borrower of the amount and the basis of determination of the required prepayment consideration. Notwithstanding the foregoing, Borrower may revoke its notice of prepayment tendered pursuant to this Section 2.4.4 no later than two (2) Business Days prior to the proposed Prepayment Date set forth in such notice to Lender; provided, however, that Borrower shall pay all costs incurred by Lender in connection with actions taken as a result of its receipt of the notice of prepayment and the revocation thereof. Subject to Borrower's right to revoke a notice of prepayment in accordance with this Section 2.4.4, if a notice of prepayment is given by Borrower to Lender pursuant to this Section 2.4.4, the Debt shall be due and payable on the proposed Prepayment Date. Lender shall not be obligated to accept any prepayment of the Debt unless it is accompanied by the prepayment consideration due in connection therewith.

Section 2.5. Defeasance.

2.5.1 Conditions to Defeasance. So long as no Event of Default exists, Borrower shall have the right at any time during the Defeasance Period to voluntarily defease the entire Loan and obtain a release of the Lien of the Security Instrument (a “**Defeasance Event**”), subject to the satisfaction of the following conditions:

(a) Borrower shall provide Lender not less than thirty (30) days’ prior notice (or such shorter period of time if permitted by Lender in its sole discretion) specifying the Business Day during the Defeasance Period (the “**Defeasance Date**”) on which the Defeasance Event is to occur. Notwithstanding the foregoing, Borrower may revoke its notice of defeasance tendered pursuant to this Section 2.5.1(a) no later than two (2) Business Days prior to the proposed Defeasance Date set forth in such notice to Lender; provided, however, that Borrower shall pay all costs (including reasonable attorneys’ fees) incurred by Lender in connection with actions taken as a result of its receipt of the notice of defeasance and the revocation thereof;

(b) Borrower shall pay to Lender (i) if the Defeasance Date is a Monthly Payment Date, the Monthly Debt Service Payment Amount due on the Defeasance Date and (ii) all other sums due and payable under the Loan Documents;

(c) Borrower shall deposit the applicable Defeasance Collateral into the Defeasance Collateral Account and otherwise comply with Sections 2.5.2 and 2.5.3;

(d) Intentionally Omitted;

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

(f) Borrower shall deliver to Lender an opinion letter of counsel for Borrower that is standard in commercial lending transactions and subject only to customary qualifications, assumptions and exceptions opining, among other things, that (i) Borrower has legally and validly transferred and assigned the Defeasance Collateral and all rights and obligations under the Note to Successor Borrower, (ii) Lender has a legal and valid perfected first priority security interest in the Defeasance Collateral Account and the Defeasance Collateral, (iii) if a Securitization has occurred, the Securitization Vehicle formed in connection with such Securitization will not fail to maintain its status as a Securitization Vehicle as a result of the Defeasance Event, (iv) the Defeasance Event will not result in a deemed exchange for purposes of the Code and will not adversely affect the status of the Note as indebtedness for federal income tax purposes, and (v) the delivery of the Defeasance Collateral and the grant of a security interest in the Defeasance Collateral Account and the Defeasance Collateral to Lender shall not constitute an avoidable preference under Section 547 of the U.S. Bankruptcy Code or any other Bankruptcy Law;

(g) If required by the Rating Agencies, Borrower shall deliver to Lender a bankruptcy non-consolidation opinion letter with respect to Successor Borrower that is reasonably acceptable to Lender and acceptable to the Rating Agencies in their sole discretion;

(h) Borrower shall deliver to Lender a Rating Agency Confirmation as to the Defeasance Event;

(i) Borrower shall deliver a certificate of a “big four” or other nationally recognized public accounting firm reasonably acceptable to Lender certifying that the Defeasance Collateral will generate amounts equal to or greater than the applicable Scheduled Defeasance Payment on or prior to each corresponding Monthly Payment Date or other scheduled payment date;

(j) Borrower shall deliver such other certificates, opinion letters, documents and instruments as Lender may reasonably request;

(k) Borrower shall deliver an Officer’s Certificate certifying that the requirements set forth in this Section 2.5 have been satisfied; and

(l) Borrower shall pay all costs incurred by Lender in connection with any actual or proposed Defeasance Event or otherwise required in connection with this Section 2.5, including (i) reasonable attorneys’ fees, (ii) the costs of the Rating Agencies, (iii) any revenue, documentary stamp or intangible taxes or any other taxes or charges due in connection with the transfer of the Note and (iv) the costs of Servicer and any Trustee.

2.5.2 Defeasance Collateral Account. On or before the date on which Borrower delivers the Defeasance Collateral, Borrower shall open at an Eligible Institution the defeasance collateral account (the “**Defeasance Collateral Account**”), which shall at all times be an Eligible Account. Each of the U.S. Obligations that constitutes a part of the Defeasance Collateral shall be duly endorsed by the holder thereof as directed by Lender or accompanied by a written instrument of transfer in form and substance that would be reasonably satisfactory to a prudent lender (including such instruments as may be required by the Eligible Institution at which the Defeasance Collateral Account is to be maintained) in order to perfect, upon the delivery of the Defeasance Collateral, a first priority security interest therein in favor of Lender in accordance with all applicable Legal Requirements. The Defeasance Collateral Account shall contain only (a) the Defeasance Collateral and (b) cash from principal and interest paid on the Defeasance Collateral or other cash proceeds thereof. Pursuant to the Defeasance Security Agreement or other appropriate agreement, Borrower or Successor Borrower, as applicable, shall authorize and direct that all payments received from and all proceeds of the Defeasance Collateral be paid directly to the Cash Management Account (unless otherwise directed by Lender) and applied to satisfy the Debt Service and any other payment obligations under the Note. Borrower or Successor Borrower, as applicable, shall be the owner of the Defeasance Collateral Account and shall report all income accrued on the Defeasance Collateral on its federal, state and local income tax returns. Borrower or Successor Borrower, as applicable, shall prepay all costs associated with opening and maintaining the Defeasance Collateral Account. Lender shall not in any way be liable by reason of any insufficiency in the Defeasance Collateral Account.

2.5.3 Successor Borrower. In connection with a Defeasance Event, at UBS 1285 Branch’s option, (a) UBS 1285 Branch shall establish a successor entity designated by UBS 1285 Branch, (b) Borrower shall establish a successor entity designated by UBS 1285 Branch or (c) Borrower shall establish a successor entity designated by Borrower (in each case, a “**Successor Borrower**”), which (i) shall be a single purpose, bankruptcy remote entity under criteria established by the Rating Agencies and (ii) shall be approved by the Rating Agencies. Borrower shall transfer and assign all rights and obligations under and to the Note and the Defeasance Security Agreement, together with the Defeasance Collateral, to such Successor Borrower. Such

Successor Borrower shall assume the obligations under the Note and the Defeasance Security Agreement and Borrower shall be relieved of its obligations under such documents. Borrower shall pay a minimum of One Thousand and 00/100 Dollars (\$1,000.00) to any Successor Borrower as consideration for assuming the obligations under the Note and the Defeasance Security Agreement. Borrower shall pay all costs incurred by Lender and the Rating Agencies in connection therewith. UBS 1285 Branch's right pursuant to this Section 2.5.3 to (A) establish any Successor Borrower designated by UBS 1285 Branch, (B) require Borrower to establish any Successor Borrower designated by UBS 1285 Branch or (C) require Borrower to establish any Successor Borrower designated by Borrower shall be retained by UBS 1285 Branch, notwithstanding any Secondary Market Transaction of all or any portion of the Loan.

2.5.4 Intentionally Omitted.

Section 2.6. Release of Property.

2.6.1 Release of Property.

(a) Except as set forth in Section 2.5 and this Section 2.6, no repayment, prepayment or defeasance of all or any portion of the Loan shall cause, give rise to a right to require, or otherwise result in, the release of the Lien of the Security Instrument on the Property.

(b) If Borrower has elected to defease the entire Loan and the requirements of Section 2.5 and this Section 2.6 have been fully satisfied, the Property shall be released from the Lien of the Security Instrument and the Defeasance Collateral Account and the Defeasance Collateral, pledged pursuant to the Defeasance Security Agreement shall be the sole source of collateral securing the Note.

(c) Upon payment in full of all principal and interest due on the Loan and all other amounts due and payable under the Loan Documents in accordance with the Loan Documents, upon the written request and at Borrower's expense, Lender shall release the Lien of the Security Instrument.

(d) In connection with such release, Borrower shall submit to Lender, concurrently with the notice under Section 2.5.1(a) or the request under Section 2.6.1(c), a release of Lien (and the related Loan Documents) for the Property. Such release shall be in a form appropriate in the jurisdiction in which the Property is located, would be satisfactory to a prudent lender and shall contain standard provisions, if any, protecting the rights of the releasing lender. In addition, Borrower shall provide all other certificates, documents and instruments Lender reasonably requires in connection with such release, together with an Officer's Certificate certifying that such documentation (i) is in compliance with all applicable Legal Requirements and (ii) will effect such release in accordance with this Agreement.

Section 2.7. Clearing Account/Cash Management Account.

2.7.1 Clearing Account.

(a) During the term of the Loan, Borrower shall establish and maintain an account (the "Clearing Account") with Clearing Bank in trust for the benefit of Lender in accordance with the

Clearing Account Agreement. The Clearing Account shall be under the sole dominion and control of Lender. Lender and Servicer shall have the sole right to make withdrawals from the Clearing Account, subject to the Loan Documents. Borrower shall pay all costs for establishing and maintaining the Clearing Account.

(b) During the term of the Loan, Borrower shall cause all Rents to be delivered directly to the Clearing Account and, in connection therewith, Borrower shall, or shall cause Manager to, (i) deliver irrevocable written instructions (each, a “**Tenant Direction Letter**”) to all then existing (and all future) non-residential tenants under Leases to deliver all Rents payable thereunder directly to the Clearing Account and (ii) deliver irrevocable written instructions (each, a “**Credit Card Company Direction Letter**”) to each of the credit card companies or credit card clearing banks with which Borrower or Manager has entered into merchant’s agreements (each, a “**Credit Card Company**”) to deliver all receipts payable with respect to the Property directly to the Clearing Account. Following the delivery of a Tenant Direction Letter to any Tenant or the delivery of a Credit Card Company Direction Letter to any Credit Card Company, if at any time such Tenant does not deliver all Rents payable under its Lease directly to the Clearing Account or such Credit Card Company does not deliver all receipts payable with respect to the Property directly to the Clearing Account, at Lender’s request, Borrower shall, or shall cause Manager to, deliver an additional Tenant Direction Letter to such Tenant or deliver an additional Credit Card Company Direction Letter to such Credit Card Company.

(c) Notwithstanding anything to the contrary contained in any Loan Document, if Borrower or Manager shall receive any Rents, Borrower shall, and shall cause Manager to, deposit all such amounts received by Borrower or Manager into the Clearing Account within one (1) Business Day after receipt thereof.

(d) Borrower shall obtain from Clearing Bank its agreement to transfer, from and after such time as Clearing Bank has received a Cash Management Activation Notice and until such time as Clearing Bank has received a Cash Management De-Activation Notice, all amounts on deposit in the Clearing Account to the Cash Management Account in immediately available funds by federal wire transfer once every Business Day.

(e) During the continuance of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any amounts then on deposit in the Clearing Account to the payment of the Debt in any order, proportion and priority as Lender may determine in its sole and absolute discretion.

(f) The Clearing Account shall not be commingled with other monies held by Borrower or Clearing Bank.

(g) Borrower shall not further pledge, assign or grant any security interest in the Clearing Account or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any financing statements, except those naming Lender as the secured party, to be filed with respect thereto.

(h) Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs (including

attorneys' fees) arising from or in any way connected with the Clearing Account and/or the Clearing Account Agreement or the performance of the obligations for which the Clearing Account was established.

2.7.2 Cash Management Account.

(a) Upon the first occurrence of a Cash Management Trigger Event, Borrower shall establish and maintain an Eligible Account (the "**Cash Management Account**") to be held by Cash Management Bank in trust and for the benefit of Lender in accordance with the Cash Management Agreement. The Cash Management Account shall be under the sole dominion and control of Lender. Lender and Servicer shall have the sole right to make withdrawals from the Cash Management Account, subject to the Loan Documents. Borrower shall pay all costs for establishing and maintaining the Cash Management Account and the Reserve Accounts.

(b) Provided that no Event of Default shall exist, all funds on deposit in the Cash Management Account shall be applied in the following amounts and order of priority:

- (i) First, funds sufficient to pay the next monthly deposit to the Ground Lease Funds in accordance with Section 6.13;
- (ii) Next, funds sufficient to pay the next monthly deposit to the Tax Funds in accordance with Section 6.2;
- (iii) Next, funds sufficient to pay the next monthly deposit to the Insurance Funds in accordance with Section 6.3;
- (iv) Next, funds sufficient to pay the costs of Cash Management Bank then due and payable in accordance with the Cash Management Agreement;
- (v) Next, funds sufficient to pay the next Monthly Debt Service Payment Amount;
- (vi) Next, funds sufficient to pay the next monthly deposit to the Cap Ex Funds in accordance with Section 6.4;
- (vii) Next, funds sufficient to pay any interest accruing at the Default Rate (without duplication with clause (iv) above), late payment charges and any other amounts then due and payable under the Loan Documents;
- (viii) Next, funds sufficient to pay for Op Ex for the applicable period incurred in accordance with an Approved Annual Budget and as set forth in a request for payment submitted by Borrower to Lender specifying the individual Op Ex in form and substance reasonably acceptable to Lender;
- (ix) Next, funds sufficient to pay for Extraordinary Expenses for the applicable period approved by Lender, if any;

- (x) [** Next, in any Seasonality Funds Deposit Month, the Monthly Seasonality Deposit shall be deposited into the Seasonality Account in accordance with Section 6.12.1 **];
- (xi) Next, during the continuance of a Franchise Trigger Event, the remaining amount (the “**Franchise Trigger Event Excess Cash**”) shall be deposited into the PIP Account in accordance with Section 6.11.1;
- (xii) Next, during the continuance of a Cash Sweep Trigger Event, the remaining amount (the “**Excess Cash**”) shall be deposited into the Excess Cash Account; and
- (xiii) Lastly, the remaining amount shall be deposited into an account designated by Borrower in accordance with the Cash Management Agreement.

(c) Notwithstanding anything to the contrary in any Loan Document, during the continuance of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, (i) apply any amounts then on deposit in the Cash Management Account or any Reserve Account to the payment of the Debt in any order, proportion and priority as Lender may determine in its sole and absolute discretion and/or (ii) hold such amounts as additional security for the Loan.

(d) Borrower hereby agrees that Lender may modify this Agreement and/or the Cash Management Agreement for the purpose of establishing additional Reserve Accounts in connection with any payments required under the Loan Documents, which Reserve Accounts shall at all times be Eligible Accounts.

2.7.3 Payments Received Under Cash Management Agreement. The insufficiency of funds on deposit in the Cash Management Account shall not relieve Borrower from the obligation to make any payments, as and when due pursuant to the Loan Documents, and such obligation shall be separate and independent, and not conditioned on any event or circumstance whatsoever. Notwithstanding anything to the contrary contained in any Loan Document, and provided that no Event of Default exists, Borrower’s obligations with respect to the payment of the Monthly Debt Service Payment Amount and amounts required to be deposited into the Reserve Funds, if any, shall be deemed satisfied to the extent sufficient amounts are timely deposited in the Cash Management Account pursuant to the Cash Management Agreement, regardless of whether or not such amounts are so applied by Lender.

III. REPRESENTATIONS AND WARRANTIES

Section 3.1. Borrower Representations and Warranties.

Borrower represents and warrants to Lender that:

3.1.1 Organization.

(a) Each of Borrower and each SPC Party is, and since the date of its respective formation has been, duly organized, validly existing and in good standing with full power and

authority to own its assets and conduct its business, and is, and since the date of its respective formation has been, duly qualified and in good standing in all jurisdictions in which the conduct of its business requires such qualification (except where the failure to be so qualified would not reasonably be expected to have a Material Adverse Effect). Borrower has taken all necessary action to authorize the execution, delivery and performance of the Loan Documents by it, and has the power and authority to execute, deliver and perform under the Loan Documents and all matters contemplated hereby and thereby.

(b) Borrower's exact legal name, entity type and state of formation or organization are as set forth in the first paragraph of this Agreement. Borrower's principal place of business and chief executive office, and the place where Borrower keeps its books and records, has been for the preceding four (4) months (or, if less than four (4) months, the entire period of its existence) the address of Borrower set forth in the first paragraph of this Agreement.

3.1.2 Proceedings. The Loan Documents have been duly authorized, executed and delivered by or on behalf of Borrower and, to Borrower's knowledge, constitute legal, valid and binding obligations of Borrower, enforceable against Borrower in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and by general principles of equity.

3.1.3 No Conflicts. The execution, delivery and performance of the Loan Documents by Borrower will not conflict with or result in a breach of any provision of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance (other than pursuant to the Loan Documents) upon any asset of Borrower pursuant to any agreement, document or instrument to which Borrower is a party or by which Borrower or any of its assets is bound, and none of such actions will result in any violation of any Legal Requirement applicable to Borrower or any of its assets.

3.1.4 Litigation. There is no action, suit, proceeding or investigation pending or, to Borrower's knowledge, threatened against Borrower, any SPC Party, Guarantor, Key Principal, Manager or the Property by or before any Governmental Authority that could reasonably be expected to have a Material Adverse Effect.

3.1.5 Agreements. Borrower is not a party to any agreement, document or instrument or subject to any restriction which could materially and adversely affect Borrower or the Property, or Borrower's business, assets, operations or condition (financial or otherwise). Borrower is not in default in any material respect in the performance or observance of any Permitted Encumbrance or any other agreement, document or instrument to which it is a party or by which Borrower or the Property is bound. Borrower has no material financial obligation (contingent or otherwise) under any agreement, document or instrument to which Borrower is a party or by which Borrower or the Property is bound, other than (a) obligations incurred in the ordinary course of the operation of the Property as permitted under paragraph (d) of the SPE Provisions and (b) obligations under the Loan Documents.

3.1.6 Consents. Each consent, approval, authorization, order, registration or qualification of or with any Governmental Authority required for the execution, delivery and performance by Borrower of the Loan Documents has been obtained and is in full force and effect.

3.1.7 Title; No Purchase Options. Borrower has good, marketable and insurable title to the Ground Lease and good title to the balance of the Property, free and clear of all Liens whatsoever except the Permitted Encumbrances. The Security Instrument, together with any financing statements required to be filed in connection therewith, when properly recorded in the appropriate records, will create (a) a valid, perfected first priority lien on the Property, subject only to Permitted Encumbrances, and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty (including the Leases), all in accordance with the terms thereof, in each case, subject only to the Permitted Encumbrances. There are no claims for payment or mechanic's, materialman's or other similar liens or claims that have been filed for work, labor or materials affecting the Property. None of the Permitted Encumbrances, individually or in the aggregate, materially interfere with the benefits of the security intended to be provided by the Loan Documents, materially and adversely affect the value of the Property, impair the use or operation of the Property or impair Borrower's ability to perform its Obligations in a timely manner. The Property, and no part thereof or interest therein, is subject to any purchase options, rights of first refusal to purchase, rights of first offer to purchase, or other similar rights in favor of any Person.

3.1.8 No Plan Assets; FIRRMA.

(a) As of the Closing Date and throughout the Term, (i) neither Borrower nor Guarantor sponsors, is obligated to contribute to or is itself or will be an "employee benefit plan," as defined in Section 3(3) of ERISA, subject to Title I of ERISA or Section 4975 of the Code, (ii) none of the assets of Borrower or Guarantor constitutes or will constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. §2510.3-101 as modified by Section 3(42) of ERISA, (iii) neither Borrower nor Guarantor is or will be a "governmental plan" within the meaning of Section 3(32) of ERISA, and (iv) transactions by or with Borrower or Guarantor are not and will not be subject to any statute, rule or regulation regulating investments of, or fiduciary obligations with respect to, "governmental plans" within the meaning of Section 3(32) of ERISA which is similar to the provisions of Section 406 of ERISA or Section 4975 of the Code and which prohibit or otherwise restrict the transactions contemplated by the Loan Documents (including the exercise by Lender of any of its rights under the Loan Documents).

(b) Each of Borrower, the Constituent Owners of Borrower, the Property and the acquisition thereof has complied with and is in compliance with FIRRMA. Borrower has provided to Lender copies of any and all FIRRMA Documents it has received. No non-U.S. Governmental Authority (including any state owned enterprises or sovereign wealth funds) owns any direct or indirect ownership interests in Borrower. Borrower has not made any voluntary filings relating to FIRRMA and Borrower is not required to make any mandatory filings relating to FIRRMA.

3.1.9 Compliance. Borrower and the Property and the use thereof comply in all material respects with all applicable Legal Requirements, including building and zoning ordinances and codes. Except as set forth in the Property Zoning Report, if all or any part of the Improvements are damaged, the Legal Requirements permit the Improvements to be legally

reconstructed to their condition immediately prior to such damage, and thereafter exist for the same use without the necessity of obtaining any variances or special permits. No legal proceedings are pending or, to the knowledge of Borrower, threatened with respect to the zoning of the Property. Neither the zoning nor any other right to construct, use or operate the Property is in any way dependent upon or related to any property other than the Property. Borrower is not in default or violation of any order, regulation, writ, injunction, decree or demand of any Governmental Authority, the violation of which could reasonably be expected to have a Material Adverse Effect. There has not been committed by Borrower or any other Person in occupancy of or involved with the operation or use of the Property any act or omission affording any Governmental Authority the right of forfeiture as against the Property, any part thereof, any interest therein or any monies paid in performance of Borrower's Obligations under the Loan Documents.

3.1.10 Financial Information. All financial data, including the statements of cash flow and income and operating expense, that have been delivered to Lender in respect of the Property or otherwise in connection with the Loan (a) are true, correct and complete, (b) accurately represent the financial condition of Borrower and the Property as of the date of such reports, and (c) have been prepared in accordance with the Acceptable Accounting Basis. Since the date of such financial statements, there has been no material adverse change in the financial condition, operation or business of Borrower or the Property. Borrower does not have any contingent liabilities, liabilities for taxes, unusual forward or long term commitments or unrealized or anticipated losses from any unfavorable commitments that could reasonably be expected to have a Material Adverse Effect.

3.1.11 Casualty; Condemnation. The Property has suffered no material Casualty that has not been fully repaired and the cost thereof fully paid. No Condemnation or other similar proceeding has been commenced or, to Borrower's best knowledge, has been threatened or is contemplated with respect to all or any portion of the Property or for the relocation of roadways providing access to the Property.

3.1.12 Easements; Utilities and Public Access. The Property has rights of access to public ways and is served by water, sewer and storm drain facilities adequate to service the Property for its intended uses. All public utilities necessary or convenient to the continued use and enjoyment of the Property are located either in the public right-of-way abutting the Property (which are connected so as to serve the Property without passing over any other property) or in recorded easements serving the Property and such easements are insured by the Title Insurance Policy. All roads necessary for the use of the Property for its current purposes have been completed and dedicated to public use and accepted by all applicable Governmental Authorities.

3.1.13 Separate Lots and Parcels. The Property consists of one (1) or more separate tax lots and legal or land parcels and does not consist of a portion of any other tax lot or legal or land parcel that is not a part of the Property.

3.1.14 Taxes and Assessments. All taxes and governmental assessments due and owing in respect of the Property have been paid, or an escrow of funds in an amount sufficient to cover such payments as and when due has been established under the Loan Documents. There are no pending or, to Borrower's best knowledge, proposed special or other assessments for public

improvements or otherwise that could affect the Property, and there are no contemplated improvements to the Property that could result in such special or other assessments.

3.1.15 Enforceability. The Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense by Borrower, any SPC Party or Guarantor, including the defense of usury, nor would the operation of any of the terms of the Loan Documents, or the exercise of any right thereunder, render the Loan Documents unenforceable (subject only to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and, as to enforceability, to principles of equity), and none of Borrower, any SPC Party or Guarantor has asserted any right of rescission, set-off, counterclaim or defense with respect thereto.

3.1.16 Assignment of Leases. The Assignment of Leases creates a valid assignment of, or a valid security interest in, certain rights under the Leases, subject only to a license granted to Borrower to exercise certain rights and to perform certain obligations of the lessor under the Leases. No Person other than Lender has any interest in or assignment of the Leases or any portion of the Rents due and payable or to become due and payable thereunder.

3.1.17 Insurance. Borrower has delivered to Lender (a) original or certified copies of the Policies or certificates of insurance acceptable to Lender reflecting the insurance coverages, amounts and other requirements set forth in this Agreement and (b) evidence acceptable to Lender that all premiums thereunder have been prepaid. No claims have been made under any of the Policies, and no Person, including Borrower, has done, by act or omission, anything that would impair the coverage of any of the Policies.

3.1.18 Licenses. All Intellectual Property, approvals, authorizations, certifications, licenses and permits, including certificates of completion and occupancy and any applicable hospitality licenses and liquor licenses, required by any Governmental Authority or otherwise necessary for the legal ownership, use, occupancy and operation of the Property in the manner in which the Property is currently owned, used, occupied and operated have been obtained by or on behalf of Borrower and are in full force and effect.

3.1.19 Flood Zone. Except as shown on the Survey, none of the Improvements on the Property is located in an area identified by the Federal Emergency Management Agency as a special flood hazard area (or, if so located, the flood insurance required pursuant to Section 5.1.1(a)(i) is in full force and effect with respect to the Property).

3.1.20 Physical Condition. Except as disclosed in the Property Condition Report, the Property, including all buildings, improvements, parking facilities, sidewalks, storm drainage systems, roofs, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior sidings and doors, landscaping, irrigation systems and all structural components, is in good condition, order and repair in all material respects. To Borrower's knowledge, there exist no structural or other material defects or damages in or to the Property, whether latent or otherwise. Borrower has not received notice from any insurance company or bonding company of any defects or inadequacies in or to the Property or any part thereof that would adversely affect the insurability of the same or cause the imposition of extraordinary

premiums or charges thereon or any termination or threatened termination of any policy of insurance or bond.

3.1.21 Boundaries. All of the Improvements lie wholly within the boundaries and building restriction lines of the Property, and no improvements on adjoining properties encroach upon the Property. No easements or other encumbrances affecting the Property encroach upon any of the Improvements so as to affect the value, marketability, use or operation of the Property, except those which are insured against by the Title Insurance Policy and shown on the Survey.

3.1.22 Leases. With respect to the Leases: (a) the Closing Rent Roll is true, correct and complete and the Property is not subject to any Leases other than the Leases described on the Closing Rent Roll, (b) the Leases identified on the Closing Rent Roll are in full force and effect and there are no defaults thereunder by Borrower or, to Borrower's knowledge, any other party thereto and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute defaults thereunder by Borrower, or to Borrower's knowledge, any other party thereto, (c) the copies of the Leases delivered to Lender are true, correct and complete, and there are no oral agreements with respect thereto, (d) no Rent (including security or other deposits) has been paid more than one (1) month in advance of its due date, (e) all work to be performed by the landlord under each Lease has been performed as required and has been accepted by the applicable Tenant, (f) any payments, free rents, rent concessions, rebates of rent or other credits, allowances, concessions or abatements required to be given by the landlord to any Tenant have already been received by such Tenant, (g) all security or other deposits are being held in accordance with the applicable Leases and Legal Requirements, (h) Borrower has no knowledge of any notice of termination or default with respect to any Lease, (i) Borrower has not assigned or pledged any of the Leases, the rents or any interest therein except to Lender, (j) no Tenant or other Person has an option, right of first refusal or offer or any other preferential right to purchase all or any portion of, or interest in, the Property, (k) no Tenant has any expansion or contraction rights pursuant to its Lease, (l) no Tenant has assigned its Lease or sublet all or any portion of the premises demised thereby, (m) no Tenant has the currently vested right to terminate its Lease prior to the expiration of the stated term of such Lease, (n) no Tenant holds rights to exclusive use or related to the co-tenancy, occupancy or operations of another Tenant (including any related rights to terminate its Lease or to receive rent concessions), (o) no Affiliate of Borrower, Guarantor or Manager is a party to or holds any interest in any Leases, (p) to Borrower's knowledge, no Hazardous Substances have been or are being disposed, stored or treated by any Tenant on, under or about the Property, (q) Borrower does not have any knowledge of any Tenant's intention to use its leased premises for any activity that, directly or indirectly, involves the use, generation, treatment, storage, disposal or transportation of any petroleum products or any other Hazardous Substances, (r) all existing Leases are subordinate to the Security Instrument, (s) each Tenant is in physical occupancy of its leased premises, (t) no Tenant has informed Borrower or otherwise given notice (written or oral) that it intends to (or will seek to) "go dark", vacate, cease to occupy or cease to conduct business in the ordinary course at its leased premises or any portion thereof, and (u) no Tenant has directly or indirectly (i) asserted any defense against the payment of any rent or other amounts under its Lease or the performance of any other obligations under its Lease, (ii) sought or given notice (written or oral) that it intends to seek any relief or other concessions with respect to the payment of any rent or other amounts under its Lease or the performance of any other obligations under its Lease or (iii) made any other request for or otherwise given notice

(written or oral) that it intends to seek any amendment, deferral, forbearance or waiver of any term or provision of its Lease.

3.1.23 Filing, Recording and Other Taxes. All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid in connection with the transfer of the Property to Borrower have been paid or are being paid simultaneously herewith. All mortgage, mortgage recording, stamp, intangible or other similar taxes required to be paid in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including the Security Instrument, have been paid or are being paid simultaneously herewith.

3.1.24 Special Purpose. Each of Borrower and any SPC Party is an SPE that complies with all SPE Provisions.

3.1.25 Tax Filings; Foreign Person. To the extent required, Borrower has filed (or has obtained extensions for filing) all federal, state and local tax returns required to be filed and has paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments payable by Borrower. Borrower's tax returns (if any) properly reflect the income and taxes of Borrower for the periods covered thereby. Borrower (or, if Borrower is a disregarded entity for U.S. federal income tax purposes, Borrower's beneficial owner) is not a "foreign person" within the meaning of Section 1445(f)(3) of the Code.

3.1.26 Solvency. Borrower has not entered into the Loan or any Loan Document with the actual intent to hinder, delay or defraud any creditor and has received reasonably equivalent value in exchange for its obligations under the Loan Documents. The fair saleable value of Borrower's assets is and will, immediately following the making of the Loan, be greater than its liabilities, including the maximum amount of its subordinate, unliquidated, disputed, probable and contingent liabilities. Borrower's assets do not and, immediately following the making of the Loan will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur debt and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debt and liabilities as they mature (taking into account the timing and amounts of cash to be received by Borrower and the amounts to be payable on or in respect of its obligations).

3.1.27 Federal Reserve Regulations. No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulations T, U or X of the Board of Governors of the Federal Reserve System or for any other purpose that would be inconsistent with Regulations T, U or X or any other regulations of such Board of Governors, or for any purposes prohibited by any Legal Requirement or the Loan Documents.

3.1.28 Organizational Chart. The organizational chart attached to the Borrower's Certificate and Agreement is true, correct and complete as of the Closing Date. No Person, other than those Persons shown on such organizational chart, has any direct or indirect ownership interest in or Control of Borrower.

3.1.29 Bank Holding Company. Borrower is not a “bank holding company” or a direct or indirect subsidiary of a “bank holding company” as defined in the Bank Holding Company Act of 1956 and Regulation Y thereunder of the Board of Governors of the Federal Reserve System.

3.1.30 Investment Company Act. Neither Borrower nor Guarantor is (a) an “investment company” or a company “controlled” by an “investment company” within the meaning of the Investment Company Act of 1940 or (b) subject to any other Legal Requirement that purports to restrict or regulate its ability to borrow money.

3.1.31 No Bankruptcy Filing. None of Borrower, any SPC Party or any of their Constituent Owners (a) has ever been subject to or involved in any Bankruptcy Action, (b) is contemplating any Bankruptcy Action or the liquidation of all or a material portion of such Person’s assets or properties and (c) has any knowledge of any Person planning a Bankruptcy Action against Borrower, any SPC Party or any of their Constituent Owners.

3.1.32 Full and Accurate Disclosure. No information contained in the Loan Documents or any written statement or document furnished by or on behalf of Borrower or Guarantor in connection with the Loan contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading in light of the circumstances under which they were made. There is no fact or circumstance presently known to Borrower that could reasonably be expected to have a Material Adverse Effect, which has not been disclosed to Lender.

3.1.33 No Change in Facts or Circumstances; Disclosure. All information submitted by or on behalf of Borrower or Guarantor to Lender and in all financial statements, rent rolls (including the Closing Rent Roll), reports, certificates and other documents submitted in connection with the Loan and all statements of fact made by or on behalf of Borrower or Guarantor in the Loan Documents are true, correct, accurate and complete in all material respects. To the best of Borrower’s knowledge, there has been no material adverse change in any condition, fact, circumstance or event that would make any such information or statement of fact inaccurate, incomplete or otherwise misleading in any material respect or that otherwise has or could reasonably be expected to have a Material Adverse Effect.

3.1.34 Management Agreement; Employees. The Management Agreement is in full force and effect and there is no default thereunder by any party thereto and no event has occurred that, with the passage of time and/or the giving of notice would constitute a default thereunder. The Management Agreement was entered into on commercially reasonable terms. All personnel employed in connection with the management and operation of the Property are direct employees of Manager.

3.1.35 REA. Each REA is in full force and effect and has not been amended, and Borrower’s interest therein has not been assigned except to Lender. To the best of Borrower’s knowledge, each REA is in full compliance with all applicable Legal Requirements. Borrower is not in default under any REA and, to the best of Borrower’s knowledge, no other party to any REA is in default thereunder and there is no existing condition which, but for the passage of time or the giving of notice or both, could result in a default under any REA. In no event may a future Lien

capable of being asserted under any REA constitute a Lien prior to the Lien of the Security Instrument. All amounts due under the REA from Borrower have been paid to the extent they are payable on or prior to the Closing Date.

3.1.36 Patriot Act.

(a) None of Borrower, any SPC Party, any of their respective Constituent Owners or Affiliates or any of their respective agents acting or benefitting in any capacity in connection with the Loan, (i) is or is Controlled by or is acting on behalf of a Prohibited Person; (ii) has conducted or will conduct any business or has engaged or will engage in any transaction or dealing with any Prohibited Person, including making or receiving any contribution of funds, goods or services to or for the benefit of any Prohibited Person; (iii) has dealt or will deal in, or otherwise has engaged or will engage in, any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224; or (iv) has engaged or will engage in or has conspired or will conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in the Patriot Act.

(b) Borrower covenants and agrees to deliver to Lender any certification or other evidence requested by Lender in its sole discretion, confirming Borrower's and each SPC Party's compliance with this Section 3.1.36.

3.1.37 Use of Property. The Property consists solely of a hotel and related operations and is used for no other purpose.

3.1.38 Material Agreements.

(a) Borrower has delivered true, correct and complete copies of all Material Agreements (including all amendments thereto) to Lender. Borrower has not entered into, and is not bound by, any other Material Agreement. No Affiliate of Borrower is a party to a Material Agreement.

(b) Each of the Material Agreements is in full force and effect, there are no defaults by Borrower thereunder and, to the best knowledge of Borrower, there are no defaults thereunder by any other party thereto. None of Borrower, Manager or any other Person acting on Borrower's behalf has given or received any notice of default under any Material Agreement that remains outstanding or in dispute.

3.1.39 Other Debt, Obligations and Liabilities. Borrower has not borrowed or received financing (other than permitted pursuant to this Agreement) that has not been heretofore repaid in full. Borrower has no liabilities or other obligations that arose or accrued prior to the Closing Date that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, which have not been disclosed to Lender in writing prior to the Closing Date.

3.1.40 Illegal Activity. No portion of the Property or any interest therein has been or will be purchased with proceeds of any illegal activity.

3.1.41 Prohibited Entity. No Prohibited Entity owns any direct and/or indirect interest in Borrower and no Prohibited Entity Controls Borrower.

3.1.42 Intentionally Omitted.

3.1.43 Hotel Matters.

(a) The Franchise Agreement is in full force and effect and there is no default thereunder by any party thereto and no event has occurred that, with the passage of time and/or giving of notice, would constitute a default thereunder. The Franchise Agreement was entered into on commercially reasonable terms. Other than the Franchise Agreement, the Property is not subject to any Hotel Operating Agreement.

(b) There is currently no PIP imposed under the Franchise Agreement [**** IF INITIAL PIP: other than with respect to the Initial PIP Work ****].

(c) Borrower owns or has the right to use pursuant to the Franchise Agreement, all patents, licenses, franchises, trademarks, trademark rights, trade names, trade name rights, trade secrets, copyrights, service marks, logos, domain names, website names and other similar proprietary rights and all registrations, filings or issuances or applications for registration, filing or issuance thereof (collectively, the “**Intellectual Property**”) necessary for the legal use, occupancy and operation of the Property in the manner in which the Property is currently used, occupied and operated. All such Intellectual Property is fully protected and/or duly and properly registered, filed or issued (or applications for such registration, filing or issuance thereof have been filed) in the appropriate offices and jurisdictions for such registrations, filings or issuances. No claim has been asserted by any Person with respect to the use of any such Intellectual Property or challenging or questioning the validity or effectiveness of any such Intellectual Property.

(d) There are no Union Agreements to which Borrower is a party or by which Borrower or the Property or any portion thereof is or may be bound. Borrower has not violated any Legal Requirement relating to the employment of labor, including those relating to wages, hours, collective bargaining, and the payment and withholding of taxes and other sums as required by any Governmental Authority.

3.1.44 Ground Lease. Borrower hereby represents and warrants to Lender with respect to the Ground Lease:

(a) **Recording; Modification.** A memorandum of the Ground Lease has been duly recorded. The Ground Lease permits the interest of Borrower to be encumbered by a mortgage. There have not been amendments or modifications to the terms of the Ground Lease since the recordation of the Ground Lease or a memorandum thereof, with the exception of written instruments which have been recorded.

(b) **No Liens.** Except for the Permitted Encumbrances, Borrower’s interest in the Ground Lease is not subject to any Liens superior to, or of equal priority with, the Security Instrument other than Ground Lessor’s related fee interest.

(c) Ground Lease Assignable. Borrower's interest in the Ground Lease is assignable without the consent of Ground Lessor to Lender, the purchaser at any foreclosure sale or the transferee under a deed or assignment in lieu of foreclosure in connection with the foreclosure of the Lien of the Security Instrument or transfer of Borrower's leasehold estate by deed or assignment in lieu of foreclosure (or, if any such consent is required, it has been obtained prior to the Closing Date). Thereafter, the Ground Lease is further assignable by such transferee and its successors and assigns without the consent of Ground Lessor.

(d) Default. As of the date hereof, the Ground Lease is in full force and effect and no default has occurred under the Ground Lease and there is no existing condition which, but for the passage of time or the giving of notice, could result in a default under the terms of the Ground Lease. All rents, additional rents and other sums due and payable under the Ground Lease have been paid in full. Neither Borrower nor Ground Lessor has commenced any action or given or received any notice for the purpose of terminating the Ground Lease.

(e) Notice. The Ground Lease requires Ground Lessor to give notice of any default by Borrower to Lender prior to exercising its remedies thereunder. The Ground Lease or estoppel letter received by Lender from Ground Lessor further provides that notice of termination given under the Ground Lease is not effective against Lender unless a copy of such notice has been delivered to Lender in the manner described in the Ground Lease or such estoppel letter.

(f) Cure. Lender is permitted the opportunity (including, where necessary, sufficient time to gain possession of Borrower's interest under the Ground Lease) to cure any default under the Ground Lease which is curable after the receipt of notice of any default before Ground Lessor may terminate the Ground Lease.

(g) Term. The Ground Lease has a term which, including unexercised renewal option terms, extends not less than twenty (20) years beyond the Stated Maturity Date.

(h) New Lease. The Ground Lease requires Ground Lessor to enter into a new lease with Lender upon termination of the Ground Lease for any reason, including rejection of the Ground Lease in a bankruptcy proceeding.

(i) Insurance Proceeds. Under the terms of the Ground Lease and the Security Instrument, taken together, any related insurance and condemnation proceeds that are paid or awarded with respect to the leasehold estate under the Ground Lease will be applied either to the repair or restoration of all or part of the Property, with Lender having the right to hold and disburse such proceeds as the repair or restoration progresses, or to the payment of the Outstanding Principal Balance, together with any accrued interest thereon.

(j) Subleasing. The Ground Lease does not impose any material restrictions on subleasing.

Section 3.2. Survival of Representations and Warranties.

The representations and warranties set forth in Section 3.1 shall survive for so long as any amount remains payable to Lender under any Loan Document.

IV. BORROWER COVENANTS

Section 4.1. Borrower Affirmative Covenants.

From the Closing Date and for so long as any amount remains payable to Lender under the Loan Documents, Borrower hereby covenants and agrees with Lender that:

4.1.1 Existence; Compliance with Legal Requirements. Each of Borrower and each SPC Party shall do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, licenses, permits and franchises and comply with all Legal Requirements applicable to it and the Property. There shall never be committed by Borrower, and Borrower shall use commercially reasonable efforts not to permit any other Person in occupancy of or involved with the operation or use of the Property to commit, any act or omission affording any Governmental Authority the right of forfeiture against the Property or any part thereof or any monies paid in performance of Borrower's obligations under any of the Loan Documents. Borrower hereby covenants and agrees not to commit, and to use commercially reasonable efforts not to permit or suffer to exist, any act or omission affording such right of forfeiture. Borrower shall at all times maintain, preserve and protect all franchises and trade names and all of its assets and properties used or useful in the conduct of its business and shall keep the Property in good working order and repair, and make, or cause to be made, all reasonably necessary repairs, renewals, replacements, betterments and improvements thereto. Borrower shall operate the Property in accordance with the O&M Agreement in all material respects.

4.1.2 Taxes and Other Charges; Labor and Material Costs. Borrower shall pay all Taxes and Other Charges now or hereafter levied or assessed or imposed against the Property or any part thereof as the same become due and payable; provided, however, Borrower's obligation to directly pay Taxes shall be suspended for so long as Borrower complies with the terms and provisions of Section 6.2. Borrower shall furnish to Lender receipts for the payment of the Taxes and the Other Charges no later than ten (10) days prior to the date the same shall become delinquent; provided, however, that Borrower is not required to furnish such receipts for payment of Taxes if such Taxes have been paid by Lender pursuant to Section 6.2. Borrower will promptly pay when due all bills and costs for labor and materials, including specifically fabricated materials (collectively, "**Labor and Material Costs**"), incurred in connection with the Property.

4.1.3 Litigation. Borrower shall give prompt notice to Lender of any legal, judicial, administrative, regulatory or governmental proceedings pending or threatened against the Property, Borrower, any SPC Party or Guarantor which, if adversely determined, could reasonably be expected to have a Material Adverse Effect. Borrower shall cooperate fully with Lender with respect to any proceedings before any court or other Governmental Authority that may in any way affect the rights or interests of Lender under the Loan Documents and, in connection therewith, permit Lender, at its election, to participate in any such proceedings.

4.1.4 Access to Property. Borrower shall permit agents, representatives and employees of Lender to inspect the Property or any part thereof at reasonable hours upon reasonable advance notice, subject to rights of Tenants under their Leases.

4.1.5 Further Assurances. Borrower shall, at its expense: (a) execute and deliver, or cause to be executed and delivered, all such documents, instruments, certificates, assignments and other writings and do, or cause to be done, such other acts necessary or desirable as Lender may reasonably require to (i) correct any omissions in the Loan Documents, (ii) evidence and more fully or accurately describe the collateral at any time securing or intended to secure the Obligations, (iii) protect or preserve the collateral at any time securing or intended to secure the Obligations or (iv) perfect, protect or preserve any Liens created under any Loan Document and/or the priority thereof; and (b) do and execute, or cause to be done and executed, all such further lawful and reasonable acts, conveyances and assurances for the better and more effective carrying out of the intents and purposes of any Loan Document as Lender shall reasonably require (including the execution and delivery of all such documents and information necessary to transfer any liquor licenses and any Intellectual Property owned by Borrower or any Affiliate of Borrower with respect to the Property into the name of Lender or its designee during the continuance of an Event of Default)..

4.1.6 Financial Reporting.

(a) **Accounting Basis; Format; Access.** Borrower shall maintain, or shall cause to be maintained, in accordance with the Acceptable Accounting Basis, proper and accurate books, records and accounts reflecting all of the financial affairs of Borrower and all items of income and expense in connection with the operation of the Property. All financial statements delivered to Lender pursuant to this Section 4.1.6 shall be prepared in accordance with the Acceptable Accounting Basis. All rent rolls, financial statements and other documents and information delivered to Lender pursuant to this Section 4.1.6 shall be in form and substance satisfactory to Lender, certified by a duly qualified and authorized representative of Borrower and delivered in electronic form or such other form reasonably acceptable to Lender. Lender shall have the right during normal business hours to examine, and make copies or extracts of, Borrower's books, records and accounts at the office of Borrower or such other Person maintaining such books, records and accounts.

(b) **Monthly Reports.** Borrower shall furnish to Lender within twenty (20) days after the end of each calendar month, the following items, accompanied by an Officer's Certificate stating that such items are true, correct and complete and accurately represent the financial condition of Borrower and the Property, as applicable: (i) to the extent that there are any Leases, a rent roll for such month; (ii) an occupancy report for such month, including an average daily rate, and any franchise inspection reports received by Borrower during such month; and (iii) monthly and year-to-date operating statements prepared for such month, including Gross Income, Op Ex, Cap Ex, NOI, NCF, aged payables, aged receivables and such other information necessary and sufficient to accurately represent the financial condition of the Property during such month, each in scope and detail reasonably satisfactory to Lender and (iv) *****FINANCIAL REPORTING FOR SEASONALITY RESERVE TBD IN UNDERWRITING *****. In addition, such Officer's Certificate shall also state that (A) Borrower is in compliance with the SPE Provisions in all material respects and (B) to the extent that there are any Leases, (I) no Tenant has informed Borrower or otherwise given notice (written or oral) that it intends to (or will seek to) "go dark", vacate, cease to occupy or cease to conduct business in the ordinary course at its leased premises or any portion thereof, pursuant to any force majeure clause contained in its Lease or otherwise as a result of any pandemic, including the COVID-19 pandemic, and (II) no Tenant has directly or

indirectly (X) asserted any defense against the payment of any rent or other amounts under its Lease or the performance of any other obligations under its Lease, (Y) sought or given notice (written or oral) that it intends to seek any relief or other concessions with respect to the payment of any rent or other amounts under its Lease or the performance of any other obligations under its Lease or (Z) made any other request for or otherwise given notice (written or oral) that it intends to seek any amendment, deferral, forbearance or waiver of any term or provision of its Lease, in any case, pursuant to any force majeure clause contained in its Lease or otherwise as a result of any pandemic, including the COVID-19 pandemic. Within thirty (30) days after the end of each calendar month, Borrower shall also furnish to Lender the most current Smith Travel Research Reports in the form of Schedule 4.1.6(b) then available to Borrower reflecting market penetration and relevant hotel properties competing with the Property.

(c) **Quarterly Reports.** Borrower shall deliver to Lender within forty-five (45) days after the end of each calendar quarter the following items, accompanied by an Officer's Certificate stating that such items are true, correct and complete and accurately represent the financial condition of Borrower and the Property, as applicable: (i) to the extent that there are any Leases, a rent roll for such quarter; (ii) an occupancy report for the subject quarter, including an average daily rate; and (iii)(A) a balance sheet for Borrower as of the last day of such quarter and (B) quarterly and year-to-date operating statements prepared for such quarter, noting Gross Income, Op Ex, Cap Ex, NOI, NCF, aged payables, aged receivables and such other information necessary and sufficient to accurately represent the financial position of the Property during such quarter, all in form reasonably satisfactory to Lender. In addition, such Officer's Certificate shall also state that Borrower is in compliance with the SPE Provisions in all material respects.

(d) **Annual Reports.** Borrower shall deliver to Lender annually, within ninety (90) days following the end of each calendar year, a complete copy of Borrower's annual financial statements audited by a certified public accounting firm reasonably acceptable to Lender covering the Property for such calendar year and containing statements of profit and loss for Borrower and the Property and a balance sheet for Borrower. Such statements shall set forth the financial condition for the Property for such calendar year and shall include amounts representing annual Gross Income, Op Ex, Cap Ex, NOI and NCF, together with schedules of aged payables and aged receivables. Borrower's annual financial statements shall be accompanied by (i) an Officer's Certificate stating that each such annual financial statement accurately represents the financial condition of Borrower and the Property and has been prepared in accordance with the Acceptable Accounting Basis, (ii) an unqualified opinion of such accounting firm, (iii) to the extent that there are any Leases, a rent roll for such calendar year, (iv) unless shown on such rent roll, a list of Tenants, if any, occupying more than ten percent (10%) of the total floor area of the Improvements, (v) unless shown on such rent roll, a breakdown showing the year in which each Lease then in effect expires and the percentage of total floor area and base rent represented by each such Lease in each such year, expressed on both a per year and cumulative basis, and (vi) a schedule audited by such accounting firm reconciling NOI to NCF, which shall itemize all adjustments made to NOI to arrive at NCF that are deemed material by such accounting firm. In connection with the financial statements required to be furnished to Lender pursuant to the Loan Documents, [_____] is an independent certified public accounting firm reasonably acceptable to Lender; provided that Lender reserves the right to disapprove such firm (and to require another independent certified public accounting firm reasonably acceptable to Lender) if, in Lender's reasonable opinion, such firm is not preparing the requisite financial statements in accordance with the applicable provisions

of the Loan Documents or such firm is not reasonably qualified to provide such services (including, without limitation, due to the loss of a CPA license or an indictment for fraud).

(e) **Annual Budget.** For the partial year period commencing on the Closing Date, and for each calendar year thereafter, Borrower shall submit to Lender an Annual Budget not later than thirty (30) days prior to the commencement of such period, which Annual Budget shall set forth, on a month-by-month basis, in reasonable detail, each line item of Borrower's good faith estimate of Gross Income, Op Ex and Cap Ex for such period and shall otherwise be in form and substance reasonably satisfactory to Lender, which budget: (i) in the absence of an existing Cash Management Trigger Event Period, shall be provided to Lender for informational purposes and (ii) during a Cash Management Trigger Event Period, shall be subject to Lender's prior approval (not to be unreasonably withheld or delayed) (upon Lender's approval if required, an "**Approved Annual Budget**"). If Lender objects to a proposed Annual Budget submitted by Borrower, Lender shall advise Borrower of such objections within fifteen (15) days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and Borrower shall promptly revise such Annual Budget and resubmit the same to Lender. Lender shall advise Borrower of any objections to such revised Annual Budget within ten (10) days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and Borrower shall promptly revise the same in accordance with the process described in this Section 4.1.6(e) until Lender approves the Annual Budget. Until such time that Lender approves a proposed Annual Budget, the most recent Approved Annual Budget shall apply; provided that, such Approved Annual Budget shall be adjusted to reflect actual changes in Taxes, Other Charges, Insurance Premiums, utility expenses and other non-discretionary items. If Borrower must incur an extraordinary operating expense or capital expense not set forth in the applicable Approved Annual Budget (each, an "**Extraordinary Expense**"), then Borrower shall promptly deliver to Lender a reasonably detailed explanation of such proposed Extraordinary Expense for Lender's approval (not to be unreasonably withheld or delayed). To the extent that Lender's approval is required in connection with any proposed budget, Lender's approval shall be deemed to have been given, provided that (i)(A) Borrower's initial request for approval is submitted with the notation "**FIRST NOTICE. FAILURE TO RESPOND TO THIS REQUEST FOR APPROVAL WITHIN FIFTEEN (15) DAYS AFTER LENDER'S RECEIPT MAY RESULT IN THE REQUEST BEING DEEMED APPROVED BY LENDER**" prominently displayed in bold, all caps and fourteen (14) point or larger font and is accompanied by the proposed budget and such other documents and information required to adequately evaluate such request and (B) within fifteen (15) days after Lender's receipt of the first request for approval, Lender fails to (1) approve or object to such request or (2) request additional documents and information required to adequately evaluate such request, and (ii)(A) Borrower submits a second request for approval with the notation "**SECOND AND FINAL NOTICE. IMMEDIATE RESPONSE REQUIRED. FAILURE TO RESPOND TO THIS REQUEST FOR APPROVAL WITHIN TEN (10) DAYS AFTER LENDER'S RECEIPT SHALL CONSTITUTE DEEMED APPROVAL BY LENDER**" prominently displayed in bold, all caps and fourteen (14) point or larger font and such request for approval is accompanied by the proposed budget and such other documents and information required to adequately evaluate such request and (B) within ten (10) days after Lender's receipt of the second request for approval, Lender fails to (1) approve or object to such request or (2) request additional documents and information required to adequately evaluate such request.

(f) **Additional Information.** Notwithstanding anything to the contrary contained in any Loan Document, Borrower shall submit to Lender the financial data and financial statements required, and within the time periods required, under Section 9.1.

(g) **Other Required Information.** Borrower shall furnish to Lender, within five (5) Business Days after request (or as soon thereafter as may be reasonably possible), such further detailed information with respect to the Property and Borrower as may be reasonably requested by Lender, including (i) a calculation reflecting the DSCR and/or the Debt Yield as of the last day of the calendar year and any interim reporting period and (ii) a comparison of the budgeted income and expenses as set forth in the applicable Approved Annual Budget and the actual income and expenses for the Property for the calendar year and any interim reporting period, together with a detailed explanation of any variances of more than five percent (5%) between budgeted and actual amounts for such periods.

(h) **Reporting Default.** If Borrower fails to provide to Lender the financial statements and other information specified in this Section 4.1.6 within the respective time period specified, then (i) such failure shall constitute an Event of Default if it continues for ten (10) days after notice to Borrower from Lender and (ii) Borrower shall pay to Lender (A) a fee in the amount of \$2,500 upon the occurrence of the first such failure and again upon the expiration of each 30-day period thereafter until compliance is achieved and (B) a fee in the amount of \$5,000 upon the occurrence of any subsequent failure and again upon the expiration of each 30-day period thereafter until compliance is achieved, which amounts shall constitute a portion of the Obligations and, if unpaid, shall accrue interest at the Default Rate.

4.1.7 Title to Property. Borrower shall warrant and defend (a) its title to the Property, subject only to Permitted Encumbrances, and (b) the validity and priority of the Liens of the Security Instrument and the Assignment of Leases on the Property, subject only to Permitted Encumbrances, in each case, against the claims of all Persons.

4.1.8 Estoppel Statement.

(a) Borrower shall deliver to Lender, within five (5) Business Days after Lender's request, a statement, duly acknowledged and certified, setting forth (i) the original principal amount of the Loan, (ii) the unpaid principal amount of the Loan, (iii) the interest rate of the Loan, (iv) the date installments of principal and/or interest were last paid, (v) any offsets or defenses to the payment or performance of the Obligations, and (vi) that the Loan Documents are valid, legal and binding obligations of Borrower and have not been modified (or, if modified, giving particulars of such modification).

(b) Borrower shall request from each Tenant, within five (5) Business Days after Lender's request, and thereafter use commercially reasonable efforts promptly to obtain from each Tenant and deliver to Lender, an estoppel certificate with respect to such Tenant's Lease, in form and substance reasonably satisfactory to Lender; provided that (i) such estoppel certificate may be in the form required under such Lease, if any, and (ii) after the Securitization of the entire Loan, unless an Event of Default exists, Borrower shall not be required to request an estoppel certificate from any Tenant more frequently than two (2) times in any calendar year.

(c) With respect to any REA, Borrower shall use commercially reasonable efforts to deliver to Lender, within thirty (30) days after Lender's request, an estoppel certificate from each party thereto in form and substance reasonably satisfactory to Lender; provided that such estoppel certificate may be in the form required by such REA.

4.1.9 Leases.

(a) All Leases and all extensions, amendments, assignments and subleases of Leases shall: (i) be on commercially reasonable terms (including terms relating to free rent, tenant allowances or tenant improvements) with creditworthy tenants, which terms are consistent with existing local market terms for similar properties, (ii) have a term of not less than [**** TBD: _____ () ****] months and of not more than [**** TBD: _____ () ****] years, including all extensions and renewals, (iii) be subordinate to the Loan Documents and provide that each Tenant attorn to Lender and any purchaser at a foreclosure sale, (iv) be written in accordance with the standard form of Lease that has been approved in writing by Lender (subject to any commercially reasonable changes), (v) not be with any Affiliate of Borrower, Guarantor or any Affiliated Manager, and (vi) not contain (A) any option to purchase or right of first offer, first refusal or other preferential right to purchase all or any portion of the Property or any interest therein, (B) any right to terminate (other than in connection with customary casualty or condemnation provisions or customary uncured material landlord defaults), (C) any requirement for a subordination, non-disturbance and attornment agreement, or (D) any other terms that are reasonably likely to materially adversely affect Lender's rights or remedies under the Loan Documents. Notwithstanding anything to the contrary contained in any Loan Document, if a Lease does not satisfy each of the foregoing conditions in this Section 4.1.9(a), then in all such events, such Lease and any extension, amendment, assignment and sublease thereof shall be subject to Lender's prior approval.

(b) Notwithstanding the last sentence of Section 4.1.9(a), Lender's prior approval shall not be required in connection with (x) the extension of any Lease existing as of the Closing Date to the extent necessary to implement any extension term expressly contained in such Lease, with respect to which Borrower has no material discretion, and (y) any assignment or sublease expressly permitted under any Lease pursuant to a unilateral right of the Tenant thereunder, which does not require Borrower's consent.

(c) Borrower (i) shall timely and diligently perform the obligations that Borrower is required to perform under the Leases in a commercially reasonable manner; (ii) shall timely and diligently enforce the obligations to be performed by the Tenants under the Leases in a commercially reasonable manner; (iii) shall promptly deliver to Lender any notice of monetary or material non-monetary default given or received by Borrower or Manager; (iv) shall not collect any Rents more than one (1) month in advance (other than security deposits held in accordance with Section 4.1.9(e)); (v) shall not terminate or accept a surrender of any Lease (except if no Event of Default exists, Borrower shall have the right, without Lender's prior consent, to terminate or accept a surrender of any Lease so long as such termination or acceptance is (a) by reason of a material default by the applicable Tenant and (b) commercially reasonable to preserve and protect the Property); (vi) shall not amend any Lease so as to decrease the amount of any rent, change the rent payment date, change the expiration date, grant any option for additional space or term, materially reduce the obligations of the Tenant thereunder or increase the obligations of Borrower

thereunder; (vii) shall not execute any assignment of Borrower's interest in the Leases or the Rents (except as contemplated by the Loan Documents); and (viii) shall provide to Lender, within ten (10) days after Lender's request, (a) executed copies of all Leases (and all extensions and other amendments thereof) not previously delivered to Lender, together with an Officer's Certificate stating that such Lease (or such extension or other amendment) is true, correct and complete and was entered into in accordance with this Agreement, and (b) a statement of all security or other deposits.

(d) Subject to the last sentence of this Section 4.1.9(d), to the extent that Lender's approval is required in connection with any proposed Lease or any proposed extension, amendment, termination or acceptance of the surrender (in whole or in part) of any Lease, Lender's approval shall be deemed to have been given, provided that (i)(A) Borrower's initial request for approval is submitted with the notation "**FIRST NOTICE. FAILURE TO RESPOND TO THIS REQUEST FOR APPROVAL WITHIN FIFTEEN (15) DAYS AFTER LENDER'S RECEIPT MAY RESULT IN THE REQUEST BEING DEEMED APPROVED BY LENDER**" prominently displayed in bold, all caps and fourteen (14) point or larger font and is accompanied by the proposed Lease or the proposed extension, amendment, termination or acceptance of surrender (in whole or in part) of a Lease and such other documents and information required to adequately evaluate such request and (B) within fifteen (15) days after Lender's receipt of the first request for approval, Lender fails to (1) approve or object to such request or (2) request additional documents and information required to adequately evaluate such request, and (ii)(A) Borrower submits a second request for approval with the notation "**SECOND AND FINAL NOTICE. IMMEDIATE RESPONSE REQUIRED. FAILURE TO RESPOND TO THIS REQUEST FOR APPROVAL WITHIN TEN (10) DAYS AFTER LENDER'S RECEIPT SHALL CONSTITUTE DEEMED APPROVAL BY LENDER**" prominently displayed in bold, all caps and fourteen (14) point or larger font and such request for approval is accompanied by the proposed Lease or the proposed extension, amendment, termination or acceptance of surrender (in whole or in part) of a Lease and such other documents and information required to adequately evaluate such request and (B) within ten (10) days after Lender's receipt of the second request for approval, Lender fails to (1) approve or object to such request or (2) request additional documents and information required to adequately evaluate such request. Notwithstanding anything to the contrary contained in any Loan Document, the terms of this Section 4.1.9(d) shall not apply in connection with any proposed Lease or any proposed extension or amendment of any Lease that contains or provides for (X) any preferential right to purchase all or any portion of the Property or any interest therein or (Y) any other terms that are reasonably likely to materially adversely affect Lender's rights or remedies under the Loan Documents.

(e) All security or other deposits of Tenants shall be held in compliance with all applicable Legal Requirements, shall not be commingled with any other funds of Borrower and, if cash, shall be deposited by Borrower in a separate Eligible Account under Borrower's control. During the continuance of an Event of Default, upon Lender's request, Borrower shall, if permitted by Legal Requirements, cause all such security or other deposits (and any interest thereon) to be transferred to Lender to be held by Lender in a separate Eligible Account subject to the Leases. Any bond or other instrument that Borrower is permitted to hold in lieu of cash security or other deposits under all applicable Legal Requirements (i) shall be maintained in full force and effect in the full amount of such deposits unless replaced by cash deposits, (ii) shall be issued by an Eligible Institution, (iii) shall, if permitted by Legal Requirements, name Lender as payee or mortgagee

thereunder (or, at Lender's option, be fully assignable to Lender), and (iv) shall comply with all applicable Legal Requirements and otherwise be reasonably satisfactory to Lender. Borrower shall, upon request, provide Lender with evidence reasonably satisfactory to Lender of Borrower's compliance with the foregoing.

4.1.10 Alterations. Lender's prior approval shall be required in connection with any alterations to the Property (a)(i) that could reasonably be expected to have a Material Adverse Effect, (ii) the cost of which (including any related alterations, improvements and replacements) could reasonably be expected to exceed the Alteration Threshold, or (iii) that could adversely affect any structural component of any Improvements, any utility or HVAC system at the Property or the exterior of any Improvements or (b) any alterations to the Property during the continuance of an Event of Default, which approval, in each case, may be granted or withheld in Lender's sole discretion. Any alteration to the Property shall be performed and completed by Borrower in an expeditious and diligent fashion, in a good and workmanlike manner, in a Lien free manner, and in compliance with all applicable Legal Requirements and shall be timely paid for in full, and Borrower shall, upon request, provide Lender with evidence reasonably satisfactory to Lender of Borrower's compliance with the foregoing. If the total unpaid amounts incurred and to be incurred with respect to such alterations to the Property (and any related alterations, improvements and replacements) are expected by Borrower or Lender to exceed the Alteration Threshold, Borrower shall promptly deliver to Lender as security for the payment of such alterations (including any related alterations, improvements and replacements) and as additional security for the Obligations any of the following: (A) cash, (B) letters of credit, (C) U.S. Obligations or (D) other securities acceptable to Lender, provided that, with respect to clause (D), Lender shall have received a Rating Agency Confirmation as to the form, substance and issuer of same. Such security shall be in an amount equal to the excess of the total unpaid amounts incurred and to be incurred with respect to such alterations (and any related alterations, improvements and replacements) over the Alteration Threshold, provided that such security may be reduced by any amounts specifically designated for such alterations (and any related alterations, improvements and replacements) that are (i) required to be paid or reimbursed by Tenants under Leases, which are in full force and effect and with respect to which no monetary default or material non-monetary default shall exist, or (ii) held by Lender in a Reserve Account. At Lender's option, Lender shall have the right to apply such security to pay for such alterations (and any related alterations, improvements and replacements) if not otherwise paid by Borrower.

4.1.11 Material Agreements and Operating Agreements. Borrower shall promptly and diligently, with respect to each Material Agreement and Operating Agreement: (a) perform and observe all of the respective provisions thereof, and do all things necessary to preserve and to keep unimpaired its rights, title, interests, benefits, and privileges thereunder, (b) deliver to Lender copies of all material notices (including notices of default), summonses, pleadings, applications, and other documents received or given in connection therewith, and (c) timely enforce the performance and observance in all material respects of all of the respective provisions thereof.

4.1.12 Performance by Borrower. Borrower shall, in a timely manner, observe, perform and fulfill each and every covenant, term and provision of each Loan Document executed and delivered by Borrower.

4.1.13 Costs of Enforcement/Remedying Defaults. In the event (a) that the Security Instrument is foreclosed in whole or in part or any Loan Document is put into the hands of an attorney for collection, suit, action, advice or foreclosure during a Default or Event of Default, (b) of the foreclosure of any Lien or mortgage, whether senior or junior to the Security Instrument, in which proceeding Lender is made a party, (c) of the Bankruptcy Action in respect of Borrower, any SPC Party or Guarantor or an assignment by Borrower or Guarantor for the benefit of its creditors, or (d) that Lender shall remedy or attempt to remedy any Default or Event of Default, Borrower shall be chargeable with and agrees to pay all costs incurred by Lender as a result thereof, including costs of collection and defense (including attorneys', experts', consultants' and witnesses' fees), which costs shall be due and payable on demand, together with interest at the Default Rate from the date such costs were incurred to and including the date the reimbursement payment is received by Lender.

4.1.14 Business and Operations. Borrower shall continue to engage in the businesses conducted by it as of the Closing Date and will qualify to do business and shall remain in good standing under the laws of each jurisdiction as and to the extent the same are necessary for the ownership, management and operation of the Property. Borrower shall at all times cause the Property to be maintained as a hotel.

4.1.15 Additional Reports. Borrower shall deliver to Lender as soon as reasonably available, but in no event later than thirty (30) days after such items become available to Borrower, copies of any engineering, environmental or seismic reports prepared for, or provided to, Borrower with respect to the Property.

4.1.16 Notice of Certain Events. Borrower shall promptly notify Lender of (a) any Default or Event of Default, together with a detailed statement of the steps being taken to cure such Default or Event of Default; (b) any notice of default received by Borrower or Guarantor under any agreement, document or instrument to which Borrower or Guarantor is a party or to which Borrower, Guarantor or the Property is subject; (c) any notice of default received by Borrower under any other obligations relating to the Property or otherwise material to Borrower's business; and (d) any pending or threatened (in writing) legal, judicial, administrative or regulatory proceedings, including any disputes between Borrower or Guarantor and any Governmental Authority, affecting Borrower, Guarantor or the Property.

4.1.17 Taxes on Security. Borrower shall pay all taxes, charges, filing, registration and recording fees, excises and levies payable with respect to the Note or the Liens created or secured by the Loan Documents, other than income, franchise and doing business taxes imposed on Lender. If there shall be enacted any law (or an amendment thereto) (a) deducting the Loan from the value of the Property for the purpose of taxation, (b) affecting any Lien on the Property, or (c) changing existing laws of taxation of mortgages, deeds of trust, security deeds, or debts secured by real property, or changing the manner of collecting any such taxes, Borrower shall promptly pay to Lender, on demand, all taxes, costs and charges for which Lender is or may be liable as a result thereof; provided, however, that if such payment would be prohibited by law or would render the Loan usurious, then instead of collecting such payment, Lender shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable.

4.1.18 Patriot Act Compliance. Borrower will use its good faith and commercially reasonable efforts to comply with the Patriot Act. Lender shall have the right to audit Borrower's compliance with the Patriot Act and all applicable requirements of Governmental Authorities relating to terrorism and money laundering. If Borrower fails to comply with the Patriot Act or any such requirements of Governmental Authorities, Lender may, at its option, cause Borrower to comply therewith. All costs incurred by Lender in connection therewith shall be paid by Borrower to Lender, upon demand, with interest at the Default Rate from the date such costs were incurred to and including the date the reimbursement payment is received by Lender.

4.1.19 Right to Contest Taxes or Labor and Material Costs. After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate and timely proceeding pursuant to applicable Legal Requirements, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any Taxes or Labor and Material Costs, provided that (i) no Event of Default is continuing, (ii) Borrower is permitted to do so under the provisions of each Material Agreement and, if applicable, other mortgage, deed of trust or deed to secure debt affecting the Property, (iii) such proceeding shall suspend the collection of the Taxes or Labor and Material Costs from Borrower and from the Property, or Borrower shall have paid all of the Taxes or Labor and Material Costs under protest or bonded over same if permitted by applicable Legal Requirements, (iv) neither the Property nor any part thereof or interest therein shall be in danger of being sold, forfeited, terminated, canceled or lost, by reason of the pendency of such contest, and (v) Borrower shall have furnished the security as may be required in the proceeding, or as may be reasonably requested by Lender to ensure the payment of any contested Taxes or Labor and Material Costs, together with all interest and penalties thereon. Upon the conclusion of such proceeding, and final determination of such Taxes or Labor and Material Costs, Borrower shall promptly pay the outstanding amount of any such Taxes or Labor and Material Costs, together with all costs, interest and penalties that are payable in connection therewith. Lender may pay over, assign or transfer any such security or part thereof to the claimant entitled thereto at any time when, in the reasonable judgment of Lender, the entitlement of such claimant is established or the Property (or any part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, canceled or lost or there shall be any danger of the Lien of the Security Instrument being primed by any related Lien. Upon the resolution of any such contest in favor of Borrower, Lender shall return any remaining portion of such security to Borrower.

4.1.20 Ground Lease.

(a) Borrower shall, at its sole cost and expense, promptly and timely perform and observe all terms, covenants and conditions required to be performed and observed by Borrower as lessee under the Ground Lease (including, without limitation, the payment of all Ground Rents).

(b) Borrower shall enforce, in a commercially reasonable manner, the terms, covenants and conditions to be performed and observed by Ground Lessor under the Ground Lease.

(c) Borrower shall promptly notify Lender of the receipt by Borrower of any notice (written or otherwise) from Ground Lessor claiming the occurrence of any default by

Borrower under the Ground Lease or the occurrence of any event that, with the giving of notice or passage of time, or both, would constitute a default by Borrower under the Ground Lease. Promptly upon its receipt thereof, Borrower shall deliver to Lender a copy of any such written notice from Ground Lessor.

(d) Borrower shall promptly notify Lender of the occurrence of any default by Ground Lessor under the Ground Lease or the occurrence of any event that, with the giving of notice or passage of time, or both, would constitute a default by Ground Lessor under the Ground Lease. Concurrently with the giving of any notice to Ground Lessor claiming the occurrence of such default or event, Borrower shall deliver a copy thereof to Lender.

(e) If Borrower shall be in default under the Ground Lease, then, subject to the terms of the Ground Lease, Borrower shall grant Lender the right (but not the obligation) to cause the applicable default under the Ground Lease to be remedied and otherwise exercise any and all rights of Borrower under the Ground Lease as may be reasonably necessary or desirable to prevent or cure such default; provided that such actions are, in Lender's good faith judgment, reasonably necessary to protect Lender's interest under the Loan Documents. Lender shall have the right to enter all or any portion of the Property, at such times and in such manner as Lender deems necessary, to prevent or to cure any such default. If Ground Lessor shall deliver to Lender a copy of any notice of default sent by Ground Lessor to Borrower, such notice shall constitute full protection to Lender for any action taken or not taken by Lender, in good faith, in reliance thereon.

(f) Borrower shall promptly execute, acknowledge and deliver to Lender such instruments as may reasonably be necessary to permit Lender to cure any default under the Ground Lease or permit Lender to take such other action required to enable Lender to cure or remedy the matter in default and preserve Lender's rights under the Loan Documents with respect to the Property (including, without limitation, the Lien of the Security Instrument and the other Loan Documents).

(g) The actions or payments of Lender to cure any default by Borrower under the Ground Lease shall not cure or waive, as between Borrower and Lender, the default that occurred under this Agreement by virtue of Borrower's default under the Ground Lease. All costs and expenses incurred by Lender to cure or attempt to cure any such default shall be paid by Borrower to Lender, upon demand, with interest at the Default Rate from the date such costs and expenses were incurred to and including the date the reimbursement payment is received by Lender. All such indebtedness shall be secured by the Security Instrument.

(h) Borrower shall not, without prior consent of Lender, subordinate or consent to the subordination of the Ground Lease to any mortgage, security deed, lease or other interest on or in Ground Lessor's interest in all or any part of the Property.

(i) Borrower shall exercise each option, if any, to extend or renew the term of the Ground Lease upon demand by Lender made at any time within [*** one (1) year ***] prior to the last day upon which any such option may be exercised.

(j) Within ten (10) days after receipt of Lender's request, Borrower shall use reasonable efforts to obtain from Ground Lessor and furnish to Lender an estoppel certificate of

Ground Lessor stating the date through which Ground Rent has been paid, whether or not there are any defaults under the Ground Lease and specifying the nature of such claimed defaults, if any, and such other matters as Lender may reasonably request.

(k) Without limiting the terms and provisions of Section 4.1.21 hereof, Borrower irrevocably appoints Lender as its true and lawful attorney-in-fact to do, in its name or otherwise, any and all acts and to execute any and all documents that are necessary to preserve any rights of Borrower under or with respect to the Ground Lease, including, without limitation, the right to effectuate any extension or renewal of the Ground Lease, or to preserve any rights of Borrower whatsoever in respect of any part of the Ground Lease (and the above powers granted to Lender are coupled with an interest and shall be irrevocable).

(l) Notwithstanding anything to the contrary contained in this Agreement with respect to the Ground Lease:

(i) The Lien of the Security Instrument attaches to all of Borrower's rights and remedies at any time arising under or pursuant to Section 365(h) of the U.S. Bankruptcy Code or any other Bankruptcy Law, including, without limitation, all of Borrower's rights, as debtor, to remain in possession of the Property.

(ii) Borrower shall not, without Lender's consent, elect to treat the Ground Lease as terminated under Section 365(h)(l) of the U.S. Bankruptcy Code or any other Bankruptcy Law. Any such election made without Lender's prior consent shall be null and void.

(iii) As security for the Obligations, Borrower unconditionally assigns, transfers and sets over to Lender all of Borrower's rights and claims to the payment of damages arising from any rejection by Ground Lessor under the Bankruptcy Law. Borrower and Lender shall proceed jointly or in the name of Borrower in respect of any claim, suit, action or proceeding relating to the rejection of the Ground Lease, including, without limitation, the right to file and prosecute any proofs of claim, complaints, motions, applications, notices and other documents in any case in respect of Ground Lessor under the Bankruptcy Law. This assignment constitutes a present, irrevocable and unconditional assignment of the foregoing rights, claims, and remedies, and shall continue in effect until all of the Debt shall have been satisfied and discharged in full. Any amounts received by Borrower or Lender as damages arising out of the rejection of the Ground Lease as aforesaid shall be applied to all costs and expenses of Lender (including, without limitation, reasonable attorneys' fees and expenses) incurred in connection with the exercise of any of its rights or remedies in accordance with the applicable provisions of this Agreement.

(iv) If, pursuant to Section 365(h) of the U.S. Bankruptcy Code or any other Bankruptcy Law, Borrower seeks to offset, against the Ground Rent, the amount of any damages caused by the non-performance by Ground Lessor of any of its obligations under the Ground Lease after the rejection by Ground Lessor under the Bankruptcy Law, then Borrower shall not effect any offset of the amounts objected to by Lender. If Lender has failed to object as aforesaid within ten (10) days after notice from Borrower in accordance

with the first sentence of this clause (iv), Borrower may proceed to offset the amounts set forth in Borrower's notice to Ground Lessor and Lender.

(v) If any action, proceeding, motion or notice shall be commenced or filed in respect of Ground Lessor in connection with any case under the Bankruptcy Law, Borrower and Lender shall cooperatively conduct and control any such action, proceeding, motion or notice with counsel agreed upon between Borrower and Lender in connection with such action, proceeding, motion or notice. Borrower shall, upon demand, pay to Lender all costs and expenses (including reasonable attorneys' fees and expenses) incurred by Lender in connection with the cooperative prosecution or conduct of any such action, proceeding, motion or notice. All such costs and expenses shall be secured by the Lien of the Security Instrument.

(vi) Borrower shall promptly, after obtaining knowledge of such filing, notify Lender orally of any filing by or against Ground Lessor of a petition under the Bankruptcy Law. Borrower shall thereafter promptly give written notice of such filing to Lender, setting forth any information available to Borrower as to the date of such filing, the court in which such petition was filed, and the relief sought in such filing. Borrower shall promptly deliver to Lender any and all notices, summonses, pleadings, applications and other documents received by Borrower in connection with any such petition and any proceedings relating to such petition.

(vii) The Ground Lease may not be canceled, terminated, surrendered or amended without the prior consent of Lender, which consent may be withheld in Lender's sole and absolute discretion [*** IF APPLICABLE: ; provided that Ground Lessor shall not be prevented from exercising its remedies in accordance with the Ground Lease if the obligations of Borrower under the Ground Lease are not performed by Borrower as provided in the Ground Lease or by Lender ***].

Section 4.2. Borrower Negative Covenants.

From the Closing Date and for so long as any amount remains payable to Lender under the Loan Documents, Borrower hereby covenants and agrees with Lender that:

4.2.1 Liens. Borrower shall not create, incur, assume or suffer to exist any Lien on any direct or indirect interest in Borrower or any SPC Party or on any portion of the Property or interest therein, except for Permitted Encumbrances.

4.2.2 Dissolution. Borrower shall not (a) engage in any division, liquidation, dissolution, winding up or consolidation or merger with or into any other business entity, (b) engage in any business activity not related to the ownership, management and operation of the Property, (c) amend, waive or terminate any Organizational Document or any provision thereof, (d) transfer, lease or sell, in one transaction or any combination of transactions, all or substantially all of its assets, or (e) cause, permit or suffer any SPC Party to (i) divide, liquidate, dissolve or wind up or take any action, or omit to take an action, as a result of which such SPC Party would be divided, liquidated, dissolved or wound up in whole or in part, or (ii) amend, waive or terminate

any Organizational Document of such SPC Party or any provision thereof, in each case, except to the extent expressly permitted by the Loan Documents or with Lender's prior consent.

4.2.3 Debt Cancellation. Borrower shall not cancel, forgive or release any claim or debt (other than in connection with the termination of Leases in accordance with Section 4.1.9) owed to Borrower, except for adequate consideration and in the ordinary course of Borrower's business.

4.2.4 Zoning. Borrower shall not initiate or consent to any zoning reclassification of any portion of the Property or seek any variance under any existing zoning ordinance or use or permit the use of any portion of the Property in any manner that could result in such use becoming a non-conforming use under any zoning ordinance or any other land use Legal Requirement, in each case, without Lender's prior consent.

4.2.5 No Joint Assessment. Borrower shall not suffer, permit or initiate (a) the joint assessment of the Property (i) with any other real property constituting a tax lot separate from the Property, and (ii) with any portion of the Property that constitutes personal property, or (b) any other action or procedure whereby the lien of any taxes that may be levied against such personal property shall be assessed, levied or charged to the Property or any portion thereof.

4.2.6 ERISA; FIRRMA.

(a) Borrower shall not engage in any transaction that would cause any obligation, or any action taken or to be taken, under any Loan Document (or the exercise by Lender of any of its rights under any Loan Document) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA. Borrower shall deliver to Lender such certifications or other evidence, as requested by Lender in its sole discretion, that (i) Borrower is not an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(32) of ERISA; (ii) Borrower is not subject to any state statute regulating investments of, or fiduciary obligations with respect to, governmental plans; and (iii) one (1) or more of the following circumstances is true: (A) equity interests in Borrower are publicly offered securities, within the meaning of 29 C.F.R. §2510.3-101(b)(2); (B) less than twenty-five percent (25%) of each outstanding class of equity interests in Borrower is held by "benefit plan investors" within the meaning of 29 C.F.R. §2510.3-101(f)(2); (C) Borrower qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R. §2510.3-101(c) or (e); or (D) the assets of Borrower are not otherwise "plan assets" of one or more "employee benefit plans" as defined in Section 3(3) of ERISA subject to Title I of ERISA, within the meaning of 29 C.F.R. §2510.3-101 as modified by Section 3(42) of ERISA.

(b) Borrower shall not suffer, permit or initiate any FIRRMA Prohibited Filing Event or any FIRRMA Prohibited Transfer without Lender's prior consent. Within three (3) Business Days of Borrower's receipt of any FIRRMA Document and concurrently with Borrower's delivery of any FIRRMA Document, Borrower shall provide a copy thereof to Lender. If Borrower or any of its Affiliates meets with any Governmental Authority for any purpose relating to FIRRMA, Borrower shall provide a written summary of such meeting to Lender within three (3) Business Days. If any review, investigation or other proceeding is commenced relating to FIRRMA that

involves Borrower, any Constituent Owner of Borrower and/or the Property, Borrower shall provide Lender with a written summary of the status of such matters on a monthly, or if requested by Lender, more frequent, basis, including such additional information as Lender shall reasonably request. Borrower shall (and shall cause its Constituent Owners to) (i) comply with FIRRMA and (ii) respond to, and comply with, all requests, orders, and directives from any Governmental Authority related to FIRRMA; provided, that clauses (i) and (ii) shall not limit any obligation of Borrower to otherwise comply with the Loan Documents.

4.2.7 Material Agreements and Operating Agreements. Borrower shall not, without Lender's prior consent: (a) enter into, permit to expire, surrender, or terminate any Material Agreement or Operating Agreement, (b) increase or consent to the increase of the amount of any charges under any Material Agreement or Operating Agreement, (c) assign or encumber any of its rights, benefits, or remedies under any Material Agreement or Operating Agreement, or (d) otherwise modify, supplement, waive, or release any of its rights, benefits, interests, or remedies under any Material Agreement or Operating Agreement, except on commercially reasonable terms.

4.2.8 Change of Name, Identity, Structure or State of Organization. Borrower shall not change (or permit to be changed) (a) its name or identity (including any trade name), (b) its form of organization, (c) its principal place of business set forth on the first page of this Agreement, or (d) the state of its formation or organization without first, in each case, (i) notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change, (ii) taking all actions required by Lender for the purpose of perfecting or protecting the Liens granted by the Loan Documents (including the priority thereof), and (iii) obtaining Lender's prior consent. Borrower shall execute and deliver to Lender, prior to or contemporaneously with the effective date of any such change, any financing statement or amendment to financing statement required by Lender to establish or maintain the validity, perfection and priority of the Liens granted by the Loan Documents. At Lender's request, Borrower shall execute a certificate in form satisfactory to Lender listing each trade name under which Borrower operates or intends to operate the Property, and representing and warranting that Borrower does business under no other trade name.

4.2.9 Special Purpose. Borrower shall not (a) take (or permit any other Person to take) any action that would result in Borrower or any SPC Party not being in compliance with the SPE Provisions or (b) fail to take (or permit any other Person to fail to take) any action, which failure would result in Borrower or any SPC Party not being in compliance with the SPE Provisions.

4.2.10 Prohibited Person. At all times, including after giving effect to any Transfers, Borrower shall comply, and cause compliance, with the following: (a) none of the funds or other assets of Borrower, any SPC Party, Key Principal or Guarantor shall constitute property of, or shall be beneficially owned, directly or indirectly, by any Prohibited Person, (b) no Prohibited Person shall have any interest of any nature whatsoever in, or Control of, Borrower, Key Principal or Guarantor, and (c) none of the funds of Borrower, any SPC Party, Key Principal or Guarantor shall be derived from any unlawful activity.

4.2.11 Prohibited Entity. At all times, including after giving effect to any Transfers, no Prohibited Entity shall have any direct or indirect ownership interest in or Control of Borrower, any SPC Party, Key Principal or Guarantor.

V. INSURANCE, CASUALTY AND CONDEMNATION

[SUBJECT TO INSURANCE CONSULTANT'S REVIEW]

Section 5.1. Insurance.

5.1.1 Insurance Policies.

(a) Borrower shall obtain and maintain, or cause to be maintained, insurance for Borrower and the Property providing at least the following coverages:

- (i) comprehensive all risk insurance (including wind and named storms) on the Improvements and the personal property at the Property (A) in an amount equal to one hundred percent (100%) of the “full replacement cost” of the Property, which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation; (B) containing an agreed amount endorsement with respect to the Improvements and personal property at the Property waiving all co-insurance provisions; (C) providing for no deductible in excess of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) for all such insurance coverage (except, in the case of wind and named storms or earthquake insurance coverage, providing for no deductible in excess of five percent (5%) of the total insurable value of the Property); and (D) containing “law and ordinance” coverage if any of the Improvements or the use of the Property shall at any time constitute a legal non-conforming structure or use, with coverage for “loss to the undamaged portion of the building” in an amount equal to full replacement cost and coverage for “demolition costs” and “increased cost of construction” in amounts acceptable to Lender. In addition, Borrower shall obtain: (I) if any portion of the Improvements is currently or at any time in the future located in an area designated by Federal Emergency Management Agency or any successor thereto as a “special flood hazard area” pursuant to the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973, the National Flood Insurance Reform Act of 1994, the Biggert-Waters Flood Insurance Reform Act of 2012 and the Homeowner Flood Insurance Affordability Act of 2014 (collectively, the “**Flood Insurance Acts**”), flood hazard insurance in an amount equal to (X) the maximum limit of coverage available under the Flood Insurance Acts, plus (Y) such excess amount as Lender shall require with deductibles no greater than the maximum limit of coverage available under the Flood Insurance Acts; and (II) if the Property is located in an area with a high degree of seismic activity and the probable maximum loss (PML) or scenario expected loss (SEL) is greater than twenty

percent (20%), earthquake insurance in amounts and in form and substance satisfactory to Lender, provided that the insurance pursuant to clauses (I) and (II) shall be on terms consistent with the comprehensive all risk insurance policy required under this Section 5.1.1(a)(i);

- (ii) broad form commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, such insurance (A) to be on the so-called “occurrence” form with an occurrence limit of not less than One Million and 00/100 Dollars (\$1,000,000.00) and an aggregate limit of not less than Two Million and 00/100 Dollars (\$2,000,000.00); (B) to continue at not less than the aforesaid limit until required to be changed by Lender by reason of changed economic conditions making such protection inadequate; and (C) to cover at least the following hazards: (I) premises and operations; (II) products and completed operations on an “if any” basis; (III) independent contractors; (IV) perils and acts of terrorism; (V) contractual liability for all insured contracts; and (VI) contractual liability covering the indemnities in Article 9 of the Security Instrument to the extent the same is available;
- (iii) business income insurance (A) with loss payable to Lender; (B) covering all risks required to be covered by insurance pursuant to Sections 5.1.1(a)(i), (iv), (vi), (xi) and (xii) for a period commencing at the time of loss for such length of time as it takes to repair or replace with the exercise of due diligence and dispatch; (C) in an amount equal to one hundred percent (100%) of the projected gross income from the Property for a period of eighteen (18) months; and (D) containing an extended period of indemnity endorsement which provides that after the physical loss to the Improvements and the personal property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of twelve (12) months from the date that the Property is repaired or replaced and operations are resumed in the ordinary course, whichever first occurs, and notwithstanding that the Policy may expire prior to the end of such period. The amount of such business income insurance shall be determined prior to Closing Date and at least once each year thereafter based on Borrower’s reasonable estimate of the gross income from the Property for the succeeding twelve (12) month period. All proceeds payable to Lender pursuant to this Section 5.1.1(a)(iii) shall be held by Lender and shall be applied to the obligations secured by and due and payable under the Loan Documents; provided, however, that nothing contained herein shall be deemed to relieve Borrower of its obligation to pay the Debt at such times and in the manner set forth in the Loan Documents except to the extent such amounts are actually paid out of the proceeds of such business income insurance;
- (iv) at all times during which structural construction, repairs or alterations are being made with respect to the Improvements, and only if the property and

liability coverage forms do not otherwise apply, (A) commercial general liability and umbrella liability insurance covering claims related to construction, repair and alteration at the Property not covered by or under the terms or provisions of the commercial general liability insurance and umbrella liability insurance policies required under this Section 5.1.1; and (B) the insurance described in Section 5.1.1(a)(i) written on a so-called builder's risk completed value form in amounts and with deductibles, terms and conditions required by Lender (I) on a non-reporting basis, (II) covering all risks required to be insured against pursuant to Sections 5.1.1(a)(i), (iii), (vi), (xi) and (xii), (III) including permission to occupy the Property, and (IV) with an agreed amount endorsement waiving co-insurance provisions;

- (v) workers' compensation, subject to the statutory limits of the state in which the Property is located, and employer's liability insurance with a limit of at least One Million and 00/100 Dollars (\$1,000,000.00) per accident and per disease per employee, and One Million and 00/100 Dollars (\$1,000,000.00) for disease in the aggregate in respect of any work or operations on or about the Property, or in connection with the Property or its operation (if applicable);
- (vi) comprehensive boiler and machinery insurance in amounts required by Lender and on terms consistent with the insurance required under Section 5.1.1(a)(i) (if applicable);
- (vii) umbrella liability insurance in addition to primary coverage in an amount not less than [****** _____ Million and 00/100 Dollars (\$_____.00) ******] per occurrence, including perils and acts of terrorism and otherwise on terms consistent with the insurance required under Section 5.1.1(a)(ii) and (viii);
- (viii) commercial auto liability coverage for all owned and non-owned vehicles, including rented and leased vehicles, containing minimum limits per occurrence of One Million and 00/100 Dollars (\$1,000,000.00) (if applicable);
- (ix) liquor liability insurance or other liability insurance required in connection with the sale of alcoholic beverages (if applicable);
- (x) insurance against employee dishonesty with respect to any employee of Borrower in an amount required by Lender and with a deductible not greater than Ten Thousand and 00/100 Dollars (\$10,000.00) (if applicable);
- (xi) with respect to commercial property and business income insurance required under this Section 5.1.1(a) (including, if applicable, insurance required under Section 5.1.1(a)(iv)), insurance for loss resulting from perils and acts of terrorism in amounts and with terms and conditions applicable to commercial property and business income insurance required under this

Section 5.1. The Policy or endorsement providing for such insurance shall be in form and substance satisfactory to Lender and shall satisfy Rating Agency criteria for securitized loans; and

- (xii) upon sixty (60) days' notice, such other insurance and in such amounts as Lender may reasonably request against such other insurable hazards which at the time are commonly insured against for properties similar to the Property located in or around the region in which the Property is located.

(b) All insurance provided for in this Section 5.1 shall be obtained under valid and enforceable policies (each individually, a "**Policy**" and collectively, the "**Policies**") and, to the extent not specified herein, shall be subject Lender's approval as to insurers, amounts, deductibles, loss payees and insureds. Not fewer than fifteen (15) days prior to the expiration dates of the existing Policies, Borrower shall deliver to Lender certificates of insurance evidencing the renewal of such Policies or new Policies that satisfy the requirements set forth in this Section 5.1 (and, upon Lender's request, complete copies of such renewed or new Policies) accompanied, in each case, by evidence satisfactory to Lender of payment of the premiums due thereunder (the "**Insurance Premiums**"). It is understood and agreed that neither a "premium installment plan" nor "premium financing" shall be permitted with respect to any Policy.

(c) Any blanket Policy covering multiple locations shall be subject to Lender's approval, which approval shall be conditioned upon, among other things, evidence satisfactory to Lender that such blanket Policy provides the same protection as would a separate Policy insuring only the Property in compliance with this Section 5.1. Any material changes to such blanket Policy and the associated limits as of the Closing Date or an aggregation of the insured values covered under such blanket Policy (including, to the extent applicable, the addition of locations that are subject to the perils of wind and named storms, flood or earthquake) shall be subject Lender's approval.

(d) All Policies of insurance under this Section 5.1 shall be primary coverage and shall name Borrower as a named insured and, in the case of liability insurance, except for the Policies referred to in Sections 5.1.1(a)(v) and (viii), shall name Lender and its successors and/or assigns as the additional insured, as their interests may appear, and, in the case of property insurance (including flood, earthquake, business income, boiler and machinery, and terrorism insurance), shall name Lender and its successors and/or assigns, as their interests may appear, as mortgagee pursuant to a non-contributing mortgagee clause in favor of Lender and its successors and/or assigns providing that the loss thereunder shall be payable to Lender and its successors and/or assigns. Borrower shall not procure or permit any of its constituent entities to procure any other insurance coverage that would be on the same level of payment as the Policies or would adversely impact in any way the ability of Borrower or Lender to collect any proceeds under any of the Policies.

(e) All Policies of insurance under this Section 5.1 shall provide that:

- (i) with respect to property insurance Policies, (A) no foreclosure or similar action, or act or negligence of Borrower or any other insured under the Policy, or failure to comply with the provisions of any Policy, which might

otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Lender is concerned, (B) the Policies shall not be canceled without at least thirty (30) days' written notice to Lender (or, in the case of non-payment of premiums, at least ten (10) days' written notice to Lender) and (C) the issuer(s) of the Policies shall give at least ten (10) days' written notice to Lender if the issuer(s) elect(s) not to renew the Policies prior to the expiration thereof;

- (ii) with respect to liability insurance Policies, (A) the Policies shall not be canceled or permitted to lapse without at least thirty (30) days' written notice to Lender (or, in the case of non-payment of premiums, at least ten (10) days' written notice to Lender) and (B) the issuer(s) thereof shall give at least ten (10) days' written notice to Lender if the issuer(s) elect(s) not to renew such Policies prior to the expiration thereof. If any issuer cannot, does not or will not provide such notice, Borrower shall be obligated to provide such notice to Lender; and
- (iii) Lender shall not be liable for any Insurance Premiums thereon or subject to any assessments thereunder.

(f) If at any time Lender is not in receipt of written evidence acceptable to Lender that all insurance required hereunder is in full force and effect, Lender shall have the right, without notice to Borrower, to take such action as Lender deems necessary to protect its interest in the Property, including the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate and all costs (including any Insurance Premiums) incurred by Lender in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Borrower to Lender upon demand with interest at the Default Rate from the date such costs were incurred to and including the date the reimbursement payment is received by Lender.

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

5.1.2 Insurance Company. The Policies shall be issued by financially sound and responsible insurance companies authorized to do business in the State and having (a) a financial strength and claims paying ability rating of "A" or better by S&P (and the equivalent ratings for Moody's, Fitch and DBRS to the extent each such Rating Agency rates the insurance companies and is rating the Securities) and (b) a financial strength rating of A and a financial size category of "A:X" or better by A.M. Best Company.

Section 5.2. Casualty and Condemnation.

5.2.1 Casualty. If the Property shall sustain a Casualty, Borrower shall give prompt notice of such Casualty to Lender and shall promptly commence and diligently prosecute

to completion the Restoration of the Property in accordance with Section 5.3. Borrower shall pay all costs of Restoration whether or not such costs are covered by insurance. Lender may, but shall not be obligated to, make proof of loss if not made promptly by Borrower. In the event of a Casualty in which the loss and the applicable Net Proceeds are less than the Restoration Threshold, Borrower may settle and adjust such claim; provided that (a) no Event of Default exists and (b) such adjustment is carried out in a commercially reasonable and timely manner. In the event of a Casualty in which the loss or the applicable Net Proceeds are equal to or greater than the Restoration Threshold or if an Event of Default exists, Borrower may settle and adjust such claim only with Lender's prior consent (which consent shall not be unreasonably withheld or delayed) and Lender shall have the right to participate, at Borrower's cost, in any such settlement and adjustment. Notwithstanding any Casualty, Borrower shall continue to pay the Debt at such times and in the manner provided for in the Loan Documents.

5.2.2 Condemnation. Borrower shall give Lender prompt notice of any actual or threatened (in writing) Condemnation by any Governmental Authority of all or any part of the Property and shall deliver to Lender copies of all notices and papers served in connection with such Condemnation or related proceedings. Borrower may settle and compromise any Condemnation only with Lender's prior consent (which consent shall not be unreasonably withheld or delayed) and Lender shall have the right to participate, at Borrower's cost, in any applicable litigation or proceeding and settlement discussions in respect thereof and Borrower shall deliver to Lender all instruments requested by Lender to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings, and shall consult with Lender and its attorneys and experts and cooperate with them in the carrying on or defense of any such proceedings. Lender is hereby irrevocably appointed as Borrower's attorney-in-fact, coupled with an interest, with exclusive power to collect, receive and retain any Award and to make any compromise or settlement in connection with any Condemnation, in each case, during the continuance of an Event of Default. Notwithstanding any Condemnation, Borrower shall continue to pay the Debt at such times and in the manner provided for in the Loan Documents. Lender shall not be limited to the interest paid on the Award by any Governmental Authority, but shall be entitled to receive interest at the rate or rates provided in this Agreement. If any portion of the Property is taken by any Governmental Authority, Borrower shall promptly commence and diligently prosecute to completion the Restoration of the Property in accordance with Section 5.3. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the Award, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the Award or a portion thereof sufficient to pay the Debt in full.

5.2.3 Business Income Insurance Proceeds. Notwithstanding the last sentence of Section 5.1.1(a)(iii), and provided that no Event of Default exists, to the extent that proceeds (or a portion thereof) received by Lender on account of business income insurance described in Section 5.1.1(a)(iii) reflect a replacement for lost Rents for the relevant period, as determined by Lender in good faith, such proceeds shall be: (a) in the absence of a Cash Management Trigger Event Period, held by Lender and disbursed to Borrower (in installments, if applicable), and (b) during a Cash Management Trigger Event Period, deposited by Lender into the Cash Management Account (in installments, if applicable).

Section 5.3. Delivery of Net Proceeds.

5.3.1 Minor Casualty or Condemnation. If a Casualty or Condemnation has occurred and the Net Proceeds and the costs to complete the Restoration shall be less than the Restoration Threshold, the Net Proceeds will be disbursed by Lender to Borrower; provided that, subject to Section 5.3.2(i), all of the conditions set forth in Section 5.3.2(a) are satisfied and Borrower delivers a written undertaking to commence and complete the Restoration in an expeditious and diligent fashion and in accordance with all applicable Legal Requirements. Any Net Proceeds that Borrower is entitled to retain pursuant to this Agreement shall be held by Borrower in trust for Lender in a segregated account and shall be used to pay for the costs of Restoration.

5.3.2 Major Casualty or Condemnation.

(a) If a Casualty or Condemnation has occurred and the Net Proceeds or the costs to complete the Restoration are equal to or greater than the Restoration Threshold, the Net Proceeds shall be disbursed for the Restoration, provided that each of the following conditions is satisfied:

- (i) no Event of Default shall exist;
- (ii) (A) if the Net Proceeds are Insurance Proceeds, less than thirty-five percent (35%) of the total floor area of the Improvements at the Property has been damaged, destroyed or rendered unusable as a result of such Casualty or (B) if the Net Proceeds are an Award, less than fifteen percent (15%) of the land constituting the Property is taken, and such land is located along the perimeter or periphery of the Property, and no portion of the Improvements is the subject of the Condemnation;
- (iii) Intentionally omitted;
- (iv) Borrower shall commence the process of completing the Restoration (including, without limitation, by applying for material approvals, authorizations, certifications, licenses and permits) as soon as reasonably practicable (but in no event later than sixty (60) days after the occurrence of such Casualty or Condemnation) and shall diligently pursue the same to satisfactory completion;
- (v) Lender shall be reasonably satisfied that any operating deficits and all scheduled payments under the Loan Documents (including scheduled payments of principal and interest) will be paid during the period required for Restoration from (A) the Insurance Proceeds of the business income insurance specified in Section 5.1.1(a)(iii) or (B) other funds of Borrower;
- (vi) Lender shall be reasonably satisfied that the Restoration will be completed on or before the earliest to occur of (A) the date that is six (6) months prior to the Maturity Date, (B) the earliest date required for such completion under the Franchise Agreement, (C) the date required for such completion under the terms of the Ground Lease, (D) the date, if any, required under all applicable Legal Requirements for such completion, or (E) the date that is

six (6) months prior to the expiration of the insurance coverage specified in Section 5.1.1(a)(iii);

- (vii) (A) the Restoration shall be completed by Borrower in an expeditious and diligent fashion, in a good and workmanlike manner at least equivalent to the quality and character of the existing work in the Improvements, in a Lien free manner, and in compliance with all applicable Legal Requirements, and (B) the Property (including the Improvements and the use thereof) after the completion of Restoration would and will be in compliance with all applicable Legal Requirements;
- (viii) such Casualty or Condemnation does not result in the loss of access to the Property (including the Improvements) for any period of time;
- (ix) the Management Agreement, the Franchise Agreement and all Operating Agreements shall remain in full force and effect, notwithstanding the occurrence of such Casualty or Condemnation;
- (x) after giving effect to such Restoration, the pro forma DSCR, as determined by Lender in good faith, for the twelve (12) calendar month period immediately following such Restoration shall not be less than **[**CLOSING DATE DSCR: ___ to 1.0**]**;
- (xi) after giving effect to such Restoration, the pro forma Debt Yield, as determined by Lender in good faith, for the twelve (12) calendar month period immediately following such Restoration shall not be less than **[**CLOSING DATE DEBT YIELD: ___% **]**;
- (xii) Lender shall be satisfied that, upon the completion of the Restoration, the LTV Ratio shall not be greater than **[**CLOSING DATE LTV: ___% **]**;
- (xiii) Borrower shall deliver to Lender a budget that sets forth all costs to complete the Restoration and a schedule of the timeline to complete the Restoration, in each case, reasonably acceptable to Lender;
- (xiv) the Net Proceeds and any Net Proceeds Deficiency are sufficient, in Lender's reasonable judgment, to pay for all costs of the Restoration in full; and
- (xv) the Ground Lease shall remain in full force and effect during and after the completion of the Restoration, notwithstanding the occurrence of such Casualty or Condemnation.

(b) The Net Proceeds shall be paid directly to Lender and held by Lender and, unless disbursed in accordance with this Section 5.3.2, shall constitute additional security for the Obligations. The Net Proceeds shall be disbursed by Lender to, or as directed by, Borrower during the course of the Restoration, upon receipt of evidence reasonably satisfactory to Lender that (i) all

requirements set forth in Section 5.3.2(a) are satisfied, (ii) all materials installed and work and labor performed in connection with the Restoration have been paid for in full (except to the extent that they are to be paid for out of the requested disbursement), and (iii) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same, or any other Liens on the Property arising out of the Restoration that have not either (A) been fully bonded by a surety company, which is acceptable to Lender and the Rating Agencies, to the satisfaction of Lender and discharged of record or (B) fully insured to the satisfaction of Lender by the title insurance company issuing the Title Insurance Policy. Lender shall not be obligated to make disbursements of the Net Proceeds more frequently than once every calendar month.

(c) All plans and specifications in connection with the Restoration shall be subject to the Lender's prior approval, which shall not be unreasonably withheld or delayed, and an independent architect or engineer selected by Lender (the "**Casualty Consultant**"). Upon the completion of the Restoration, the Property shall be at least equal in value and general utility to the Property prior to the Casualty or Condemnation (it being understood, however, that (i) Borrower shall not be obligated to restore the Property to the precise condition of the Property prior to such Casualty or Condemnation, and (ii) in the case of a partial Condemnation, the Restoration shall be done to the extent reasonably practicable after taking into account the consequences of such partial Condemnation; provided that the Property shall be restored, to the extent reasonably practicable, to be of at least equal value and of substantially the same character as prior to the Casualty or Condemnation). The identity of the contractors, subcontractors and materialmen engaged in the Restoration, as well as the contracts under which they have been engaged, shall be subject to the prior approval of Lender and the Casualty Consultant, which approval shall not be unreasonably withheld or delayed. All costs incurred by Lender in connection with recovering, holding and disbursing the Net Proceeds for the Restoration (including reasonable attorneys' fees and the Casualty Consultant's fees) shall be paid by Borrower.

(d) In no event shall Lender be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the costs actually incurred for work in place as part of the Restoration, as certified by the Casualty Consultant, less the Casualty Retainage. The term "**Casualty Retainage**" shall mean, as to each contractor, subcontractor or materialman engaged in the Restoration, an amount equal to ten percent (10%) of the costs actually incurred for work in place as part of the Restoration, as certified by the Casualty Consultant, until the Restoration has been completed. The Casualty Retainage shall in no event, and notwithstanding anything to the contrary set forth in this Section 5.3.2(d), be less than the amount actually held back by Borrower from contractors, subcontractors and materialmen engaged in the Restoration. The Casualty Retainage shall not be released until the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with this Section 5.3.2 and that all approvals necessary for the re-occupancy and use of the Property have been obtained from all applicable Governmental Authorities, and Lender receives evidence reasonably satisfactory to Lender and the Casualty Consultant that the costs of the Restoration have been paid in full or will be paid in full out of the Casualty Retainage; provided, however, that Lender will release the portion of the Casualty Retainage being held with respect to any contractor, subcontractor or materialman engaged in the Restoration as of the date upon which (i) the Casualty Consultant certifies to Lender that such contractor, subcontractor or materialman has satisfactorily completed all work and has supplied all materials in accordance with the applicable contractor's, subcontractor's or materialman's contract, (ii) such contractor, subcontractor or materialman delivers lien waivers

and evidence of payment in full of all sums due to such contractor, subcontractor or materialman as may be reasonably requested by Lender, the Casualty Consultant or by the title insurance company issuing the Title Insurance Policy, and (iii) Lender receives an endorsement to the Title Insurance Policy insuring the continued priority of the Lien of the Security Instrument and evidence of payment of any premium payable in connection with such endorsement. If required by Lender, the release of any such portion of the Casualty Retainage shall be approved by the surety company, if any, which has issued a payment or performance bond with respect to the applicable contractor, subcontractor or materialman.

(e) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the reasonable opinion of Lender in consultation with the Casualty Consultant, be sufficient to pay in full the outstanding costs incurred and the remaining costs which are estimated by the Casualty Consultant to be incurred in connection with the completion of the Restoration, Borrower shall deposit the deficiency (the “**Net Proceeds Deficiency**”) with Lender before any further disbursement of the Net Proceeds shall be made. The Net Proceeds Deficiency deposited with Lender shall be disbursed for costs actually incurred in connection with the Restoration on the same terms and conditions applicable to the disbursement of the Net Proceeds, and, unless so disbursed pursuant to this Section 5.3.2, shall constitute additional security for the Obligations.

(f) The excess, if any, of the Net Proceeds and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Lender after (i) the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with this Section 5.3.2 and (ii) the receipt by Lender of evidence reasonably satisfactory to Lender that all costs incurred in connection with the Restoration have been paid in full shall be remitted by Lender to Borrower, provided that no Event of Default exists; provided, however, that, in the case of a Condemnation, the amount returned to Borrower in accordance with this Section 5.3.2(g) shall not exceed the amount of the Net Proceeds Deficiency deposited by Borrower with the balance being applied to the Debt in the manner provided for in Section 5.3.2(h).

(g) All Net Proceeds not required (i) to be made available for the Restoration or (ii) to be returned to Borrower as excess Net Proceeds pursuant to Section 5.3.2(g) may be retained and applied by Lender toward the payment of the Debt in accordance with Section 2.4.2, whether or not then due and payable or, at the discretion of Lender, the same may be paid, either in whole or in part, to Borrower for such purposes as Lender shall approve in its sole discretion.

(h) Notwithstanding anything to the contrary contained in any Loan Document, if the Loan or any portion thereof or interest therein is included in a REMIC Trust and, immediately following a release of any portion of the Lien of the Security Instrument following a Casualty or Condemnation (but taking into account any proposed Restoration of the remaining Property), the ratio of the Outstanding Principal Balance to the value of the remaining Property is greater than one hundred and twenty-five percent (125%) (such value to be determined, in Lender’s sole discretion, by any commercially reasonable method permitted to a REMIC Trust, (i) based solely on real property and excluding any personal property and going concern value, if any, and (ii) for purposes of clarification, it being understood and agreed that such value shall be determined by Lender in compliance with Treasury Regulations Section 1.860G-2(a)(2) (i.e., for purposes of such loan-to-value ratio, such value of the remaining Property shall be reduced by (A) the amount of any lien on real property that is senior to the Loan and (B) the proportionate amount of any lien on

real property that is in parity with the Loan)), the principal balance of the Loan must be paid down by an amount equal to the least of the following amounts: (1) the Net Proceeds, (2) the fair market value of the released property at the time of the release, or (3) an amount such that the loan-to-value ratio of the Loan (as so determined by Lender) does not increase after the release, unless Lender receives an opinion letter of counsel that if such amount is not paid, the applicable Securitization will not fail to maintain its status as a REMIC Trust as a result of the related release of such portion of the Lien of the Security Instrument. If and to the extent the preceding sentence applies, only such portion of the Net Proceeds, if any, in excess of the amount required to pay down the principal balance of the Loan may be released for purposes of Restoration or released to Borrower as otherwise expressly provided in this Section 5.3.

VI. RESERVE FUNDS AND CASH MANAGEMENT

Section 6.1. Reserve Funds.

6.1.1 Security Interest. Borrower hereby pledges to Lender, and grants a security interest in, all sums now or hereafter deposited in the Reserve Accounts as additional security for the performance of the Obligations. Until expended or applied as provided in this Agreement, the Reserve Funds shall constitute additional security for the performance of the Obligations. Borrower shall not further pledge, assign or grant any security interest in any Reserve Funds or any Reserve Account or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any financing statements, except those naming Lender as the secured party, to be filed with respect thereto.

6.1.2 Investments; Income Taxes. The Reserve Accounts shall be held in Lender's name and the Reserve Funds may be commingled with Lender's own funds at financial institutions selected by Lender in its sole discretion. The Reserve Funds shall be held in an Eligible Account and may be invested in Permitted Investments as directed by Lender. Lender shall not be liable for any loss sustained on the investment of any funds constituting the Reserve Funds. Borrower shall deposit with Lender an amount equal to the actual losses sustained on the investment of any funds constituting the Reserve Funds in Permitted Investments within one (1) Business Day of Lender's notice. All interest or other income on the Reserve Funds shall not be added to or become a part thereof and shall be the sole property of, and shall be paid to, Lender.

6.1.3 Indemnity. Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs (including attorneys' fees) arising from or in any way related to the Reserve Funds or the performance of the obligations for which the Reserve Accounts were established. Borrower shall assign to Lender all rights and claims that Borrower may have against all Persons supplying labor, materials or other services, which are to be paid for or reimbursed from the Reserve Funds; provided, however, that Lender may not pursue any such right or claim unless an Event of Default exists.

6.1.4 Reserve Funds Generally.

(a) Nothing in this Article VI shall (i) make Lender responsible for performing or satisfying any Reserve Item; (ii) obligate Lender to commence or proceed with any Reserve Item;

(iii) require Lender to expend funds in addition to the applicable Reserve Funds to perform or satisfy any Reserve Item or pay for any Reserve Item; or (iv) obligate Lender to demand from Borrower additional sums to perform, satisfy or pay for any Reserve Item.

(b) Lender shall not be required to disburse Reserve Funds from each Reserve Account more frequently than once each calendar month, and each disbursement of Reserve Funds (other than on account of Taxes and Insurance Premiums) must be in an amount not less than the Minimum Disbursement Amount (or a lesser amount if the total remaining balance of the applicable Reserve Funds is less than the Minimum Disbursement Amount, in which case only one disbursement of the amount remaining in the applicable Reserve Account shall be made). All reasonable costs incurred by Lender in connection with holding and disbursing the Reserve Funds (including the costs of any inspections and examinations) shall be paid by Borrower. Any Reserve Funds remaining after the Debt has been repaid in full shall be returned to Borrower.

(c) Notwithstanding anything to the contrary contained in any Loan Document, during the continuance of an Event of Default, (i) Lender shall have no obligation to release any of the Reserve Funds and (ii) in addition to all other rights and remedies available to Lender, Lender may, in its sole and absolute discretion, apply any or all of the Reserve Funds to (x) perform, satisfy and pay for any Reserve Item and (y) the payment of the Debt in any order, proportion and priority as Lender may determine.

Section 6.2. Tax Funds.

6.2.1 Deposits of Tax Funds. On the Closing Date, Borrower shall deposit with Lender an amount equal to **[** _____ and ___/100 Dollars (\$ _____) **]** and, on each Monthly Payment Date, Borrower shall deposit with Lender an amount equal to one-twelfth (1/12) of the Taxes (the “**Monthly Tax Deposit**”) that Lender reasonably estimates will be payable during the next ensuing twelve (12) months in order to accumulate sufficient funds to pay all such Taxes at least thirty (30) days prior to their respective due dates. If, at any time Lender reasonably determines that the Tax Funds will not be sufficient to pay Taxes at least thirty (30) days prior to the respective due dates, Lender shall notify Borrower of such determination and the Monthly Tax Deposit shall be increased by the amount that Lender reasonably estimates is sufficient to make up the deficiency at least thirty (30) days prior to the respective due dates for Taxes; provided that if there are fewer than thirty (30) days prior to the date that Taxes are due, Borrower shall deposit such amount within one (1) Business Day after its receipt of such notice.

6.2.2 Release of Tax Funds. The Tax Funds shall be applied to payments of Taxes required to be made by Borrower pursuant to Section 4.1.2 and the Security Instrument. Borrower shall furnish Lender with all bills, statements and estimates for Taxes received by or available to Borrower at least thirty (30) days prior to the date on which such Taxes first become payable. In making any payment relating to Taxes, Lender may do so according to any bill, statement or estimate of the applicable Governmental Authority without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amount of the Tax Funds shall exceed the amounts due for Taxes, Lender shall, in its sole discretion, return any excess to Borrower or credit such excess against future Monthly Tax Deposits.

Section 6.3. Insurance Funds.

6.3.1 Deposits of Insurance Funds.

(a) On the Closing Date, Borrower shall deposit with Lender an amount equal to [** _____ and ___/100 Dollars (\$ _____) **] and, on each Monthly Payment Date, Borrower shall deposit with Lender an amount equal to one-twelfth (1/12) of the Insurance Premiums (the "**Monthly Insurance Deposit**") that Lender reasonably estimates will be payable for the renewal of the coverages afforded by the Policies upon the expiration thereof in order to accumulate sufficient funds to pay all such Insurance Premiums at least thirty (30) days prior to the expiration of the Policies. If, at any time Lender reasonably determines that the Insurance Funds will not be sufficient to pay the Insurance Premiums at least thirty (30) days prior to the expiration of any Policy, Lender shall notify Borrower of such determination and the monthly deposits for Insurance Premiums shall be increased by the amount that Lender reasonably estimates is sufficient to make up the deficiency at least thirty (30) days prior to expiration of any Policy; provided that if there are fewer than thirty (30) days prior to expiration of any Policy, Borrower shall deposit such amount within one (1) Business Day after its receipt of such notice.

(b) Intentionally Omitted.

6.3.2 Release of Insurance Funds. The Insurance Funds shall be applied to payments of Insurance Premiums for the Policies. Borrower shall furnish Lender with all bills, invoices and statements for Insurance Premiums at least thirty (30) days prior to the date on which such Insurance Premiums first become payable. In making any payment relating to Insurance Premiums, Lender may do so according to any bill, invoice or statement from the insurance company or its agent, without inquiry into the accuracy of such bill, invoice or statement. If the amount of the Insurance Funds shall exceed the amounts due for Insurance Premiums, Lender shall, in its sole discretion, return any excess to Borrower or credit such excess against future payments to be made to the Insurance Account.

Section 6.4. Cap Ex Funds.

6.4.1 Deposits of Cap Ex Funds. On the Closing Date, Borrower shall deposit with Lender an amount equal to [** _____ and ___/100 Dollars (\$ _____) **] and, on each Monthly Payment Date, Borrower shall deposit with Lender an amount equal to the greater of (i) four percent (4%) of the Gross Income during the second calendar month preceding the calendar month in which such Monthly Payment Date occurs and (ii) an amount equal to one-twelfth (1/12) of the aggregate amount, if any, required to be reserved pursuant to the Management Agreement and the Franchise Agreement for Cap Ex during the calendar year in which such Monthly Payment Date occurs (the "**Monthly Cap Ex Deposit**"). The Cap Ex Funds will be made available for Cap Ex set forth in an Approved Annual Budget or otherwise approved by Lender, which approval shall not be unreasonably withheld or delayed. At any time, Lender may reassess its estimate of the amount necessary for Cap Ex reasonably required for the proper maintenance and operation of the Property and require Borrower to increase the monthly deposits required pursuant to this Section 6.4.1 upon thirty (30) days' notice to Borrower.

6.4.2 Release of Cap Ex Funds. Lender shall disburse the Cap Ex Funds to pay for any Cap Ex Work upon satisfaction by Borrower of all applicable Reserve Disbursement Conditions. Notwithstanding anything to the contrary contained in any Loan Document, tenant allowances, tenant improvements, leasing commissions or other leasing related costs shall not constitute Cap Ex or Cap Ex Work for purposes of this Section 6.4.

Section 6.5. Intentionally Omitted.

Section 6.6. Intentionally Omitted.

Section 6.7. Excess Cash Funds.

6.7.1 Deposits of Excess Cash Funds. During a Cash Sweep Trigger Event Period, Borrower shall deposit with Lender all Excess Cash, which sums shall be held by Lender as additional security for the Loan.

6.7.2 Release of Excess Cash Funds. Upon the termination of a Cash Sweep Trigger Event Period, all funds on deposit in the Excess Cash Account shall be applied or transferred in accordance with the following order: (i) during the continuance of a Franchise Trigger Event Period, transferred to the PIP Account, (ii) during the continuance of any other Cash Management Trigger Event Period, transferred to the Cash Management Account and (iii) in the absence of a Cash Management Trigger Event Period and a Cash Sweep Trigger Event Period, returned to Borrower.

Section 6.8. [Required Repair Funds.**

6.8.1 Deposit of Required Repair Funds. Borrower shall perform and complete the Required Repairs in a good and workmanlike manner, in accordance with all Leases, all insurance requirements and all applicable Legal Requirements, before the respective deadline as set forth on Schedule 6.8.1. On the Closing Date, Borrower shall deposit with Lender [** _____ and ___/100 Dollars (\$ _____) **], an amount equal to [** one hundred and twenty-five percent (125%) **] of the estimated cost to perform the Required Repairs as set forth on Schedule 6.8.1.

6.8.2 Release of Required Repair Funds.

(a) Lender shall disburse the Required Repair Funds to pay for any Required Repair upon satisfaction by Borrower of all applicable Reserve Disbursement Conditions.

(b) Upon the completion of all Required Repairs, the Required Repair Funds then on deposit in the Required Repair Account shall be applied or transferred in accordance with the following order: (i) during the continuance of a Franchise Trigger Event Period, transferred to the PIP Account, (ii) during the continuance of any other Cash Management Trigger Event Period, transferred to the Cash Management Account and (iii) in the absence of a Cash Management Trigger Event Period and a Cash Sweep Trigger Event Period, returned to Borrower. **]

Section 6.9. Intentionally Omitted.

Section 6.10. Intentionally Omitted.

Section 6.11. PIP Funds.

6.11.1 Deposits of PIP Funds. **[** IF INITIAL PIP WORK:** On the Closing Date, Borrower shall deposit with Lender an amount equal to **[**** _____ and ___/100 Dollars (\$ _____) ****]** with respect to the Initial PIP Work described on Schedule 6.11.1. In addition, on each Monthly Payment Date during a Franchise Trigger Event Period, Borrower shall deposit with Lender all Franchise Trigger Event Excess Cash for costs incurred in connection with the PIP Work necessary to effect a Franchise Trigger Event Cure. ****]** **[** IF NO INITIAL PIP WORK:** On each Monthly Payment Date during a Franchise Trigger Event Period, Borrower shall deposit with Lender all Franchise Trigger Event Excess Cash for costs incurred in connection with the PIP Work necessary to effect a Franchise Trigger Event Cure. ****]**

6.11.2 Release of PIP Funds.

(a) Lender shall disburse the PIP Funds to pay for any PIP Work upon satisfaction by Borrower of all applicable Reserve Disbursement Conditions.

(b) **[** IF INITIAL PIP WORK:** With respect to the PIP Funds deposited with Lender on the Closing Date in connection with the Initial PIP Work, upon satisfaction of the PIP Work Conditions, the then remaining funds on deposit in the PIP Account shall be applied or transferred in accordance with the following order: (i) during the continuance of any Cash Management Trigger Event Period, transferred to the Cash Management Account and (ii) in the absence of a Cash Management Trigger Event Period and a Cash Sweep Trigger Event Period, returned to Borrower. **[** IF NO INITIAL PIP WORK:** Intentionally Omitted. ****]**

(c) **[** IF INITIAL PIP WORK:** Subject to the prior or concurrent performance or other satisfaction of the Initial PIP Work and satisfaction of the PIP Work Conditions, upon ****]** **[IF NO INITIAL PIP WORK:** Upon ****]** the occurrence of a Franchise Trigger Event Cure, the then remaining funds on deposit in the PIP Account shall applied or transferred in accordance with the following order: (i) during the continuance of any Cash Management Trigger Event Period, transferred to the Cash Management Account and (ii) in the absence of a Cash Management Trigger Event Period and a Cash Sweep Trigger Event Period, returned to Borrower.

Section 6.12. **[Seasonality Funds.****

6.12.1 Deposit of Seasonality Funds. On the Closing Date, Borrower shall deposit with Lender an amount equal to **[**** _____ and ___/100 Dollars (\$ _____) ****]** and, on each Monthly Payment Date during a Seasonality Funds Deposit Month, Borrower shall deposit with Lender an amount equal to the Monthly Seasonality Deposit to provide some protection for payments due under the Loan Documents and budgeted operating expenses during seasonal periods when Rents may be reduced. At any time, Lender may reassess the amount of the Monthly Seasonality Deposit and require Borrower to increase the monthly deposits required pursuant to this Section 6.12.1 upon thirty (30) days' notice to Borrower.

6.12.2 Release of Seasonality Funds. On each Monthly Payment Date during a Seasonality Funds Disbursement Month, Lender shall disburse all or a portion of the Seasonality

Funds in an amount up to [*** TBD IN UNDERWRITING ***], subject to satisfaction of the following conditions: (a) Borrower shall submit a request for payment to Lender at least five (5) Business Days prior to the Monthly Payment Date on which Borrower requests such payment be made and specifies the applicable Monthly Net Cash Flow Shortfall, together with a calculation thereof in reasonable detail, (b) Borrower shall not be in breach of any of its obligations under Section 4.1.6, and (c) no Event of Default or monetary or material non-monetary Default shall exist. Each disbursement of the Seasonality Funds shall be: (i) during the continuance of a Cash Management Trigger Event Period, transferred to the Cash Management Account or (ii) in the absence of a Cash Management Trigger Event Period and a Cash Sweep Trigger Event Period, returned to Borrower. **]

Section 6.13 Ground Rent Funds.

6.13.1 Deposits of Ground Rent Funds. On the Closing Date, Borrower shall deposit with Lender an amount equal to [*** _____ Dollars (\$) _____] and, on each Monthly Payment Date during a Cash Management Trigger Event Period or a Cash Sweep Event Period, Borrower shall deposit with Lender an amount (the “**Monthly Ground Rent Deposit**”) equal to the Ground Rent that will be payable under the Ground Lease for the month immediately following the month in which such Monthly Payment Date occurs. Amounts so deposited shall hereinafter be referred to as the “**Ground Rent Funds**” and the account in which such amounts are held by Lender shall hereinafter be referred to as the “**Ground Rent Account.**” If at any time when Borrower is required to make a Monthly Ground Rent Deposit in accordance with the terms and provisions of this Section 6.6.1 Lender reasonably determines that the Ground Rent Funds will not be sufficient to pay the Ground Rents, Lender shall notify Borrower of such determination and the monthly deposits for Ground Rents shall be increased by the amount that Lender estimates is sufficient to make up the deficiency; provided that if Borrower receives notice of any such deficiency after the date that is ten (10) days prior to the date that the next installment of Ground Rent is due, Borrower will deposit such amount within one (1) Business Day after its receipt of such notice.

6.13.2 Release of Ground Rent Funds.

(a) Lender shall apply the Ground Rent Funds to payments of Ground Rents. Borrower shall furnish Lender with all bills, invoices and statements for Ground Rent at least ten (10) days prior to the date on which such Ground Rent first becomes payable. In making any payment relating to Ground Rents, Lender may do so according to the Ground Lease or any bill, invoice or statement given by Ground Lessor without inquiry into the accuracy of such bill, invoice or statement or into the validity of any rent, additional rent or other charge thereof. If the amount of the Ground Rent Funds shall exceed the amounts due for Ground Rents, Lender shall, in its sole discretion, return any excess to Borrower or credit such excess against future payments to be made to the Ground Rent Funds.

(b) All costs and expenses incurred by Lender in connection with holding and disbursing the Ground Rent Funds shall be paid by Borrower.

VII. PROPERTY MANAGEMENT

Section 7.1. Franchise Agreement and Management Agreement.

(a) Borrower shall cause the Property to be operated, “flagged” and branded pursuant to the Franchise Agreement and the Management Agreement.

(b) Borrower shall (i) diligently perform and observe the terms, covenants and conditions to be performed and observed by Borrower under the Franchise Agreement and the Management Agreement, (ii) promptly notify Lender of any default under the Franchise Agreement or the Management Agreement of which it is aware, (iii) promptly deliver to Lender a copy of each financial statement, business plan, capital expenditures plan or PIP, report, estimate and material notice (including any notice of default and any notice relating to a PIP) received by Borrower under the Franchise Agreement or the Management Agreement, (iv) promptly notify Lender of the filing of any union election petition or the scheduling of any union election, and (v) enforce the terms, covenants and conditions required to be performed and/or observed by Franchisor under the Franchise Agreement and Manager under the Management Agreement in a commercially reasonable manner.

(c) Without limiting the generality of Section 7.1(b), Borrower shall (i) perform or otherwise satisfy (or cause to be performed or otherwise satisfied) any and all applicable PIP Work in a good and workmanlike manner and in accordance with (A) the Franchise Agreement, (B) this Agreement, (C) all applicable plans, specifications and shop drawings, (D) all applicable insurance requirements and (E) all applicable Legal Requirements, (ii) pay for all costs and expenses in connection with such PIP Work and keep the Property free and clear from any liens, claims and other encumbrances arising from or relating to such PIP Work, (iii) from time to time during the performance or other satisfaction of any PIP Work, if requested by Lender, promptly provide to Lender a reasonably detailed progress report relating to such PIP Work, and (iv) upon completion of any PIP Work, promptly provide to Lender such documents and information evidencing the satisfaction of the foregoing in form and substance reasonably acceptable to Lender.

(d) Upon Lender’s request, Borrower shall promptly furnish Lender with a true, correct and complete copy of the then existing Franchise Agreement or Management Agreement (including any amendments thereof).

(e) If Borrower shall default in the performance or observance of any term, covenant or condition to be performed and observed by Borrower under the Franchise Agreement or the Management Agreement, then, without limiting Lender’s other rights or remedies under the Loan Documents and without waiving or releasing Borrower from any of its obligations under the Loan Documents, the Franchise Agreement or the Management Agreement, Lender shall have the right (at Borrower’s cost), but not the obligation, to pay any sums and to perform any act as may be appropriate to cause such terms, covenants and conditions to be performed or observed in all material respects.

Section 7.2. Other Hotel Related Matters.

(a) Borrower shall not, without Lender’s prior consent, (i) surrender, terminate, amend or extend the Franchise Agreement or enter into a Replacement Franchise Agreement; provided that Borrower may, without Lender’s consent, effectuate a Franchise Replacement Event as long

as (A) no Event of Default or monetary or material non-monetary Default shall exist, (B) Borrower shall give Lender not less than sixty (60) days' prior notice, (C) Borrower shall have paid all Hotel Agreement Termination Fees payable pursuant to the Franchise Agreement that is being replaced, and (D) Borrower shall satisfy, or cause to be satisfied, the PIP Work Conditions, (ii) surrender, terminate, amend or extend the Management Agreement; provided that Borrower may, without Lender's consent, replace Manager with a Qualified Manager pursuant to a Replacement Management Agreement as long as (A) no Event of Default or monetary or material non-monetary Default shall exist, (B) Borrower shall give Lender not less than sixty (60) days' prior notice, and (C) Borrower shall have paid all termination fees payable pursuant to the Management Agreement that is being replaced, (iii) change the "flag" or other brand applicable to the Property, (iv) reduce or consent to the reduction of any term (including any extension term) under the Franchise Agreement or the Management Agreement, (v) increase or consent to the increase of the amount of any fees or other charges under the Franchise Agreement or the Management Agreement, (vi) otherwise amend, or waive or release any of its rights and remedies under, the Franchise Agreement or the Management Agreement in any material respect, (vii) agree to any PIP, or (viii) enter into, or permit Manager to enter into, any Union Agreement with respect to the Property.

(b) If (A) the Franchise Agreement expires or is terminated (without limiting any obligation of Borrower to obtain Lender's prior consent to such expiration or termination), Borrower shall effectuate a Franchise Replacement Event and satisfy, or cause to be satisfied, the PIP Work Conditions or (B) the Management Agreement expires or is terminated (without limiting any obligation of Borrower to obtain Lender's prior consent thereto), Borrower shall promptly enter into a Replacement Management Agreement.

(c) In connection with any matter relating to (A) a Franchise Extension Event, (B) a Franchise Replacement Event or (C) a PIP, Lender's approval may be conditioned upon Lender's determination, in its sole, but good faith, discretion that an amount not less than the aggregate amount of all costs and expenses reasonably anticipated to be incurred in connection with such Franchise Extension Event, Franchise Replacement Event or PIP, as applicable, is on deposit in the PIP Account (taking into account any anticipated deposits into the PIP Account pursuant to Section 6.11.1 during the applicable period).

(d) During the continuance of an Event of Default, Borrower shall not exercise any rights, make any decisions, grant any approvals or otherwise take any action under the Franchise Agreement or the Management Agreement without Lender's prior consent, which consent may be granted, conditioned or withheld in Lender's sole discretion.

Section 7.3. Replacement of Franchisor or Manager.

(a) Lender shall have the right to require Borrower to replace Franchisor with a Qualified Franchisor pursuant to Replacement Franchise Agreement, which Qualified Franchisor is not an Affiliate of, but is chosen by, Borrower, upon the occurrence of any Hotel Agreement Termination Trigger Event.

(b) Lender shall have the right to require Borrower to replace Manager with a Qualified Manager pursuant to Replacement Management Agreement, which Qualified Manager is not an Affiliate of, but is chosen by, Borrower, upon the occurrence of any one or more of the following

events: (i) during the continuance of an Event of Default, (ii) if Manager shall be in default under the Management Agreement beyond any applicable notice and/or cure period, (iii) if Manager shall become insolvent or a debtor in any Bankruptcy Action, and/or (iv) if at any time Manager has engaged in gross negligence, fraud, willful misconduct or misappropriation of funds.

VIII. TRANSFERS

Section 8.1. Transfers Generally.

(a) Except as expressly permitted in this Article VIII, Section 4.1.9, Section 11.29 and the definition of “Permitted Encumbrances”, without Lender’s prior consent, Borrower shall not, and shall not permit any other Person to, sell, transfer, convey, assign, partition, mortgage, pledge, encumber, grant a Lien on, grant any option with respect to or grant any other interest in (each, a “**Transfer**”) the Property or any part thereof or any interest therein (including any legal, beneficial or economic interest in any Restricted Party), directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record.

(b) A Transfer shall include (i) any agreement to sell the Property, any part thereof or any interest therein; (ii) an agreement by Borrower leasing all or any part of the Property other than for actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower’s right, title and interest in and to any Leases or any Rents; (iii) if a Restricted Party is a corporation, any merger or consolidation, the Transfer of such corporation’s stock, or the creation or issuance of new stock; (iv) if a Restricted Party is a general or limited partnership or limited liability company, any merger or consolidation, the change, removal, resignation or addition of any partner or member, the Transfer of the partnership or membership interest of any partner or member or any profits or proceeds relating to such partnership or membership interest, or the creation or issuance of new partnership or membership interests; (v) if a Restricted Party is a trust or nominee trust, any merger or consolidation, the change, removal, resignation or addition of any trustee, the Transfer of the legal or beneficial interest in such trust or nominee trust, or the creation or issuance of new legal or beneficial interests in such trust or nominee trust; (vi) any division of a Borrower, SPC Party or Guarantor into two (2) or more separate entities (or any allocation of Borrower’s, SPC Party’s or Guarantor’s assets, liabilities, rights and/or obligations between or among such entities); and (vii) the incurrence of any PACE Loan relating to or affecting Borrower or the Property.

(c) Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default under any Loan Document in order to declare the Debt immediately due and payable upon a Transfer that is in breach of this Agreement. This provision shall apply to every Transfer regardless of whether voluntary or not, and whether or not Lender has consented to any previous Transfer.

(d) Lender’s consent to one Transfer shall not be deemed to constitute consent to any other Transfer. Any Transfer made in contravention of this Article VIII shall be null and void and of no force and effect.

(e) Borrower agrees to bear and shall pay or reimburse Lender on demand for all costs (including reasonable attorneys’ fees, title search costs and title insurance endorsement premiums)

incurred by Lender in connection with the review, approval and/or documentation of any proposed Transfer. If required by Lender, Borrower shall deposit with Lender an amount equal to Lender's anticipated costs in evaluating any proposed Transfer.

Section 8.2. Transfers of Equity Interests in Borrower. Notwithstanding anything to the contrary contained in Section 8.1, Lender's consent shall not be required in connection with any of the following Transfers:

(a) any Transfer, directly as a result of the death or the legal incapacity of a natural person, of any direct or indirect ownership interests in Borrower previously held by the natural person in question to the Person or Persons lawfully entitled thereto;

(b) any Transfer for bona fide estate planning purposes by a natural person of any direct or indirect ownership interests in Borrower to any Immediate Family Member of such natural person or to a trust for the benefit of any Immediate Family Member of such natural person;

(c) any Transfer, pursuant to a single Transfer or a series of Transfers, of not more than forty-nine percent (49%) in the aggregate of the direct or indirect ownership interests in Borrower; or

(d) any Transfer of shares of common stock in any Restricted Party that is a publicly traded entity, provided such shares of common stock are listed on the New York Stock Exchange or another nationally recognized stock exchange located in the United States of America;

provided that following conditions are satisfied:

- (i) no Event of Default shall exist or would occur (with the giving of notice or passage of time or otherwise) solely as a result of such Transfer;
- (ii) Borrower shall give Lender notice of such Transfer, together with a copy of an updated organizational chart giving effect to such Transfer and copies of all instruments and organizational documents relating to such Transfer, (A) with respect to any Transfer described in Section 8.2(a), not more than ten (10) Business Days after such Transfer; and (B) with respect to any Transfer described in Section 8.2(b) or Section 8.2(c), not less than thirty (30) days prior to the proposed date of such Transfer;
- (iii) to the extent the transferee, together with its Affiliates, would own ten percent (10%) or more of the direct or indirect ownership interests in Borrower immediately following such Transfer, Lender shall have performed customary searches and/or received such documents and information as required by Lender, in each case, in form and substance (including the results of such searches) reasonably satisfactory to Lender, to comply with Lender's then-customary "know your customer" and compliance requirements with respect to the transferee and its Affiliates;
- (iv) (A) such Transfer shall not cause, or result in, a change in Control of Guarantor or any Affiliated Manager; (B) with respect to any Transfer

described in Section 8.2(a), such Transfer shall not (1) cause, or result in, a change of Control of Borrower or any SPC Party unless to another Key Principal or the Immediate Family Members of the applicable Key Principal or trusts established for their benefit and (2) cause the transferee, together with its Affiliates (except another Key Principal or the Immediate Family Members of the applicable Key Principal or trusts established for their benefit), to acquire (or increase) its direct or indirect ownership interests in Borrower or any SPC Party to an amount that exceeds forty-nine percent (49%) in the aggregate; (C) with respect to any Transfer described in Section 8.2(b), such Transfer shall not cause, or result in, a change of Control of Borrower or any SPC Party; and (D) with respect to any Transfer described in Section 8.2(c), such Transfer shall not (1) cause, or result in, a change of Control of Borrower or any SPC Party, or (2) cause the transferee, together with its Affiliates, to acquire (or increase) its direct or indirect ownership interests in Borrower or any SPC Party to an amount that exceeds forty-nine percent (49%) in the aggregate;

- (v) with respect to any Transfer described in Section 8.2(c), Key Principal shall continue to (A) hold at least ***** TBD: fifty-one percent (51%) ***** of all direct or indirect ownership interests in Borrower and any SPC Party and (B) control the day-to-day operations of the Property;
- (vi) after giving effect to such Transfer, no Prohibited Person or Prohibited Entity (A) shall own any direct or indirect ownership interests in Borrower or any SPC Party and (B) shall Control Borrower or any SPC Party;
- (vii) such Transfer shall not consist of or result in any event described in Section 8.1(b)(vi) or any Lien on the Property or any direct or indirect ownership interests in Borrower or any SPC Party;
- (viii) each of Borrower and each SPC Party, after such Transfer, shall continue to be an SPE that complies, and shall continue to comply, with all SPE Provisions;
- (ix) the Property shall continue to be “flagged”, branded, operated and managed pursuant to the Franchise Agreement (or a Replacement Franchise Agreement) and the Management Agreement (or a Replacement Management Agreement);
- (x) Borrower shall have paid all costs incurred by Lender in connection with such Transfer (including reasonable attorneys’ fees and the costs of the Rating Agencies); and
- (xi) if, after giving effect to any Transfer, forty-nine percent (49%) or more of direct or indirect ownership interests in Borrower are owned by any Person and its Affiliates that owned less than forty-nine percent (49%) in the aggregate as of the Closing Date, Borrower shall deliver to Lender prior to

the effective date of such Transfer an updated Insolvency Opinion acceptable to Lender and the Rating Agencies.

Notwithstanding anything to the contrary contained in any Loan Document, neither the issuance of any preferred equity interests with any characteristics of debt (such as a fixed redemption date or maturity date, a rate of return, scheduled interest payments, a pledge of ownership interests as collateral, any right to demand repayment, or any right to cause a change of Control) directly or indirectly in Borrower or any SPC Party nor the pledge of any such preferred equity interests shall be permitted without Lender's consent in its sole and absolute discretion.

Section 8.3. Loan Assumption. No assumption of the Loan shall be permitted before the earlier to occur of (a) the first (1st) anniversary of the first (1st) Monthly Payment Date and (b) the sixtieth (60th) day following the initial Securitization of any portion of the Loan. Thereafter, Lender's consent to a Transfer of the Property and the concurrent assumption of the Loan shall not be unreasonably withheld, provided that the following conditions are satisfied:

(a) no Event of Default shall exist or would occur (with the giving of notice or passage of time or otherwise) solely as a result of such Transfer;

(b) Borrower shall give Lender notice of such Transfer not less than sixty (60) days prior to the proposed date of such Transfer;

(c) the proposed transferee ("**Transferee**") shall be a limited partnership or limited liability company that is an SPE and qualifies as a single purpose, bankruptcy remote entity under criteria established by the Rating Agencies (including criteria applicable to Transferee SPE Constituent Entities);

(d) none of Transferee, any Transferee SPE Constituent Entity or any Constituent Owner of Transferee that directly or indirectly Controls Transferee shall be a Prohibited Person or a Prohibited Entity;

(e) (i) Lender shall have received an organizational chart of Transferee in form and substance reasonably satisfactory to Lender, and (ii) Lender shall have performed customary searches and/or received such documents and information as required by Lender, in each case in form and substance (including the results of such searches) reasonably satisfactory to Lender, with respect to Transferee and the Constituent Owners of Transferee;

(f) the Organizational Documents of Transferee and any Transferee SPE Constituent Entities shall be reasonably satisfactory to Lender;

(g) none of any Transferee Sponsor, Transferee or any other Person owned or Controlled, directly or indirectly, by any Transferee Sponsor shall have been a debtor in any Bankruptcy Action or taken advantage of any Bankruptcy Law or any law for the benefit of debtors within seven (7) years prior to the date of the proposed Transfer;

(h) none of any Transferee Sponsor, Transferee or any other Person owned or Controlled, directly or indirectly, by any Transferee Sponsor shall have defaulted under its

obligations with respect to any Indebtedness in a manner that is not reasonably acceptable to Lender;

(i) there shall be no material litigation or regulatory action pending or threatened against any Transferee Sponsor, Transferee or any other Person owned or Controlled, directly or indirectly, by any Transferee Sponsor that is not reasonably acceptable to Lender;

(j) Transferee Sponsors shall, as of the date of such Transfer, have an aggregate net worth and liquidity reasonably satisfactory to Lender;

(k) Transferee and Transferee Sponsors (together with Transferee's proposed property manager) shall be experienced owners and operators of properties similar in location, size, class, use, operation and value as the Property, as evidenced by financial statements and other information reasonably satisfactory to Lender (it being understood and agreed that Lender reserves the right to approve Transferee and/or Transferee Sponsors without approving its proposed property manager);

(l) if (i) the Franchise Agreement will be terminated as a result of such Transfer, Borrower and Transferee shall effectuate a Franchise Replacement Event concurrently with the assumption of the Loan and (ii) the Management Agreement will be terminated as a result of such Transfer, Transferee shall enter into a Replacement Management with a Qualified Manager concurrently with the assumption of the Loan, such that, in each case, from and after such assumption of the Loan, the Property shall continue to be "flagged", branded, operated and managed pursuant to the Franchise Agreement and the Management Agreement;

(m) Transferee shall have delivered, or caused to be delivered, all agreements, certificates and opinions reasonably required by Lender (including a new Borrower's Certificate and Agreement and, if applicable, an amendment to Section 8.2 to incorporate changes reasonably acceptable to Lender based on differences in the organizational structures of Borrower and Transferee);

(n) Transferee shall have assumed all obligations of Borrower under the Loan Documents in a manner reasonably satisfactory to Lender, including pursuant to an assumption agreement in form and substance reasonably satisfactory to Lender;

(o) Borrower shall have delivered, at its expense, an endorsement to the Title Insurance Policy, as modified by the assumption agreement, insuring that, as of the recording of the assumption agreement, (i) Transferee is owner of the Property and (ii) the Security Instrument continues as a valid first lien on the Property, subject only to Liens and other matters set forth in the Title Insurance Policy issued on the Closing Date and any applicable Permitted Encumbrances;

(p) one (1) or more substitute or additional guarantors reasonably acceptable to Lender shall (i) have assumed all obligations of Guarantor under the Guaranty and the Environmental Indemnity or (ii) have executed a replacement or additional guaranty and a replacement or additional environmental indemnity in form and substance reasonably satisfactory to Lender;

(q) Borrower or Transferee, at its expense, shall have delivered a new bankruptcy non-consolidation opinion letter reflecting such Transfer acceptable to Lender and the Rating Agencies;

(r) if required by Lender, Borrower shall have delivered a Rating Agency Confirmation as to such Transfer and Transferee; and

(s) Borrower shall have paid (i) to Lender an assumption fee equal to one half of one percent (0.5%) of the Outstanding Principal Balance with respect to the first assumption of the Loan and one percent (1%) of the Outstanding Principal Balance with respect to any subsequent assumption of the Loan and (ii) all out-of-pocket costs incurred in connection with such Transfer (including reasonable attorneys' fees and the costs of the Rating Agencies).

IX. SECONDARY MARKET TRANSACTIONS

Section 9.1. Secondary Market Transactions.

(a) Lender shall have the right, at any time, (i) to sell or otherwise transfer the Loan as a whole loan or sell or otherwise transfer any portion thereof or any interest therein, (ii) to sell participation interests in the Loan or (iii) to securitize the Loan or any portion thereof or any interest therein in one or more private or public securitizations (each, a "**Secondary Market Transaction**"), and the transaction referred to in clause (iii), a "**Securitization**"). Any certificates, notes or other securities issued in connection with a Securitization are hereinafter referred to as "**Securities**."

(b) If requested by Lender, Borrower shall assist Lender in satisfying the market standards to which Lender customarily adheres or which may be required in the marketplace, by the Rating Agencies or by any Legal Requirement in connection with any Secondary Market Transaction, including:

- (i) review material proposed to be included in any Disclosure Document with respect to Borrower, Guarantor, any Affiliate of Borrower or Guarantor, the Loan and the Property, promptly upon request of Lender, and either deliver an Officer's Certificate stating that such material neither contains any untrue statement of a material fact, nor omits to state a material fact necessary to make the statements contained herein or therein not misleading in light of the circumstances under which they were made, or (alternatively) providing suggested changes thereto;
- (ii) (A) provide updated financial and other information with respect to the Property, the business operated at the Property, Borrower, Guarantor, any Affiliate of Borrower or Guarantor, Franchisor and Manager (including the information set forth on Schedule 9.1(b)), (B) provide (1) updated budgets and (2) to the extent there are any Leases, updated rent rolls (including the itemized percentage of floor area occupied and percentage of aggregate base rent for each Tenant) relating to the Property and (C) provide updated appraisals, market studies, occupancy reports and statistics, environmental audits, reviews and reports (Phase I's and, if appropriate, Phase II's), property condition reports and other due diligence investigations of the Property (individually and collectively, the "**Updated Information**"), together, if customary, with appropriate verification of the Updated

Information through letters of auditors, certificates of third party providers or opinions of counsel acceptable to Lender and the Rating Agencies;

- (iii) provide opinions of counsel, which may be relied upon by Lender, the NRSROs and their respective counsel, agents and representatives, as to bankruptcy non-consolidation, fraudulent conveyance, and “true sale” or any other opinion customary in Secondary Market Transactions or required by the Rating Agencies with respect to the Property, Borrower, Guarantor and any Affiliate of Borrower or Guarantor, which counsel and opinions shall be satisfactory to Lender and the Rating Agencies;
- (iv) provide, and cause to be provided, updated representations and warranties made in the Loan Documents and make, and cause to be made, such additional representations and warranties as may be requested by Lender or the Rating Agencies;
- (v) execute, and cause to be executed, such amendments to the Loan Documents or Borrower’s or any SPC Party’s Organizational Documents as may be reasonably requested by Lender or requested by the Rating Agencies to effect any Secondary Market Transaction; provided, however, that Borrower shall not be required to amend any Loan Document if such amendment would (A) increase the initial weighted average interest rate or change the principal amortization schedule for the Loan (except that the same may subsequently change due to involuntary prepayments or if an Event of Default shall occur) or (B) amend any other material economic term of the Loan; and
- (vi) permit Lender and its agents and representatives to attend management meetings, provide access to the Property and conduct tours of the Property.

(c) If, at the time a Disclosure Document is being prepared, Lender expects that Borrower alone or Borrower and one or more Affiliates of Borrower (including any guarantor or other Person that is directly or indirectly committed by contract or otherwise to make payments on all or a part of the Loan) collectively (each, an “**Obligor Party**”), or the Property alone or the Property and Related Properties collectively, will be a Significant Obligor, Borrower shall furnish to Lender upon request the following financial information:

- (i) if Lender expects that the principal amount of the Loan together with any Related Loans, as of the cut-off date for such Securitization, may equal or exceed ten percent (10%) (but less than twenty percent (20%)) of the aggregate principal amount of all mortgage loans included or expected to be included in the Securitization, net operating income for the Property and the Related Properties for the most recent calendar year and interim period as required under Item 1112(b)(1) of Regulation AB (and, if Lender determines that any Obligor Party is to be treated as a separate Significant Obligor from the Property and the Related Properties under Instruction 3 for Item 1101(k) of Regulation AB, selected financial data for such

Significant Obligor meeting the requirements and covering the time periods specified in Item 301 of Regulation S-K and Item 1112(b)(1) of Regulation AB), or

- (ii) if Lender expects that the principal amount of the Loan together with any Related Loans, as of the cut-off date for such Securitization, may equal or exceed twenty percent (20%) of the aggregate principal amount of all mortgage loans included or expected to be included in the Securitization, the financial statements meeting the requirements of Regulation S-X as required under Item 1112(b)(2) of Regulation AB.

(d) Further, if requested by Lender, Borrower shall promptly furnish to Lender financial data or financial statements meeting the requirements of Item 1112(b)(1) or (2) of Regulation AB, as specified by Lender, for any tenant of the Property if, in connection with a Securitization, Lender expects there to be, as of the cut-off date for such Securitization, a concentration with respect to such tenant or group of Affiliated tenants within all of the mortgage loans included or expected to be included in the Securitization such that such tenant or group of Affiliated tenants would constitute a Significant Obligor. Borrower shall furnish to Lender, on an ongoing basis, financial data or financial statements with respect to such tenants meeting the requirements of Item 1112(b)(1) or (2) of Regulation AB, as specified by Lender, but only for so long as such entity or entities are a Significant Obligor and either (i) Exchange Act Filings in connection with or relating to the Securitization are required to be made under any Legal Requirement or (ii) comparable information is required to otherwise be “available” to holders of the Securities under Regulation AB or any other Legal Requirements.

(e) If Lender determines that an Obligor Party alone or with one or more other Obligor Parties collectively, or the Property alone or the Property and Related Properties collectively, are a Significant Obligor, then Borrower shall furnish to Lender, on an ongoing basis, selected financial data or financial statements for such Significant Obligor meeting the requirements of Item 1112(b)(1) or (2) of Regulation AB, as specified by Lender, but only for so long as such entity or entities are a Significant Obligor and either (i) Exchange Act Filings are required to be made under the Legal Requirements or (ii) comparable information is required to otherwise be “available” to holders of the Securities under Regulation AB or any other Legal Requirements.

(f) Any financial data or financial statements provided pursuant to this Section 9.1 shall be furnished to Lender within the following time periods:

- (i) with respect to information requested in connection with the preparation of Disclosure Documents for a Securitization, within ten (10) Business Days after notice from Lender; and
- (ii) with respect to ongoing information required under Sections 9.1(d) and (e), (A) not later than thirty (30) days after the end of each calendar quarter of Borrower and (B) not later than seventy-five (75) days after the end of each calendar year.

(g) All financial data and financial statements provided by Borrower pursuant to Sections 9.1(c), (d), (e), (f), (h) and (i) shall be prepared in accordance with the Acceptable Accounting Basis and, if applicable, shall meet the requirements of Regulation AB, Regulation S-K, Regulation S-X, and/or any other Legal Requirements. If required by any Legal Requirement, all such financial statements relating to a calendar year shall be audited by independent accountants of Borrower acceptable to Lender in accordance with generally accepted auditing standards, Regulation S-X or Regulation S-K, as applicable, Regulation AB, and all other Legal Requirements, shall be accompanied by the manually executed report of the independent accountants thereon, which report shall meet the requirements of Regulation S-K or Regulation S-X, as applicable, Regulation AB, and all other Legal Requirements, and shall be further accompanied by a manually executed consent of the independent accountants, in form and substance acceptable to Lender, to the inclusion of such financial statements in any Disclosure Document, any Exchange Act Filing or any report that is required to be made “available” to holders of the Securities under Regulation AB or any other Legal Requirements and to the use of the name of such independent accountants and the reference to such independent accountants as “experts” in any Disclosure Document, any Exchange Act Filing or any report that is required to be made “available” to holders of the Securities under Regulation AB or any other Legal Requirements, all of which shall be provided at the same time as the related financial statements are required to be provided. All other financial data and financial statements (audited or unaudited) provided by Borrower pursuant to Section 9.1 shall be accompanied by an Officer’s Certificate which shall state that such financial data and financial statements meet the requirements set forth in the first sentence of this Section 9.1(g).

(h) If Lender determines that financial statements and financial data required in order to comply with Regulation AB or any other Legal Requirements are other than as, or in addition to those, provided herein, then, notwithstanding the foregoing provisions of this Section 9.1, Lender may request, and Borrower shall promptly provide, such other financial statements and financial data as Lender determines to be necessary or appropriate for such compliance.

(i) Without limiting the generality of Section 9.1(h), if requested by Lender, Borrower shall promptly provide Lender with any financial statements or financial, statistical, operating or other information as Lender shall determine to be required pursuant to Regulation AB or any other Legal Requirements in connection with any Disclosure Document, any Exchange Act Filing or any report that is required to be made “available” to holders of the Securities under Regulation AB or any other Legal Requirements or as shall otherwise be reasonably requested by Lender.

(j) Borrower agrees that any information relating to Borrower, its Affiliates, the Property or the Loan (including information provided to Lender by or on behalf of Borrower or any of its Affiliates and the findings and conclusions of any third-party due diligence reports obtained by Lender or any other Securitization Party) may be (i) disclosed to purchasers or prospective purchasers, participants or prospective participants, investors or prospective investors, advisory and service providers, NRSROs and Persons requesting such information, (ii) made publicly available if required by any Legal Requirement and (iii) included in Disclosure Documents and filings with the Securities and Exchange Commission pursuant to the Securities Act or the Exchange Act, in each case in connection with any Secondary Market Transaction.

(k) If any Disclosure Document is required to be revised prior to the sale of all Securities in connection with a Securitization, Borrower shall cooperate with Lender (or, if applicable, the holder of the applicable interest in the Loan) in updating the Disclosure Document by providing all current information necessary to keep the Disclosure Document accurate and complete in all material respects.

(l) Borrower shall pay all costs (including the costs of the Rating Agencies) in connection with this Section 9.1.

Section 9.2. Securitization Indemnification.

(a) Borrower hereby agrees to indemnify the Securitization Parties for any Securitization Liabilities. Borrower also agrees to reimburse each Securitization Party for any legal or other costs reasonably incurred by such Securitization Party in connection with investigating or defending the Securitization Liabilities. Borrower's liability under this Section 9.2(a) will be limited to any such Securitization Liability that arises out of or is based upon information furnished by or on behalf of Borrower in connection with (i) the preparation of the Disclosure Documents, (ii) the underwriting or closing of the Loan, (iii) the issuing, monitoring or maintaining the ratings on the Securities by the Rating Agencies or (iv) any Exchange Act Filing and information therein or any other report containing comparable information that is required to be made "available" to holders of the Securities under Regulation AB or any other Legal Requirements. This indemnity provision will be in addition to any obligation or liability which Borrower may otherwise have.

(b) Promptly after receipt by a Securitization Party of notice of any claim or the commencement of any action or suit, such Securitization Party shall, if a claim for indemnification in respect thereof is to be made against Borrower, notify Borrower in writing of the claim or the commencement of such action or suit; provided, however, that the failure to notify Borrower shall not relieve Borrower from any liability which it may have under this Section 9.2, except to the extent that it has been materially prejudiced by such failure and, provided further that the failure to notify Borrower shall not relieve Borrower from any liability which it may have to any Securitization Party otherwise than under this Section 9.2. If any such claim, action or suit shall be brought against any Securitization Party, and it shall notify Borrower thereof, Borrower shall be entitled to participate therein and, to the extent that it wishes, assume the defense thereof with counsel reasonably satisfactory to such Securitization Party. After notice from Borrower to the applicable Securitization Party of Borrower's election to assume the defense of such claim, action or suit, Borrower shall not be liable to such Securitization Party for any legal or other costs subsequently incurred by such Securitization Party in connection with the defense thereof; provided, that, if the defendants in any such action or suit include both Borrower and one or more Securitization Parties, and such Securitization Parties shall have reasonably concluded that there are legal defenses available to it and/or them that are different from or in addition to those available to Borrower, such Securitization Parties shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action or suit on behalf of such Securitization Parties at Borrower's cost.

(c) Without the prior written consent of the applicable Securitization Party (which consent shall not be unreasonably withheld or delayed), Borrower shall not settle or compromise

or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding in respect of which indemnification may be sought hereunder (whether or not any Securitization Party is an actual or potential party to such claim, action, suit or proceeding) unless Borrower shall have given the applicable Securitization Party reasonable prior notice thereof and shall have obtained an unconditional release of each Securitization Party from all Securitization Liabilities arising out of or relating to such claim, action, suit or proceeding. As long as Borrower has complied with its obligations to defend and indemnify hereunder, Borrower shall not be liable for any settlement made by any Securitization Party without the consent of Borrower (which consent shall not be unreasonably withheld or delayed).

(d) Borrower agrees that, if any indemnification or reimbursement sought pursuant to this Section 9.2 is finally judicially determined to be unavailable for any reason or is insufficient to hold any Securitization Party harmless (with respect only to the Securitization Liabilities that are the subject of this Section 9.2), then Borrower, on the one hand, and such Securitization Party, on the other hand, shall contribute to the Securitization Liabilities for which such indemnification or reimbursement is held unavailable or is insufficient: (i) in such proportion as is appropriate to reflect the relative benefits to Borrower, on the one hand, and such Securitization Party, on the other hand, from the transactions to which such indemnification or reimbursement relates; or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative faults of Borrower, on the one hand, and all Securitization Parties, on the other hand, as well as any other equitable considerations. Notwithstanding this Section 9.2, (A) no Person found liable for a fraudulent misrepresentation shall be entitled to contribution from any other Person who is not also found liable for such fraudulent misrepresentation, and (B) Borrower agrees that in no event shall the amount to be contributed by the Securitization Parties collectively pursuant to this Section 9.2(e) exceed the amount of the fees actually received by the Securitization Parties in connection with the closing of the Loan.

(e) Borrower agrees that the indemnification, contribution and reimbursement obligations set forth in this Section 9.2 shall apply whether or not any Securitization Party is a formal party to any claim, action, suit or proceeding. Borrower further agrees that the Securitization Parties are intended third party beneficiaries under this Section 9.2.

(f) The liabilities and obligations of Borrower and the Securitization Parties under this Section 9.2 shall survive the termination of this Agreement and the satisfaction of the Debt.

X. DEFAULTS

Section 10.1. Event of Default.

(a) Each of the following events shall constitute an event of default hereunder (an “**Event of Default**”):

- (i) (A) if any monthly Debt Service, any monthly deposit of Reserve Funds or the payment due on the Maturity Date is not paid when due or (B) if any other portion of the Debt is not paid when due; provided that, with respect

to this clause (B), such non-payment continues for five (5) days following notice to Borrower that the same is due and payable;

- (ii) if any of the Taxes or Other Charges are not paid when due;
- (iii) if the Policies are not kept in full force and effect;
- (iv) if Borrower commits, permits or suffers a Transfer in violation of this Agreement or Article 6 of the Security Instrument;
- (v) if any certification, representation or warranty made by Borrower in any Loan Document or in any report, certificate, financial statement or other instrument, agreement or document furnished to Lender shall have been false or misleading in any material respect as of the date such certification, representation or warranty was made;
- (vi) if Borrower, any SPC Party or Guarantor shall make an assignment for the benefit of creditors;
- (vii) if Borrower, any SPC Party or Guarantor fails or admits its inability to pay its debts generally as they become due;
- (viii) (A) if a Bankruptcy Official shall be appointed for Borrower, any SPC Party or Guarantor or (B) if Borrower, any SPC Party or Guarantor shall be adjudicated as bankrupt or insolvent, or (C) if any petition, case or proceeding for bankruptcy, reorganization or arrangement pursuant to any applicable Bankruptcy Law, shall be filed by or against or consented to, or acquiesced or joined in, by Borrower, any SPC Party or Guarantor, or (D) if any petition, case or proceeding for the dissolution or liquidation of Borrower, any SPC Party or Guarantor shall be instituted; provided, however, if such appointment, adjudication, petition, case or proceeding was involuntary and not consented to, or acquiesced or joined in, by Borrower, any SPC Party or Guarantor, upon the same not being discharged or dismissed within sixty (60) days;
- (ix) with respect to any term, covenant or provision set forth herein that specifically contains a notice requirement or grace period, if Borrower shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;
- (x) if Borrower shall continue to be in Default under Section 9.1, Section 11.28 or Section 11.29, or fails to cooperate with Lender in connection with a Secondary Market Transaction in accordance with Section 9.1, in each case, for three (3) days after notice from Lender;
- (xi) if Borrower or any SPC Party breaches any of the SPE Provisions; or if any of the assumptions contained in any Insolvency Opinion is or shall become untrue in any material respect;

- (xii) at Lender's option, if Borrower does not complete each Required Repair in accordance with Section 6.8.1, and such failure continues for five (5) Business Days after written notice thereof by Lender;
- (xiii) if (A) a material default or event of default exists under the Management Agreement, the Franchise Agreement or any Operating Agreement or (B) the Management Agreement, the Franchise Agreement or any Operating Agreement is amended, expires or terminates in breach of this Agreement, and such amendment, expiration or termination could reasonably be expected to have a Material Adverse Effect as reasonably determined by Lender;
- (xiv) if Borrower breaches any of the terms set forth in Section 7.1(a), Section 7.2(a) or Section 7.2(b);
- (xv) if Borrower ceases to do business as a hotel at the Property or terminates such business for any reason whatsoever (other than a temporary cessation in connection with any continuous and diligent renovation or restoration of the Property following a Casualty or Condemnation);
- (xvi) if Borrower shall continue to be in Default under any of the other terms, covenants or conditions of this Agreement not specified in clauses (i) to (xv) above, for ten (10) days after notice to Borrower from Lender, in the case of any Default that can be cured by the payment of money, or for thirty (30) days after notice from Lender in the case of any other Default; provided, however, that, if (A) such non-monetary Default is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and (B) Borrower shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed sixty (60) days; or
- (xvii) if (A) there shall be a Default under any other Loan Document beyond any applicable cure periods contained in such Loan Document or (B) any other event shall occur or condition shall exist, if the effect of such event or condition under the Loan Documents is to accelerate or permit Lender to accelerate the maturity of any portion of the Debt; and
- (xviii) (A) if Borrower shall fail to pay any Ground Rent as and when such Ground Rent is due under the Ground Lease (unless such breach is cured within any applicable cure period provided in the Ground Lease or unconditionally waived in writing by the landlord under the Ground Lease), (B) if there shall occur any breach or default by Borrower, as tenant under the Ground Lease, in the observance or performance of any term, covenant or condition of the Ground Lease on the part of Borrower to be observed or performed (unless such breach or default is cured within any applicable cure period provided

in the Ground Lease or unconditionally waived in writing by the landlord under the Ground Lease), (C) if any event, circumstance or condition shall occur which would cause the Ground Lease to terminate without notice or action by the landlord under the Ground Lease or which would entitle the landlord under the Ground Lease to terminate the Ground Lease by giving notice to Borrower, as tenant thereunder (unless such event, circumstance, condition or right to terminate is unconditionally waived in writing by the landlord under the Ground Lease), (D) if Borrower shall fail to exercise any renewal options under the Ground Lease; (E) if the leasehold estate created by the Ground Lease shall be surrendered or the Ground Lease shall be terminated or canceled for any reason or under any circumstances whatsoever; or (F) if any of the terms, covenants or conditions of the Ground Lease shall in any manner be modified, changed, supplemented, altered, or amended without Lender's prior consent.

(b) During the continuance of an Event of Default (other than an Event of Default described in Section 10.1(a)(vi), (vii) or (viii)), Lender may, in addition to any other rights or remedies available to it pursuant to any Loan Document, at law or in equity, take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and in and to the Property, including declaring the Debt to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents, at law or in equity against Borrower and the Property; and upon any Event of Default described in Section 10.1(a)(vi), (vii) or (viii), the Debt shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, notwithstanding anything to the contrary contained in any Loan Document.

Section 10.2. Remedies.

(a) During the continuance of an Event of Default, any one or more of the rights, powers and remedies available to Lender against Borrower under the Loan Documents, at law or in equity may be exercised by Lender at any time, whether or not all or any portion of the Debt shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or initiated or taken other action for the enforcement of its rights and remedies under any Loan Document with respect to all or any part of the Property. Without limiting the generality of the foregoing, Borrower agrees that, if an Event of Default exists, (i) Lender is not subject to any "one action," "election of remedies" or similar law or rule, and (ii) all liens and other rights and remedies provided to Lender shall remain in full force and effect until Lender has exhausted all of its rights and remedies against the Property and the Security Instrument has been foreclosed, sold or otherwise realized upon in satisfaction of the Obligations or the Debt has been paid in full.

(b) With respect to Borrower and the Property, nothing contained in any Loan Document shall be construed as requiring Lender to resort to the Property for the satisfaction of all or any part of the Debt in any order, proportion or priority, and Lender may seek satisfaction out of the Property, or any part thereof, in its sole and absolute discretion. In addition, Lender shall have the right to partially foreclose the Security Instrument in any manner and for any

amounts secured by the Security Instrument then due and payable as determined by Lender in its sole and absolute discretion, including the following circumstances: (i) if Borrower defaults in the payment of any Debt Service, Lender may foreclose the Security Instrument to recover the delinquent payments or (ii) if Lender elects to accelerate less than the entire Outstanding Principal Balance, Lender may foreclose the Security Instrument to recover the accelerated portion of the Outstanding Principal Balance and such other sums secured by the Security Instrument as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to the Security Instrument to secure payment of sums secured by the Security Instrument and not previously recovered by Lender.

(c) During the continuance of an Event of Default (but without limiting Lender's rights under Section 9.1, Section 11.28 or Section 11.29), Lender shall have the right to sever the Note and the other Loan Documents into one or more separate notes, security instruments and other loan documents (collectively, the "**Severed Loan Documents**") in such denominations and priority as Lender shall determine in its sole and absolute discretion. Borrower shall execute and deliver to, promptly after the request of Lender, a severance agreement and such other documents as Lender shall request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender.

(d) During the continuance of an Event of Default, (i) all costs incurred by Lender in connection with the exercise of any of its rights, powers and remedies under the Loan Documents, at law or in equity shall bear interest at the Default Rate from the date such costs were incurred to the date reimbursement payment is received by Lender, (ii) such costs, together with interest thereon calculated at the Default Rate, shall constitute a portion of the Obligations, shall be secured by the Loan Documents and shall be immediately due and payable upon demand by Lender therefor and (iii) any amounts recovered from the Property or any other collateral for the Loan may be applied by Lender toward the payment of the Debt in such order, proportion and priority as Lender in its sole and absolute discretion shall determine.

Section 10.3. Right to Cure Defaults. Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation or liability under the Loan Documents or being deemed to have cured any Default or Event of Default, make, do or perform any obligation of Borrower under any Loan Document in such manner and to such extent as Lender may deem necessary. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in and to the Property for such purposes. Without limiting the generality of Section 10.2(d), (a) all costs incurred by Lender in remedying or attempting to remedy such Default or Event of Default or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate from the date such costs were incurred to the date reimbursement payment is received by Lender and (b) such costs, together with interest thereon calculated at the Default Rate, shall constitute a portion of the Obligations, shall be secured by the Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

Section 10.4. Remedies Cumulative. The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy that Lender may have pursuant to any other Loan Document, at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued independently, singly, concurrently, successively, or

otherwise, at such time(s) and in such order as Lender may determine in Lender's sole and absolute discretion, without impairing or otherwise affecting the other rights, powers and remedies of Lender under the Loan Documents or at law or in equity. No delay or omission to exercise any right, power or remedy accruing upon a Default or Event of Default shall impair or otherwise affect any such right, power or remedy or be construed as a waiver thereof, but any such right, power or remedy may be exercised as often as determined by Lender. A waiver of one Default or Event of Default shall not be construed to be a waiver of any other or subsequent Default or Event of Default or impair or affect any right, power or remedy consequent thereon.

XI. MISCELLANEOUS

Section 11.1. Successors and Assigns. This Agreement shall inure to the benefit of the legal representatives, successors and assigns of Lender.

Section 11.2. Lender's Discretion. Whenever pursuant to any Loan Document, (a) Lender exercises any right given to it to approve or disapprove, (b) any arrangement, document, instrument, term or other matter is to be satisfactory to Lender, or (c) any other decision or determination is to be made by Lender, the decision to approve or disapprove, the decision that an arrangement, document, instrument, term or other matter is satisfactory or not satisfactory and any other decision or determination by Lender shall be in the sole discretion of Lender, except as may be otherwise expressly set forth in such Loan Document. Prior to a Securitization, whenever pursuant to any Loan Document, the Rating Agencies are given any right to approve or disapprove any arrangement, document, instrument, term or other matter, the decision of Lender to approve or disapprove the same based upon Lender's good faith determination of the applicable Rating Agency criteria shall be substituted therefor.

Section 11.3. Governing Law.

(a) **THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOAN WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES HERETO AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THEM AND TO THE LOAN, AND IN ALL RESPECTS, INCLUDING MATTERS OF CONSTRUCTION, VALIDITY, AND PERFORMANCE, THE ENTIRETY OF THE LOAN DOCUMENTS SHALL BE GOVERNED BY, AND CONSTRUED ACCORDING TO, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY OTHER APPLICABLE LAWS OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT TO THE SECURITY INSTRUMENT AND THE ASSIGNMENT OF LEASES SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAWS OF THE STATE. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS ANY MATTER UNDER THE LOAN**

DOCUMENTS, AND THE LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENT MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, AND BORROWER WAIVES ANY OBJECTIONS THAT IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

[

_____]

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY PROCESS THAT MAY BE SERVED IN ANY SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SUCH AGENT AT SUCH ADDRESS AND NOTICE OF SUCH SERVICE DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION, OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK, AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE AGENT IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

Section 11.4. Actions in Writing; Notices Not Precedent. No amendment, extension, discharge, termination or waiver of any provision of any Loan Document, and no consent to any departure by Borrower therefrom, shall be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and shall be effective only in the specific instance, and for the limited 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 in, or exercising any right, power or remedy under, any Loan Document shall operate as or constitute a waiver thereof, and any exercise thereof shall not preclude or restrict any future exercise thereof

or the exercise of any other right, power or remedy. In particular, and not by way of limitation, by accepting any untimely payment under any Loan Document, Lender shall not be deemed to have waived any right to require timely payment of all other amounts under the Loan Documents or to declare a Default or Event of Default, as applicable, for failure to make timely payment of such other amounts.

Section 11.6. Notices. All notices, demands, requests, consents, approvals or other communications (each, a “**Notice**”) required, permitted, or desired to be given hereunder shall be in writing (a) sent by certified mail, postage prepaid, return receipt requested, (b) delivered by hand, (c) delivered by overnight commercial courier or (d) electronically transmitted by e-mail with a hard copy delivered by hand or overnight commercial courier, addressed to the party to be so notified at its address set forth below. Any Notice shall be deemed to have been received: (i) if sent by certified mail, on the date of delivery or the date of the first attempted delivery, in either case on a Business Day (otherwise on the next Business Day), (ii) if delivered by hand, on the date of delivery if delivered during business hours on a Business Day (otherwise on the next Business Day), (iii) if sent by overnight commercial courier, on the next Business Day, and (iv) if transmitted by e-mail, (A) if such e-mail was sent prior to 5 P.M. Eastern Time on a Business Day, then on the date such e-mail was sent, provided that a hard copy of such e-mail (and hard copies of all attachments) are delivered by hand or sent by overnight commercial courier for delivery on the immediately succeeding Business Day, or (B) if such e-mail was sent on a day that is not a Business Day or after 5 P.M. Eastern Time on a Business Day, then on the Business Day immediately succeeding the date such e-mail was sent, provided that a hard copy of such e-mail (and hard copies of all attachments) are delivered by hand or sent by overnight commercial courier for delivery on the second Business Day immediately following the date on which such e-mail was sent, in each case addressed to the parties as follows:

If to Lender: UBS AG
 1285 Avenue of the Americas
 New York, New York 10019
 Attention: Transaction Management – Naja Armstrong
 E-mail: naja.armstrong@ubs.com

with a copy to: UBS AG
 1285 Avenue of the Americas
 New York, New York 10019
 Attention: Transaction Management – Racquel Small
 E-mail: racquel.small@ubs.com

with a copy to: McGuireWoods LLP
 1251 Avenue of the Americas, 20th Floor
 New York, New York 10020
 Attention: Dennis W. Mensi, Esq.
 Email: dmensi@mcguirewoods.com

If to Borrower: [_____

Attention: _____
E-mail: _____]

with a copy to:

Case Lombardi
Pacific Guardian Center, Mauka Tower Suite 2600
737 Bishop Street
Honolulu, Hawaii 96813
Attention: Matthew A. Cohen
E-mail: mac@caselombardi.com

Any party may change the address (including e-mail address) to which any Notice is to be delivered by furnishing ten (10) days' written notice of such change to the other parties in accordance with this Section 11.6. Notices shall be deemed to have been given on the date as set forth above, even if there is an inability to actually deliver any Notice because of a changed address (including e-mail address) as to which no Notice was given or there is a rejection or refusal to accept any Notice offered for delivery. Any Notice by any party may be given by its counsel.

Section 11.7. Trial by Jury. THE PARTIES HERETO HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE BY JURY, AND WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN, ANY LOAN DOCUMENT OR ANY ACT OR OMISSION OF BORROWER OR LENDER. THIS WAIVER OF RIGHT TO A TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY THE PARTIES HERETO AND IS INTENDED TO ENCOMPASS 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 SUCH WAIVER.

Section 11.8. Power of Attorney. Borrower (and in connection with Section 11.29, together with New Mortgage Borrower and New Mezzanine Borrower) hereby (a) absolutely and irrevocably appoints Lender as its true and lawful attorney-in-fact, coupled with an interest, to do, in Borrower's, New Mortgage Borrower's, and/or New Mezzanine Borrower's names or otherwise, any and all acts and to execute any and all documents to facilitate the consummation of the provisions of the Loan Documents, or procure or preserve to Lender any and all rights, remedies, interests, benefits, or privileges under the Loan Documents, at law or in equity (including (i) Sections 2.7.1, 4.1.5, 9.1, 10.2, 10.3, 10.4, 11.28, and 11.29 and (ii) any perfection of security interests and completion and/or delivery of any Tenant Direction Letter to a Tenant or any Credit Card Company Direction Letter to a Credit Card Company) and (b) ratifies any and all such acts taken pursuant to this Section 11.8; provided, however, Lender shall not make or execute any documents under such power until three (3) days after Lender notifies Borrower of its intent to exercise its rights under such power.

Section 11.9. Severability. 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 only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the other 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. To the extent Borrower makes any payment 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 Bankruptcy Official or any other Person pursuant to any Legal Requirement, then, to the extent of such payment or proceeds or part thereof, the Obligations or a portion thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds or part thereof had not been received by Lender.

Section 11.11. Waiver of Notice. Unless expressly prohibited by applicable Legal Requirements, Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which a Loan Document does not expressly grant such right to Borrower.

Section 11.12. Remedies of Borrower. If a claim or adjudication is made that Lender or any Lender Indemnitee has breached or defaulted under any law, requirement or Loan Document, Borrower agrees that neither Lender nor such Lender Indemnitee shall be liable for any monetary damages, and Borrower's sole remedy shall be limited to commencing an action seeking injunctive relief or declaratory judgment.

Section 11.13. Costs; Indemnity.

(a) Except as may be otherwise expressly set forth in the Loan Documents, Borrower shall pay, or reimburse Lender for, all costs (including reasonable attorneys' fees) incurred by Lender in connection with (i) Borrower's performance and observance of any and all provisions under the Loan Documents to be performed or observed by Borrower after the Closing Date; (ii) Lender's performance and observance of any and all provisions under the Loan Documents be performed or observed by Lender after the Closing Date (including in connection with a Franchise Extension Event, a Franchise Replacement Event or a PIP); (iii) the review, negotiation, preparation, execution, delivery and administration of any amendments, approvals or waivers relating to the Loan Documents or any other documents or matters requested by Borrower or Lender (whether or not any such request is approved, rejected or revoked); (iv) the filing or recording of any documents or instruments, the creation and perfection of Liens, title insurance charges (including endorsements, letters or searches), survey charges, appraisals, engineering reports, environmental reports, inspections and legal opinions; (v) the enforcement or preservation of any rights or remedies under the Loan Documents or the prosecution or defense of any action, matter or proceeding that affects Borrower, any SPC Party, Guarantor, the Property, any Loan Document or any Lien securing the Loan; (vi) the enforcement of any obligations of Borrower, any SPC Party or Guarantor under the Loan Documents and in connection with any refinancing, restructuring or work-out of the Loan or in connection with any Bankruptcy Action; and (vii) any obligation of Lender to pay any fee to Franchisor pursuant to the Franchise Agreement in connection with any assignment or other transfer of the Loan or any portion thereof or interest therein; provided, however, that Borrower shall not be liable for the payment of any such costs to the extent the same arise solely by reason of the gross negligence, illegal acts, fraud or willful

misconduct of Lender. At Lender's discretion, any such costs due and payable to Lender may be paid to Lender from any amounts in the Clearing Account or the Cash Management Account.

(b) Borrower shall indemnify, defend and hold harmless the Lender Indemnitees from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, and disbursements of any kind or nature whatsoever (including attorney's fees for any Lender Indemnitee in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not such Lender Indemnitee is designated a party thereto) that may be imposed on, incurred by, or asserted against any Lender Indemnitee in any manner relating to or arising out of (i) any breach by Borrower or Guarantor of its obligations under, or any misrepresentation by Borrower or Guarantor contained in, any Loan Document, (ii) the breach of any representation, warranty or covenant set forth in Section 3.1.8 or Section 4.2.6, (iii) any misstatement or omission in any report, certificate, financial statement, other agreement, instrument or document or other materials or information provided by or on behalf of Borrower or Guarantor in connection with the Loan or pursuant to any Loan Document, or (iv) the use or intended use of the proceeds of the Loan (collectively, the "**Indemnified Liabilities**"); provided, however, that Borrower shall not have any obligation to the Lender Indemnitees hereunder to the extent that such Indemnified Liabilities arise solely from the gross negligence, illegal acts, fraud or willful misconduct of the Lender Indemnitees. To the extent that the undertaking to indemnify, defend and hold harmless set forth in this Section 11.13(b) may be unenforceable in any respect because it violates any law or public policy, Borrower shall pay the maximum amount that it is permitted to pay and satisfy under applicable law.

(c) Borrower shall pay for or, if Borrower fails to pay, reimburse Lender upon receipt of notice from Lender for the costs of any Rating Agency in connection with any approval, waiver or confirmation requested of or obtained from such Rating Agency pursuant to any Loan Document. Lender shall be entitled to require the payment of such costs prior to seeking or obtaining any such approval, waiver or confirmation.

(d) Any amounts payable to Lender or any Lender Indemnitee pursuant to this Section 11.13 (i) shall constitute indebtedness of Borrower and a portion of the Obligations, (ii) shall be secured by the Security Instrument and (iii) shall be due and payable on demand. All costs incurred by Lender or any Lender Indemnitee in connection therewith shall be paid by Borrower to Lender or such Lender Indemnitee, upon demand, with interest at the Default Rate from the date such costs were incurred to and including the date the reimbursement payment is received by Lender or such Lender Indemnitee. The liabilities and obligations of Borrower under this Section 11.13 shall survive the termination of this Agreement and the satisfaction of the Debt.

Section 11.14. Approvals; Third Parties; Conditions. All approval rights retained or exercised by Lender are solely to facilitate Lender's underwriting, and shall not be deemed or construed as a determination that Lender has passed on the adequacy thereof for any other purpose and may not be relied upon by Borrower or any other Person other than a Servicer acting on behalf of Lender. The Loan Documents are for the sole and exclusive use of the parties thereto and may not be enforced or relied upon by any other Person. Nothing contained in any Loan Document shall be deemed to confer upon any Person other than the parties thereto any right to insist upon or to enforce the performance or observance of the terms, covenants and conditions contained therein. All conditions to Lender's obligations under the Loan Documents are for the sole and

exclusive benefit of Lender and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions or have standing to require satisfaction of such conditions. Lender may waive all or any of such conditions in its sole and absolute discretion.

Section 11.15. Acknowledgment and Consent to Bail-In of Affected Institutions.

Notwithstanding anything to the contrary in any Loan Document or in any other agreement or understanding among the respective parties thereto, the parties hereto acknowledge and agree that any liability of any Affected Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority, and hereby consent to, acknowledge and agree to be bound by:

- (i) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Institution; and
- (ii) the effects of any Bail-In Action on any such liability, including, if applicable: (A) a reduction in full or in part or cancellation of any such liability; (B) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under any Loan Document; or (C) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

For purposes of this Section 11.15:

“**Affected Institution**” shall mean any EEA Institution or any UK Institution.

“**Bail-In Action**” shall mean the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Institution.

“**Bail-In Legislation**” shall mean (A) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule or requirement for such EEA Member Country, which is described in the EU Bail-In Legislation Schedule, and (B) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“**EEA Institution**” shall mean (A) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (B) any entity established in an EEA Member Country which is a parent of an institution described in clause (A) of this definition, or (C) any financial institution established in an EEA Member

Country which is a subsidiary of an institution described in clause (A) or (B) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” shall mean any of the member states of the European Union, Iceland, Liechtenstein, and Norway or any other member state of the European Economic Area.

“EEA Resolution Authority” shall mean any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegate) having responsibility for the resolution of any EEA Institution.

“EU Bail-In Legislation Schedule” shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person).

“Resolution Authority” shall mean (A) with respect to any EEA Institution, an EEA Resolution Authority, and (B) with respect to any UK Institution, a UK Resolution Authority.

“UK Institution” shall mean any BRRD Undertaking (as such term is defined under the PRA Rulebook promulgated by the United Kingdom Prudential Regulation Authority) or any Person falling within IFPRU 11.6 of the FCA Handbook promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions, investment firms and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” shall mean the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Institution.

“Write-Down and Conversion Powers” shall mean (A) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule and (B) with respect to any UK Resolution Authority, the powers of such UK Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Institution or any contract or instrument under which such liability arises, to convert all or any part of such liability into shares, securities or obligations of such UK Institution or any other Person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of such liability.

Section 11.16. No Joint Venture or Partnership. The parties hereto intend that the relationships created under the Loan Documents be solely that of borrower and lender. Nothing in the Loan Documents is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between the parties hereto or to grant Lender any interest in the Property other than that of mortgagee, beneficiary or lender.

Section 11.17. Publicity. All news releases, publicity or advertising by Borrower or its Affiliates through any media that refers to the Loan, any Loan Document or Lender or any of its Affiliates shall be subject to Lender’s prior approval. Borrower authorizes Lender to issue press releases, advertisements and other promotional materials in connection with Lender’s promotional and marketing activities, including in connection with any Secondary Market Transaction, and

such materials may describe the Loan in general terms or in detail and Lender's participation in the Loan.

Section 11.18. Waiver of Marshalling of Assets. To the fullest extent permitted by applicable law, Borrower hereby expressly waives (a) the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale under the Security Instrument of the Property or any part thereof or interest therein and (b) any and all rights of redemption from sale under any order or decree of foreclosure of the Security Instrument on behalf of Borrower, on behalf of each and every Person acquiring an interest in or title to the Property subsequent to the date of the Security Instrument and on behalf of all other Persons. Borrower shall execute and deliver to Lender, promptly after Lender's request, such other documents or amendments as Lender shall request in order to effect the waiver in the preceding sentence, all in form and substance sufficient to satisfy Legal Requirements.

Section 11.19. Waiver of Offsets, Counterclaims and Defenses.

(a) Any assignee of Lender's interest in and to the Loan Documents shall take the same free and clear of all offsets, counterclaims and defenses which are unrelated to the Loan Documents that Borrower may otherwise have against any assignor of the Loan Documents, and no such unrelated offset, counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any assignee upon the Loan 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.

(b) Borrower hereby waives the right to assert a counterclaim (other than a compulsory counterclaim), offset or defense in any action or proceeding brought against it by Lender or any Lender Indemnitee. Without any limitation of the foregoing, no failure by Lender to perform any of its obligations hereunder shall be a valid defense to, or result in any offset against, any payments that Borrower is obligated to make under the Loan Documents.

Section 11.20. Conflict; Construction of Documents; Reliance. In the event of any conflict between the provisions of this Agreement and any other Loan Document, the provisions of this Agreement shall control. 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 the Loan Documents shall not be subject to the principle of construing the meaning of any provision in a document against the party that drafted the same. Borrower acknowledges and agrees 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 Lender Indemnitee. Borrower agrees that Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to Lender under any of the Loan Documents, at law or in equity by virtue of the ownership by Lender or any affiliate of Lender of any legal, beneficial or economic 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, except for Colliers Mortgage (“**Broker**”), it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement. Borrower will pay all fees charged by Broker. Borrower shall indemnify, defend and hold Lender harmless from and against any and all liabilities, obligations, losses, damages, claims and costs (including Lender’s attorneys’ fees) in any way relating to or arising from a claim by any Person (including Broker) that such Person acted on behalf of Borrower or Lender in connection with the Loan. The provisions of this Section 11.21 shall survive the termination of this Agreement and the satisfaction of the Debt.

Section 11.22. Exculpation.

(a) Subject to the qualifications below, Lender shall not enforce the liability and obligation of Borrower to perform and observe the obligations under the Loan Documents by any action or proceeding wherein a money judgment shall be sought against Borrower, except that Lender may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Lender to enforce and realize upon its interest under the Loan Documents or in the Property, the Rents or any other collateral given to Lender pursuant to the Loan Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against Borrower only to the extent of Borrower’s interest in the Property, in the Rents, and in any other collateral given to Lender, and Lender, by accepting the Loan Documents, agrees that it shall not sue for, seek or demand any deficiency judgment against Borrower in any such action or proceeding under or by reason of, under or in connection with the Loan Documents. The provisions of this Section 11.22 shall not, however, constitute a waiver, release or impairment of any obligation evidenced or secured by any of the Loan Documents; impair the right of Lender to name Borrower as a party defendant in any action or suit for foreclosure and sale under the Security Instrument; affect the validity or enforceability of any guaranty, indemnity or similar instrument (including the indemnities set forth in Section 11.13, the Guaranty and the Environmental Indemnity) made in connection with the Loan or any of the rights and remedies of Lender thereunder (including Lender’s right to enforce said rights and remedies against Borrower and/or Guarantor (as applicable) personally and without the effect of the exculpatory provisions of this Section 11.22); impair the right of Lender to obtain the appointment of a receiver or any other Bankruptcy Official; impair the enforcement of the Assignment of Leases; constitute a prohibition against Lender to seek a deficiency judgment against Borrower in order for Lender to fully realize the security granted by the Security Instrument or to commence any other appropriate action or proceeding in order for Lender to exercise its rights and remedies against the Property; impair the right of Lender to assert the Debt as a set-off, affirmative defense or limitation on any liability of Lender for any claim for damages made by Borrower, Guarantor or any Borrower Related Party arising from or in connection with the Loan, in any arbitration, mediation, proceeding or other action; or constitute a waiver of the right of Lender to enforce the liability and obligation of Borrower, by money judgment or otherwise, to the extent of any loss, damage, cost, liability, claim or other obligation incurred by Lender (including attorneys’ fees) arising out of or in connection with, and Borrower shall be personally

liable for, the following (all such liability and obligation of Borrower, the “**Borrower’s Recourse Liabilities**”):

- (i) willful misconduct or material misrepresentation by or on behalf of any Borrower Party in connection with the Loan;
- (ii) any material physical waste at the Property caused by the intentional or willful acts or omissions of any Borrower Party, except for such waste arising solely from omissions of any Borrower Party to the extent there is insufficient cash flow from the operation of the Property to prevent such waste;
- (iii) the removal or disposal of any portion of the Property during the continuance of an Event of Default, unless any personal property that is removed or disposed of is replaced with personal property of the same utility and the same or greater value;
- (iv) (A) the misappropriation, misapplication or conversion by any Borrower Party of any Insurance Proceeds or Awards, (B) the misappropriation or conversion by any Borrower Party of any Rents, or (C) the misapplication by any Borrower Party of any Rents during the continuance of an Event of Default;
- (v) the failure to deliver to Lender upon a foreclosure of the Property or action in lieu thereof any security deposits, other deposits or prepaid rents or reimbursements collected with respect to the Property, except to the extent any such security deposits were applied in accordance with the express terms of the applicable Leases prior to such foreclosure or action in lieu thereof;
- (vi) Borrower’s failure to pay any Taxes affecting the Property or to obtain and maintain in full force and effect fully paid for Policies, provided that Borrower shall not be liable if (A) there are sufficient funds on deposit in the Tax Account or the Insurance Account, as applicable, that are fully available to Lender in accordance with the Loan Documents and Lender fails to apply the requisite portion of such funds to the payment of such amounts, (B) there is insufficient cash flow from the operation of the Property to pay such amounts and with respect to Insurance Premiums, the applicable Policies are not blanket policies, or (C) with respect to Taxes, Borrower is contesting Taxes in accordance with this Agreement;
- (vii) Borrower’s failure to pay Labor and Material Costs or other charges that can create Liens on the Property or any portion thereof, provided that Borrower shall not be liable if such charges were incurred in accordance with the Loan Documents and (A) there are sufficient funds on deposit in a Reserve Account that are designated for such purpose and fully available to Lender in accordance with the Loan Documents, and Lender fails to apply

the requisite portion thereof to the payment of such amounts, (B) there is insufficient cash flow from the operation of the Property to pay such amounts, or (C) Borrower is contesting Labor and Material Costs in accordance with this Agreement;

- (viii) (A) Borrower's failure to pay any "Chargeable Amounts" as defined in and due and payable under the Clearing Account Agreement and/or the Cash Management Agreement, and (B) Borrower's indemnification of Lender set forth in Section 2.7.1(h) and Section 6.1.3, less any amounts payable by Clearing Bank pursuant to Section 5 of the Clearing Account Agreement or by Cash Management Bank pursuant to Section 13.1 of the Cash Management Agreement;
- (ix) Borrower's failure to (A) permit on-site inspections of the Property, (B) provide financial information or (C) appoint a new property manager upon the request of Lender, in each case, in accordance with the Loan Documents;
- (x) commission of any criminal act by any Borrower Party that results in the seizure or forfeiture of the Property or any portion thereof or interest therein;
- (xi) Borrower's failure to obtain Lender's prior consent to any Transfer set forth in Section 8.2, if such Transfer would have been permitted by the Loan Documents as of right (and without the discretionary approval of Lender), but for the failure to give notice in accordance with Section 8.2;
- (xii) Borrower's indemnification of Lender set forth in Section 9.2 and Section 9.1 of the Security Instrument;
- (xiii) the breach of any representation, warranty or covenant set forth in Section 3.1.8 or Section 4.2.6 hereof or Section 9.2 or Section 9.3 of the Security Instrument;
- (xiv) **[** IF RECYCLED SPE: the breach of any of the SPE Provisions consisting of "backward looking" representations; **]**
- (xv) subject to Section 11.22(b)(ii)(A), if Borrower or any SPC Party fails to maintain its status as an SPE in accordance with the Loan Documents;
- (xvi) any Borrower Party contests, impedes, delays or opposes the exercise by Lender of any enforcement actions, rights or remedies under the Loan Documents or applicable Legal Requirements, including the assertion by any Borrower Party of defenses (other than defenses raised in good faith) and counterclaims;

- (xvii) subject to Section 11.22(b)(ii)(M), if Borrower fails to comply with the requirements of any PIP under the Franchise Agreement (including any Replacement Franchise Agreement); or
- (xviii) if Borrower enters into, or permits Manager to enter into, any Union Agreement with respect to the Property.

(b) Notwithstanding anything to the contrary in any Loan Document, (i) Lender shall not be deemed to have waived any right which Lender may have under Section 506(a), 506(b) or 1111(b) or any other provisions of the U.S. Bankruptcy Code or any other Bankruptcy Law to file a claim for the full amount of the Debt or to require that all collateral shall continue to secure all of the Obligations in accordance with the Loan Documents, and (ii) the Debt shall be fully recourse to Borrower if any of the following occurs (each, a “**Springing Recourse Event**”): (A) Borrower or any SPC Party fails to maintain its status as an SPE in accordance with the Loan Documents and such failure is cited as a factor in a substantive consolidation of Borrower or any SPC Party with any other Person in connection with a proceeding under any applicable Bankruptcy Law; (B) Borrower or any SPC Party incurs any Indebtedness or any voluntary Lien encumbering the Property or any portion thereof or interest therein, except, in each case, to the extent expressly permitted by the Loan Documents; (C) subject to Section 11.22(a)(x), Borrower fails to obtain Lender’s prior consent to any Transfer, except to the extent expressly permitted by the Loan Documents; (D) Borrower or any SPC Party files a voluntary petition, case or proceeding under any applicable Bankruptcy Law; (E) Guarantor or any Borrower Related Party that Controls Borrower or any SPC Party files, or joins in the filing of, an involuntary petition, case or proceeding against Borrower or any SPC Party under any applicable Bankruptcy Law, or solicits or causes to be solicited petitioning creditors for any involuntary petition, case or proceeding against Borrower or any SPC Party from any Person; (F) Borrower, any SPC Party, Guarantor or any Borrower Related Party that Controls Borrower or any SPC Party files an answer consenting to or otherwise acquiescing or joining in any involuntary petition, case or proceeding filed against Borrower or any SPC Party by any other Person under any applicable Bankruptcy Law, or solicits or causes to be solicited petitioning creditors for any involuntary petition, case or proceeding against Borrower or any SPC Party from any Person; (G) Borrower, any SPC Party, Guarantor or any Borrower Related Party that Controls Borrower or any SPC Party consents to or acquiesces or joins in an application for the appointment of a Bankruptcy Official for Borrower, any SPC Party or all or any portion of the Property; (H) Borrower or any SPC Party makes an assignment for the benefit of creditors, or admits, in writing (except to Lender) or in any action or proceeding, its insolvency or inability to pay its debts as they become due; (I) any Bankruptcy Action occurs with respect to an Affiliated Tenant during the exercise by Lender of any enforcement actions, rights or remedies under the Loan Documents or applicable Legal Requirements; (J) any Borrower Party commits fraud in connection with the Loan; (K) the first full Monthly Debt Service Payment Amount is not paid when due; (L) if the Ground Lease is amended, modified or terminated without Lender’s prior written consent other than as expressly permitted by this Agreement; or (M)(1) the Franchise Agreement (or the right to operate the Property thereunder) shall (X) expire or (Y) be cancelled, surrendered, terminated or replaced by Borrower or any Affiliate of Borrower except, in each case under clause (X) or (Y), in connection with a Franchise Replacement Event effectuated in accordance with this Agreement, (2) the Franchise Agreement (or the right to operate the Property thereunder) shall be cancelled, surrendered or terminated by reason of any failure of Borrower or any Affiliate of Borrower to perform its obligations thereunder, (3) Borrower amends

the Franchise Agreement without the prior consent of Lender, (4) Borrower or any Affiliate of Borrower takes any action in furtherance of any of the foregoing, in each case without the prior consent of Lender, (5) if, in connection with any transfer of the Property to Lender (or Lender's designee) in full or partial satisfaction of the Debt, Borrower or any Affiliate of Borrower fails to take any lawful action reasonably necessary to effect the transfer of any liquor license, other licenses and permits, or any Intellectual Property owned by Borrower or any Affiliate of Borrower with respect to the Property to the transferee of the Property or its designee, (6) the hospitality license necessary to operating the Property as a hotel is suspended or revoked by the applicable Governmental Authority for any reason, or (7) the certificate of occupancy with respect to the Property is suspended or revoked by the applicable Governmental Authority for any reason.

(c) Notwithstanding anything to the contrary contained in any Loan Document, no Borrower Related Party (other than Borrower pursuant to the Loan Documents and Guarantor pursuant to the Guaranty and the Environmental Indemnity) shall have any personal liability for, nor be joined as a party to any action with respect to (i) the payment of any sum of money which is or may be payable under any Loan Document (including the repayment of the Debt) or (ii) the performance of any covenants, obligations or undertakings of Borrower or Guarantor with respect thereto.

(d) Notwithstanding anything to the contrary contained in any Loan Document, Borrower shall not have any liability hereunder or under the Environmental Indemnity (and Guarantor shall not have any liability under the Guaranty or the Environmental Indemnity) with respect to any matters, events or circumstances that first arise or occur after the date on which Lender or a Person that is not an affiliate of Borrower or Guarantor acquires title to and control of the Property, whether through foreclosure, private power of sale, the acceptance of a deed-in-lieu of foreclosure or otherwise; provided that (i) the foregoing provisions of this Section 11.22(d) shall not relieve Borrower from any liability hereunder or under the Environmental Indemnity (and shall not relieve Guarantor from any liability under the Guaranty or the Environmental Indemnity) arising from or relating to any matters, events or circumstances caused by, or at the direction of, Borrower, Guarantor or any Borrower Related Party at any time and (ii) Borrower and Guarantor shall bear the burden of proving that the applicable matters, events or circumstances that would otherwise give rise to liability hereunder or under the Guaranty or the Environmental Indemnity first arose after the date on which Lender or a Person that is not an affiliate of Borrower or Guarantor acquires title to and control of the Property.

Section 11.23. Prior Agreements. The Loan Documents contain the entire agreement of the parties hereto in respect of the Loan, and all prior agreements among or between such parties, whether oral or written, are superseded by the Loan Documents.

Section 11.24. Servicer.

(a) At the option of Lender, the Loan may be serviced by a master servicer, primary servicer, special servicer and/or trustee (any such master servicer, primary servicer, special servicer and trustee, together with its respective agents, nominees or designees, collectively, "**Servicer**") selected by Lender, and Lender may delegate all or any portion of its rights or responsibilities under the Loan Documents to Servicer pursuant to a pooling and servicing agreement, servicing agreement, special servicing agreement and/or other agreement providing for

the servicing of one or more mortgage loans (collectively, the “**Servicing Agreement**”) between Lender and Servicer. Borrower shall be responsible for any reasonable set-up fees or any other initial costs relating to or arising under the Servicing Agreement, but Borrower shall not be responsible for payment of regularly scheduled base monthly master servicing fees due to Servicer under the Servicing Agreement or any costs required to be borne by, and not reimbursable to, Servicer pursuant to the Servicing Agreement. Notwithstanding anything to the contrary contained in any Loan Document, Borrower shall be responsible for, and shall promptly pay upon demand (without duplication), (i) any costs of Servicer (including reasonable attorneys’ fees) in connection with any release of the Property, any prepayment, defeasance, assumption or amendment of the Loan, any documents or matters requested by Borrower, (ii) interest payable on advances made by Servicer, Trustee or other Persons pursuant to the Servicing Agreement with respect to delinquent debt service payments (to the extent that default interest pursuant to Section 2.2.2 and late payment charges pursuant to Section 2.3.3 actually paid by Borrower in respect of such delinquent debt service payments are insufficient to pay interest on such advances by Servicer, Trustee or such other Persons, as applicable) or costs paid by Servicer, Trustee or other Persons pursuant to the Servicing Agreement to protect or preserve the Property (including payments of Taxes, Insurance Premiums and other items (including maintenance costs, Cap Ex, tenant allowances, tenant improvement costs and leasing commissions) that are reasonably necessary to protect or preserve the Property), (iii) any special servicing fees, work-out fees, liquidation fees, operating advisor fees and other similar fees payable to Servicer, Trustee or other Persons pursuant to the Servicing Agreement, (iv) all costs (including attorneys’ fees) (A) as a result of any Default or Event of Default, (B) in connection with the enforcement of any obligations of Borrower or Guarantor under the Loan Documents, (C) as a result of the Loan becoming a specially serviced loan or (D) in connection with any refinancing, restructuring or work-out of the Loan or in connection with any Bankruptcy Action, and (v) the costs of all property inspections and/or appraisals of the Property (or any updates to any existing inspection or appraisal) that Servicer, Trustee or other Persons may be required to perform or obtain pursuant to the Servicing Agreement (other than the cost of any regular annual inspections required to be borne by, and not reimbursable to, Servicer in accordance with the Servicing Agreement). Without limiting the generality of the foregoing, Servicer shall be entitled to reimbursement of costs as and to the same extent (but without duplication) as Lender is entitled thereto under the Loan Documents.

(b) Upon notice thereof from Lender, Servicer shall have the right to exercise all rights of Lender and enforce all obligations of Borrower and Guarantor pursuant to the Loan Documents.

(c) Provided that Borrower shall have been given notice of Servicer’s address by Lender, Borrower shall deliver, or cause to be delivered, to Servicer duplicate originals of all notices and other documents and instruments, which Borrower or Guarantor may or shall be required to deliver to Lender pursuant to the Loan Documents (and no delivery of such notices or other documents and instruments by Borrower or Guarantor shall be of any force or effect unless delivered to Lender and Servicer).

Section 11.25. Joint and Several Liability. If Borrower, SPC Party and/or Guarantor consists of more than one Person, the representations, warranties, covenants, obligations and liabilities of each Borrower, each SPC Party and each Guarantor, as applicable, shall be joint and several.

Section 11.26. Creation of Security Interest. Notwithstanding anything to the contrary contained in any Loan Document, Lender may at any time grant a security interest in all or any portion of its rights under any Loan Documents (including the payments owing to it) (a) to any Federal Reserve Bank in accordance with Regulation A of the Board of Governors of the Federal Reserve System or to the central reserve bank or similar authority of any other country to secure any obligation of Lender or its affiliates to such bank or similar authority or (b) to secure any borrowing by Lender or its affiliates from any company that purchases or funds financial assets by issuing commercial paper.

Section 11.27. Set-Off. In addition to any other rights and remedies of Lender under the Loan Documents, at law or in equity, during the continuance of an Event of Default, Lender shall have the right, without prior notice to Borrower (any such notice being expressly waived by Borrower to the fullest extent permitted by Legal Requirements), upon any amount becoming due and payable by Borrower under any Loan Document, to set-off, appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by Lender or any Affiliate of Lender to or for the credit or the account of Borrower. Lender agrees to promptly notify Borrower after any such set-off, appropriation and application by Lender; provided that the failure to give such notice shall not affect the validity of such set-off, appropriation and application.

Section 11.28. Component Notes. Without in any way limiting Lender's other rights under any Loan Document (including Lender's rights under Section 9.1 and Section 11.29), Lender shall have the right, at any time and in its sole and absolute discretion, to require Borrower to execute and deliver new component notes (including senior and junior notes) to replace the original note or amend the original note to reflect multiple components of the Loan, which notes may be paid in such order of priority as may be designated by Lender, provided that (a) the aggregate principal amount of such component notes shall, on the date created, equal the Outstanding Principal Balance immediately prior to the creation of such component notes, (b) the weighted average interest rate of all such component notes shall, on the date created, equal the interest rate that was applicable to the Loan immediately prior to the creation of such component notes, and (c) the scheduled debt service payments on all such component notes shall, on the date created, equal the scheduled debt service payments under the Loan immediately prior to the creation of such component notes. Borrower shall cooperate with all reasonable requests of Lender in order to establish the component notes and shall execute and deliver, and cause to be executed and delivered, such documents as shall reasonably be required by Lender or any Rating Agency in connection therewith, all in form and substance satisfactory to Lender and the Rating Agencies (including the severance of security documents). Borrower shall pay all costs in connection with this Section 11.28; provided that, if the creation of any component notes did not occur during the continuance of an Event of Default or as a result of an Event of Default, Lender shall reimburse all reasonable third party costs incurred by Borrower in connection with this Section 11.28 (including the costs of the Rating Agencies).

Section 11.29. New Mezzanine Loan. Lender shall have the right (the "New Mezzanine Option") at any time, in its sole and absolute discretion, to divide the Loan into two or more parts: a mortgage loan (the "New Mortgage Loan") and one or more mezzanine loans (each, a "New

Mezzanine Loan”). In effectuating the foregoing, Lender will make one or more mezzanine loans to entities that own all of the direct or indirect ownership interests in Borrower (each, “**New Mezzanine Borrower**”) in the amount of the related New Mezzanine Loan; each New Mezzanine Borrower will contribute the amount of its New Mezzanine Loan, and the proceeds of any junior New Mezzanine Loan contributed to such New Mezzanine Borrower by its immediately junior New Mezzanine Borrower, to Borrower (Borrower, in its capacity as the borrower under the New Mortgage Loan, “**New Mortgage Borrower**”) or to its immediately senior New Mezzanine Borrower, as applicable; and New Mortgage Borrower will apply the contribution to pay down and reduce the Outstanding Principal Balance of the Loan to an amount equal to the principal amount of the New Mortgage Loan. In connection with the New Mezzanine Option:

(a) Lender shall have the right to establish different interest rates and debt service payments for the New Mortgage Loan and the New Mezzanine Loans and to require the payment of the New Mortgage Loan and the New Mezzanine Loans in such order of priority as may be designated by Lender; provided, that (i) the aggregate principal amount of the New Mortgage Loan and the New Mezzanine Loans shall equal the Outstanding Principal Balance immediately prior to the creation of the New Mortgage Loan and the New Mezzanine Loans, (ii) the weighted average interest rate of the New Mortgage Loan and the New Mezzanine Loans shall, on the date created, equal the interest rate that was applicable to the Loan immediately prior to the creation of the New Mortgage Loan and the New Mezzanine Loans, and (iii) the scheduled debt service payments on the New Mortgage Loan and the New Mezzanine Loans shall, on the date created, equal the scheduled debt service payments under the Loan immediately prior to the creation of the New Mortgage Loan and the New Mezzanine Loans.

(b) Each New Mezzanine Borrower shall be a single purpose, bankruptcy remote entity under the criteria established by the Rating Agencies and shall own one hundred percent (100%) of the direct ownership interests in New Mortgage Borrower or its immediately senior New Mezzanine Borrower, as applicable. The security for any New Mezzanine Loan shall include a pledge by the related New Mezzanine Borrower of one hundred percent (100%) of the direct ownership interests in New Mortgage Borrower or its immediately senior New Mezzanine Borrower, as applicable.

(c) Borrower, New Mortgage Borrower and New Mezzanine Borrowers shall cooperate with all reasonable requests of Lender in order to convert the Loan into the New Mortgage Loan and the New Mezzanine Loans and shall execute and deliver, and cause to be executed and delivered, such documents as shall reasonably be required by Lender or any Rating Agency in connection therewith, all in form and substance satisfactory to Lender and the Rating Agencies (including the delivery of non-consolidation opinion letters and amendments of organizational documents and loan documents). Borrower shall pay all costs in connection with this Section 11.29; provided that, if the creation of any New Mortgage Loan and New Mezzanine Loans did not occur during the continuance of an Event of Default or as a result of an Event of Default, Lender shall reimburse all reasonable third party costs incurred by Borrower in connection with this Section 11.29 (including the costs of the Rating Agencies).

Section 11.30. Limitation on Liability of Lender’s Officers, Employees, etc. Any obligation or liability whatsoever of Lender which may arise at any time under any Loan Document shall be satisfied, if at all, out of Lender’s interest in the Property only. No such obligation or

liability shall be personally binding upon, nor shall resort for the enforcement thereof be had to, any other asset or property of Lender or any asset or property of any of Lender's affiliates, directors, officers, employees or agents, regardless of whether such obligation or liability is in the nature of contract, tort or otherwise.

[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 as of the date first written above.

LENDER:

UBS AG

By: _____

Name:

Title:

By: _____

Name:

Title:

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS]**

BORROWER:

WHR LLC, a Hawaii limited liability company

[SIGNATURE BLOCK TO FOLLOW]

By: _____

Name:

Title:

[SCHEDULE 1.1**
DESCRIPTION OF REA **]

SCHEDULE 4.1.6(b)

SMITH TRAVEL RESEARCH REPORT

[SCHEDULE 6.8.1
REQUIRED REPAIRS **]**

[SCHEDULE 6.11.1
INITIAL PIP WORK **]**

SCHEDULE 9.1(b)

UPDATED INFORMATION

1. Any proposed program for the renovation, improvement or development of the Property, or any part thereof, including the estimated cost thereof and the method of financing to be used.
2. The general competitive conditions to which the Property is or may be subject.
3. Management of the Property.
4. Occupancy rate expressed as a percentage for each of the last five (5) years.
5. Principal businesses, occupations and professions carried on, in or from the Property.
6. Number of tenants occupying ten percent (10%) or more of the total rentable square footage of the Property, the principal business of each such tenant, and the principal provisions of the Leases with such tenants (including, but not limited to: rent per annum, expiration date, and renewal options).
7. The average effective annual rent per square foot or unit for each of the last three (3) years.
8. Schedule of the lease expirations for each of the following ten (10) years stating:
 - (a) The number of tenants whose leases will expire.
 - (b) The total area in square feet covered by such Leases.
 - (c) The annual rent represented by such Leases.
 - (d) The percentage of gross annual rent represented by such Leases.

EXHIBIT C

PROMISSORY NOTE

[\$54,000,000.00]

New York, New York
[April ____], 2023

FOR VALUE RECEIVED WHR, LLC, a Hawaii limited liability company, as maker (“**Borrower**”), having its principal place of business at 93 Banyan Drive, Hilo, Hawaii 96720, hereby unconditionally promises to pay to the order of **UBS AG**, by and through its branch office at 1285 Avenue of the Americas, New York, New York, a U.S. branch of a Swiss banking corporation, as lender (together with its successors and assigns, collectively, “**Lender**”), having an address at 1285 Avenue of the Americas, New York, New York 10019, or at such other place as the holder hereof may from time to time designate in writing, the principal amount of [**** FIFTY-FOUR MILLION AND 00/100 DOLLARS (\$54,000,000.00) ****], in lawful money of the United States of America, with interest thereon to be computed from the date of this Promissory Note (this “**Note**”) at the Interest Rate, and to be paid in accordance with the terms of this Note and that certain Loan Agreement, dated as of the date hereof, between Borrower and Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Loan Agreement**”). All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement.

ARTICLE 1: PAYMENT TERMS

Borrower agrees to pay the principal amount of this Note and interest on the unpaid principal amount of this Note from time to time outstanding at the rates and at the times specified in Article II of the Loan Agreement. The outstanding balance of the principal sum of this Note and all accrued and unpaid interest thereon shall be due and payable on the Maturity Date.

ARTICLE 2: DEFAULT AND ACCELERATION

The Debt shall without notice become immediately due and payable at the option of Lender if any payment required by this Note is not paid on or prior to the date when due or if not paid on the Maturity Date or on the happening of any other Event of Default.

ARTICLE 3: SECURITY

This Note is secured by the Security Instrument and the other Loan Documents. All of the terms, covenants and conditions contained in the Loan Documents are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein.

ARTICLE 4: SAVINGS CLAUSE

Notwithstanding anything to the contrary contained herein or in any other Loan Document, (a) all agreements between Borrower and Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed interest on account of the Debt, the interest contracted for, charged or received by Lender shall never exceed the Maximum Legal Rate, (b) in calculating whether any interest exceeds the Maximum Legal Rate, all such interest shall, to the extent permitted by applicable law, be amortized, prorated, allocated and

spread over the full amount and term of all principal indebtedness of Borrower to Lender so that the rate of interest does not exceed the Maximum Legal Rate, and (c) if through any contingency or event, Lender receives or is deemed to receive interest in excess of the Maximum Legal Rate, any such excess shall be deemed to be immediately reduced to the Maximum Legal Rate and any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Borrower to Lender, or if there is no such indebtedness, shall immediately be returned to Borrower.

ARTICLE 5: NO ORAL CHANGE; CONFLICT OF TERMS

This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of 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. In the event of any conflict between the provisions of this Note and the Loan Agreement, the provisions of the Loan Agreement shall control.

ARTICLE 6: WAIVERS

Borrower and all others who may become liable for the payment of all or any part of the Debt do hereby severally waive presentment and demand for payment, notice of dishonor, notice of intention to accelerate, notice of acceleration, protest and notice of protest and non-payment and all other notices of any kind. No release of any security for the Debt or extension of time for payment of this Note or any installment hereof, and no alteration, amendment or waiver of any provision of this Note or any other Loan Document made by agreement between Lender or any other Person shall release, modify, amend, waive, extend, change, discharge, terminate or affect the liability of Borrower or any other Person who may become liable for the payment of all or any part of the Debt under this Note or any other Loan Document. No notice to or demand on Borrower shall be deemed to be a waiver of the obligation of Borrower or of the right of Lender to take further action without further notice or demand as provided for in this Note or any other Loan Document. If Borrower is a partnership or limited liability company, the agreements herein contained shall remain in force and be applicable, notwithstanding any changes in the individuals or entities comprising the partnership or limited liability company, and the term "Borrower," as used herein, shall include any alternate or successor partnership or limited liability company, but any predecessor partnership or limited liability company and their partners or members shall not thereby be released from any liability. If Borrower is a corporation, the agreements contained herein shall remain in full force and be applicable notwithstanding any changes in the shareholders comprising, or the officers and directors relating to, the corporation, and the term "Borrower," as used herein, shall include any alternative or successor corporation, but any predecessor corporation shall not be relieved of liability hereunder. (Nothing in the foregoing two sentences shall be construed as a consent to, or a waiver of, any prohibition or restriction on transfers of interests in such partnership, limited liability company or corporation, which may be set forth in the Loan Agreement or any other Loan Document.)

ARTICLE 7: TRANSFER

Upon the transfer of this Note, Borrower hereby waiving notice of any such transfer, Lender may deliver all the collateral mortgaged, granted, pledged or assigned pursuant to the Loan Documents, or any part thereof, to the transferee who shall thereupon become vested with all the rights herein or under applicable law given to Lender with respect thereto, and Lender shall thereafter forever be relieved and fully discharged from any liability or responsibility in the matter; but Lender shall retain all rights hereby given to it with respect to any liabilities and the collateral not so transferred.

ARTICLE 8: EXCULPATION

The provisions of Section 11.22 of the Loan Agreement are hereby incorporated by reference into this Note to the same extent and with the same force as if fully set forth herein.

ARTICLE 9: GOVERNING LAW

(A) THIS NOTE WAS NEGOTIATED IN THE STATE OF NEW YORK, AND MADE BY BORROWER AND ACCEPTED BY LENDER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THIS NOTE WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE BORROWER AND LENDER AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THEM AND TO THE LOAN, AND IN ALL RESPECTS, INCLUDING MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS NOTE AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED ACCORDING TO, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY OTHER APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS NOTE, AND THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(B) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS NOTE MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, AND BORROWER WAIVES ANY OBJECTIONS THAT IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY PROCESS THAT MAY BE SERVED IN ANY SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SUCH AGENT AT SUCH ADDRESS AND NOTICE OF SUCH SERVICE DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK, AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

ARTICLE 10: NOTICES

All notices or other written communications hereunder shall be delivered in accordance with Section 11.6 of the Loan Agreement.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Borrower has duly executed this Note as of the date first written above.

BORROWER:

WHR, LLC, a
Hawaii limited liability company

By: **TOWER DEVELOPMENT INC.**, a
Hawaii corporation, its [_____]

By: _____
Name: Stuart Miller
Title: President

EXHIBIT D

WHR, LLC, a
Hawaii limited liability company, as mortgagor
(Borrower)

to

UBS AG, by and through its branch office at
1285 Avenue of the Americas, New York, New York,
a U.S. branch of a Swiss banking corporation, as mortgagee
(Lender)

**LEASEHOLD MORTGAGE, SECURITY AGREEMENT, FINANCING STATEMENT
AND FIXTURE FILING**

Dated: As of [April ____], 2023

Location: 93 Banyan Drive
Hilo, Hawaii 96720

County: Hawaii

PREPARED BY AND UPON
RECORDATION RETURN TO:

McGuireWoods LLP
1251 Avenue of the Americas, 20th Floor
New York, New York 10020
Attention: Real Estate Recording Department

THIS LEASEHOLD MORTGAGE, SECURITY AGREEMENT, FINANCING STATEMENT AND FIXTURE FILING (this “**Security Instrument**”) is made as of [April ___, 2023], by **WHR, LLC**, a Hawaii limited liability company (“**Borrower**”), having its principal place of business at 93 Banyan Drive, Hilo, Hawaii 96720, as mortgagor, for the benefit of **UBS AG**, by and through its branch office at 1285 Avenue of the Americas, New York, New York, a U.S. branch of a Swiss banking corporation (together with its successors and assigns, collectively, “**Lender**”), having an address at 1285 Avenue of the Americas, New York, New York 10019, as mortgagee.

W I T N E S S E T H:

WHEREAS, this Security Instrument is given to secure a loan (the “**Loan**”) in the original principal amount of [** **FIFTY-FOUR MILLION AND 00/100 DOLLARS (\$54,000,000.00)** **] pursuant to that certain Loan Agreement, dated as of the date hereof, between Borrower and Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Loan Agreement**”) and evidenced by that certain Promissory Note, dated the date hereof, made by Borrower to Lender (together with all extensions, renewals, replacements, restatements or modifications thereof, the “**Note**”);

WHEREAS, Borrower desires to secure the payment of the Debt (as defined in the Loan Agreement) and the performance of all of its obligations under the Note, the Loan Agreement and the other Loan Documents (as defined in the Loan Agreement);

WHEREAS, this Security Instrument is given pursuant to the Loan Agreement, and payment, fulfillment, and performance by Borrower of its obligations thereunder and under the other Loan Documents are secured hereby, and each and every term and provision of the Loan Agreement and the Note, including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Security Instrument; and

WHEREAS, all capitalized terms not defined in this Security Instrument shall have the respective meanings set forth in the Loan Agreement.

NOW THEREFORE, in consideration of the making of the Loan by Lender and the covenants, agreements, indemnities, representations and warranties set forth in this Security Instrument:

Article 1 - GRANTS OF SECURITY

Section 1.1 **PROPERTY MORTGAGED**. Borrower does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey and grant a security interest to Lender and its successors and assigns the following property, rights, interests and estates now owned, or hereafter acquired by, Borrower (collectively, the “**Property**”):

(a) Land. All leasehold estates, leasehold interests or other rights in and to that certain real property described in Exhibit A attached hereto and made a part hereof (the “**Land**”), under and in accordance with that certain ground lease more fully described on Exhibit B attached hereto and made a part hereof (together with all modifications, extensions, renewals and replacements thereof, the “**Ground Lease**”), and all rights, benefits, privileges and interests of Borrower in the Ground Lease, and all deposits, credits, options, privileges and rights of Borrower as tenant under the Ground Lease;

(b) Additional Land. All additional lands, estates and development rights hereafter acquired by Borrower for use in connection with the Land and the development of the Land or for any other use and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Security Instrument regardless of the ownership thereof (collectively, the “**Additional Land**”);

(c) Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land or the Additional Land (collectively, the “**Improvements**”);

(d) Easements and Other Beneficial Interests. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land, the Additional Land, and the Improvements (including, without limitation, those arising under and by virtue of the Ground Lease) and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Land or the Additional Land and the Improvements (including, without limitation, those arising under and by virtue of the Ground Lease) and every part and parcel thereof, with the appurtenances thereto;

(e) Equipment. All “equipment,” as such term is defined in Article 9 of the Uniform Commercial Code (as hereinafter defined), now owned or hereafter acquired by Borrower, which is used at or in connection with the Improvements or the Land or the Additional Land or is located thereon or therein (including, but not limited to, all machinery, equipment, furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired by Borrower and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto (collectively, the “**Equipment**”). Notwithstanding the foregoing, Equipment shall not include any property belonging to tenants under leases except to the extent that Borrower shall have any right or interest therein;

(f) Fixtures. All Equipment now owned, or the ownership of which is hereafter acquired, by Borrower which is so related to the Land or the Additional Land and Improvements forming part of the Property that it is deemed fixtures or real property under the law of the particular state in which the Equipment is located, including, without limitation, all building or

construction materials intended for construction, reconstruction, alteration or repair of or installation on the Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land or the Additional Land, including, but not limited to, engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, plumbing, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Borrower's interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (collectively, the "**Fixtures**"). Notwithstanding the foregoing, "Fixtures" shall not include any property which tenants are entitled to remove pursuant to leases except to the extent that Borrower shall have any right or interest therein;

(g) Personal Property. All furniture, furnishings, objects of art, machinery, goods, tools, supplies, appliances, general intangibles, contract rights, accounts, accounts receivable, franchises, licenses, certificates and permits, and all other personal property of any kind or character whatsoever (as defined in and subject to the provisions of the Uniform Commercial Code), other than Fixtures, which are now or hereafter owned by Borrower and which are located within or about the Land or the Additional Land and the Improvements, including all beds, chairs, bookcases, tables, carpeting, drapes, couches, luggage carts, luggage racks, bars, bar fixtures, radios, television sets, intercom and paging equipment, electric and electronic equipment, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air-conditioning systems, elevators, escalators, stoves, ranges, refrigerators, laundry machines, tools, machinery, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, cabinets, lockers, shelving, dishwashers, garbage disposals, washers, dryers and all other customary hotel and casino resort equipment and other tangible property owned by Borrower or in which Borrower has or shall have an interest, now or hereafter located at the Property and usable in connection with the present or future operation and occupancy of the Property, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof (collectively, the "**Personal Property**"), and the right, title and interest of Borrower in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (the "**Uniform Commercial Code**"), superior in lien to the lien of this Security Instrument and all proceeds and products of the above;

(h) Leases and Rents. All leases and other agreements affecting the use, enjoyment or occupancy of the Land or the Additional Land and the Improvements heretofore or hereafter entered into, whether before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "**Bankruptcy Code**") (collectively, the "**Leases**") and all right, title and interest of Borrower, its successors

and assigns therein and thereunder, including, without limitation, any lease guaranties, letters of credit, cash or securities deposited thereunder to secure the performance by the tenants of their obligations thereunder and all rents, additional rents, revenues, fees payable under the Leases (including, without limitation, any fees or other amounts payable in connection with the termination or cancellation of any Lease with respect to all or a portion of the space demised thereunder), issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land or the Additional Land and the Improvements whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (collectively, the “**Rents**”) and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

(i) Condemnation Awards. All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(j) Insurance Proceeds. All proceeds of and any unearned premiums on any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

(k) Tax Certiorari. All refunds, rebates or credits in connection with reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction;

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

(m) Rights. The right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Lender in the Property;

(n) Agreements. All agreements, contracts, certificates, instruments, letters of credit, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof or the Additional Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof or the Additional Land and any part thereof, and all right, title and interest of Borrower therein and thereunder, including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Borrower thereunder;

(o) Trademarks. All tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(p) Accounts. All reserves, escrows and deposit accounts maintained by Borrower with respect to the Property, including, without limitation, the Clearing Account and the Cash Management Account, together with all deposits or wire transfers made to such accounts, all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof;

(q) Letter of Credit. All letter-of-credit rights (whether or not the letter of credit is evidenced by a writing) that Borrower now has or hereafter acquires relating to the properties, rights, titles and interests referenced herein;

(r) Tort Claims. All commercial tort claims that Borrower now has or hereafter acquires relating to the properties, rights, titles and interests referenced herein;

(s) Proceeds. All proceeds of any of the foregoing, including, without limitation, proceeds of insurance and condemnation awards, whether cash, liquidation or other claims or otherwise;

(t) Ground Lease Appurtenances. All appurtenances in respect of or otherwise relating to the Ground Lease, including, but not limited to, renewal options and expansion rights, and all the estate and rights of Borrower of, in and to (i) all modifications, extensions and renewals of the Ground Lease and all rights to renew or extend the term thereof, (ii) all credits to and deposits of Borrower under the Ground Lease, (iii) all other options, privileges and rights granted and demised to Borrower under the Ground Lease, (iv) all the right or privilege of Borrower to terminate, cancel, abridge, surrender, merge, modify or amend the Ground Lease, and (v) any and all possessory rights of Borrower and other rights and/or privileges of possession, including, without limitation, Borrower's right to elect to remain in possession of the Land and the leasehold estate created by the Ground Lease pursuant to Section 365(h)(1) of the Bankruptcy Code;

(u) Ground Lease Rejection Claims. All of Borrower's claims and rights to damages and any other remedies in connection with or arising from the rejection of the Ground Lease by the lessor thereunder or any trustee, custodian or receiver of or for such lessor pursuant to the Bankruptcy Code, in the event that there shall be filed by or against such lessor any petition, action or proceeding under the Bankruptcy Code or under any similar federal or state law now or hereafter in effect; and

(v) Other Rights. Any and all other rights of Borrower in and to the items set forth in Subsections (a) through (s) above.

AND without limiting any of the other provisions of this Security Instrument, to the extent permitted by applicable law, Borrower expressly grants to Lender, as secured party, a security interest in the portion of the Property which is or may be subject to the provisions of the Uniform Commercial Code which are applicable to secured transactions; it being understood and agreed that the Improvements and Fixtures are part and parcel of the Land or the Additional Land (the Land, the Additional Land, the Improvements and the Fixtures collectively referred to as the "**Real Property**") appropriated to the use thereof and, whether affixed or annexed to the

Real Property or not, shall for the purposes of this Security Instrument be deemed conclusively to be real estate and mortgaged hereby.

Section 1.2 ASSIGNMENT OF RENTS. Borrower hereby absolutely and unconditionally assigns to Lender all of Borrower's right, title and interest in and to all current and future Leases and Rents; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of the Assignment of Leases, the Clearing Account Agreement, the Cash Management Agreement, and Section 7.1(h), Lender grants to Borrower a revocable license to collect, receive, use and enjoy the Rents. Borrower shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, for use in the payment of such sums.

Section 1.3 SECURITY AGREEMENT. This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in and to the Property. By executing and delivering this Security Instrument, Borrower hereby grants to Lender, as security for the Obligations (as hereinafter defined), a security interest in the Fixtures, the Equipment, the Personal Property and other property constituting the Property to the full extent that the Fixtures, the Equipment, the Personal Property and such other property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called the "Collateral"). If an Event of Default shall occur and be continuing, Lender, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Lender after the occurrence and during the continuance of an Event of Default, Borrower shall, at its expense, assemble the Collateral and make it available to Lender at a convenient place (at the Land or Additional Land if tangible property) reasonably acceptable to Lender. Borrower shall pay to Lender on demand any and all expenses, including reasonable legal expenses and attorneys' fees, incurred or paid by Lender in protecting its interest in and to the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence and during the continuance of an Event of Default. Any notice of sale, disposition or other intended action by Lender with respect to the Collateral sent to Borrower in accordance with the provisions hereof at least ten (10) Business Days prior to such action, shall, except as otherwise provided by applicable law, constitute reasonable notice to Borrower. The proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper. The principal place of business of Borrower (Debtor) is as set forth in the introductory paragraph of this Security Instrument and the address of Lender (Secured Party) is as set forth on in the introductory paragraph of this Security Instrument.

Section 1.4 FIXTURE FILING. Certain of the Property is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the Land or the Additional Land, described or referred to in this Security Instrument, and this Security Instrument, upon being

filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures.

Section 1.5 PLEDGES OF MONIES HELD. Borrower hereby pledges to Lender any and all monies now or hereafter held by Lender or on behalf of Lender in connection with the Loan, including, without limitation, any Reserve Funds, any sums deposited in the Clearing Account or the Cash Management Account and Net Proceeds, as additional security for the Obligations until expended or applied as provided in this Security Instrument.

CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Lender and its successors and assigns, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall well and truly pay to Lender the Debt at the time and in the manner provided in the Note, the Loan Agreement and this Security Instrument, shall well and truly perform the Other Obligations (as hereinafter defined) and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note, the Loan Agreement and the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void; provided, however, that Borrower's obligation to indemnify and hold harmless Lender pursuant to the provisions hereof shall survive any such payment or release.

Article 2 - **DEBT AND OBLIGATIONS SECURED**

Section 2.1 DEBT. This Security Instrument and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the Debt.

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

- (a) the performance of all other obligations of Borrower contained herein;
- (b) the performance of each obligation of Borrower contained in the Loan Documents; and
- (c) the performance of each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of any Loan Document.

Section 2.3 DEBT AND OTHER OBLIGATIONS. Borrower's obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively herein as the "**Obligations**."

Article 3 - **BORROWER COVENANTS**

Borrower covenants and agrees that:

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

Section 3.2 INCORPORATION BY REFERENCE. All the covenants, conditions and agreements contained in the Loan Agreement, the Note and all of the other Loan Documents are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

Section 3.3 INSURANCE. Borrower shall obtain and maintain, or cause to be maintained, in full force and effect at all times the insurance required pursuant to the Loan Agreement.

Section 3.4 MAINTENANCE OF PROPERTY. Borrower shall cause the Property to be maintained in a good and safe condition and repair. The Improvements, the Fixtures, the Equipment and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of the Fixtures, the Equipment or the Personal Property, tenant finish and refurbishment of the Improvements) without the consent of Lender. Borrower shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any Casualty or become damaged, worn or dilapidated or which may be affected by any Condemnation, and shall complete and pay for any structure at any time in the process of construction or repair on the Land or the Additional Land.

Section 3.5 WASTE. Borrower shall not commit or suffer any waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or allow the cancellation of any Policy, or do or permit to be done thereon anything that may in any way materially impair the value of the Property or the security of this Security Instrument. Borrower will not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land or the Additional Land, regardless of the depth thereof or the method of mining or extraction thereof.

Section 3.6 PAYMENT FOR LABOR AND MATERIALS. Borrower will promptly pay when due all bills and costs for Labor and Material Costs incurred in connection with the Property and never permit to exist beyond the due date thereof in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests hereof except for the Permitted Encumbrances.

Section 3.7 PERFORMANCE OF OTHER AGREEMENTS. Borrower shall observe and perform each and every term, covenant and provision to be observed or performed by Borrower pursuant to the Loan Documents and any other agreement or recorded instrument affecting or pertaining to the Property and any amendments, modifications or changes thereto.

Section 3.8 CHANGE OF NAME, IDENTITY OR STRUCTURE. Borrower shall not change Borrower's name, identity (including its trade name or names) or Borrower's limited liability, partnership, corporate or other structure without first (a) notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change, (b) taking all action required by Lender for the purpose of perfecting or protecting the liens and security interests of Lender and (c) in the case of a change in Borrower's structure, without first obtaining Lender's prior written consent. Borrower shall promptly notify Lender in writing of any change in its organizational identification number. If Borrower does not now have an organizational identification number and later obtains one, Borrower shall promptly notify Lender in writing of such organizational identification number. Borrower shall execute and deliver to Lender, prior to or contemporaneously with the effective date of any such change, any financing statement or financing statement change required by Lender to establish or maintain the validity, perfection and priority of the security interests granted herein. At the request of Lender, Borrower shall execute a certificate in form satisfactory to Lender listing the trade names under which Borrower operates or intends to operate the Property, and representing and warranting that Borrower does business under no other trade name.

Section 3.9 LETTER OF CREDIT RIGHTS. If Borrower is at any time a beneficiary under a letter of credit relating to the properties, rights, titles and interests referenced in Section 1.1 now or hereafter issued in favor of Borrower, Borrower shall promptly notify Lender thereof and, at the request and option of Lender, Borrower shall, pursuant to an agreement in form and substance satisfactory to Lender, either (i) arrange for the issuer and any confirmer of such letter of credit to consent to an assignment to Lender of the proceeds of any drawing under the letter of credit or (ii) arrange for Lender to become the transferee beneficiary of the letter of credit, with Lender agreeing, in each case that the proceeds of any drawing under the letter of credit are to be applied as provided in Section 7.2.

Article 4 - **OBLIGATIONS AND RELIANCES**

Section 4.1 RELATIONSHIP OF BORROWER AND LENDER. The relationship between Borrower and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Borrower, and no term or condition of any of the Loan Documents shall be construed so as to deem the relationship between Borrower and Lender to be other than that of debtor and creditor.

Section 4.2 NO RELIANCE ON LENDER. The general partners, officers, shareholders, members, principals and/or other beneficial owners of Borrower are experienced in the ownership and operation of properties similar to the Property, and Borrower and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Borrower is not relying on Lender's expertise, business acumen or advice in connection with the Property.

Section 4.3 NO LENDER OBLIGATIONS. (a) Notwithstanding the provisions of Sections 1.1(h) and (m) or Section 1.2, Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender pursuant to this Security Instrument or the other Loan Documents, including, without limitation, any Officer's Certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Lender.

Section 4.4 RELIANCE. Borrower recognizes and acknowledges that in accepting the Loan Documents, Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Article III of the Loan Agreement without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; that such reliance existed on the part of Lender prior to the date hereof, that the warranties and representations are a material inducement to Lender in making the Loan; and that Lender would not be willing to make the Loan and accept this Security Instrument in the absence of the warranties and representations as set forth in Article III of the Loan Agreement.

Article 5 - **FURTHER ASSURANCES**

Section 5.1 RECORDING OF SECURITY INSTRUMENT, ETC. Borrower forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the other Loan Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Lender in, the Property. Borrower will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Security Instrument, the other Loan Documents, any note, deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by applicable law so to do.

Section 5.2 FURTHER ACTS, ETC. Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with applicable law. Borrower, on demand,

will execute and deliver, and in the event it shall fail to so execute and deliver, hereby authorizes Lender to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more financing statements (including, without limitation, initial financing statements and amendments thereto and continuation statements) with or without the signature of Borrower as authorized by applicable law, to evidence more effectively the security interest of Lender in the Property. Borrower also ratifies its authorization for Lender to have filed any initial financing statements, amendments thereto and continuation statements, if filed prior to the date of this Security Instrument. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including, without limitation, such rights and remedies available to Lender pursuant to this Section 5.2. To the extent not prohibited by applicable law, Borrower hereby ratifies all acts Lender has lawfully done in the past or shall lawfully do or cause to be done in the future by virtue of such power of attorney.

Section 5.3 CHANGES IN TAX, DEBT, CREDIT AND DOCUMENTARY STAMP LAWS. (a)

If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Borrower will pay the tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of tax by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury then Lender shall have the option by written notice of not less than one hundred twenty (120) days to declare the Debt immediately due and payable.

(b) Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction shall be required by law, Lender shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable.

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

Section 5.4 SEVERING OF SECURITY INSTRUMENT. The provisions of Section 10.2(c) of the Loan Agreement are hereby incorporated by reference herein.

Section 5.5 REPLACEMENT DOCUMENTS. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other Loan Document, Borrower will issue, in lieu thereof, a replacement Note or other Loan Document, dated the date of or as of the date of, as applicable, such lost, stolen, destroyed or mutilated Note or other Loan Document in the same principal amount thereof and otherwise of like tenor.

Article 6 - **DUE ON SALE/ENCUMBRANCE**

Section 6.1 LENDER RELIANCE. Borrower acknowledges that Lender has examined and relied on the experience of Borrower and its general partners, members, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for payment of the Debt and the performance of the Other Obligations. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the payment of the Debt or the performance of the Other Obligations, Lender can recover the Debt by a sale of the Property.

Section 6.2 NO TRANSFER. Borrower shall not permit or suffer any Transfer to occur, unless specifically permitted by (and pursuant to the terms and conditions of) Article VIII of the Loan Agreement or unless Lender shall otherwise consent thereto in writing.

Article 7- **RIGHTS AND REMEDIES UPON DEFAULT**

Section 7.1 REMEDIES. Upon the occurrence and during the continuance of any Event of Default, Borrower agrees that Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

- (a) declare the entire unpaid Debt to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority;
- (d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by applicable law;
- (e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained in the Loan Documents;

(f) recover judgment on the Note either before, during or after any proceedings for the enforcement of the Loan Documents;

(g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower, any guarantor, indemnitor with respect to the Loan or of any Person liable for the payment of the Debt;

(h) the license granted to Borrower under Section 1.2 shall automatically be revoked and Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents; (v) require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower; (vi) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, Insurance Premiums and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees;

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

(j) apply any sums then deposited or held in escrow or otherwise by or on behalf of Lender in accordance with the terms of the Loan Documents to the payment of the following items in any order in its sole discretion:

- (i) Taxes and Other Charges;
- (ii) Insurance Premiums;
- (iii) Interest on the unpaid principal balance of the Note;
- (iv) Amortization of the unpaid principal balance of the Note;

(v) All other sums payable pursuant to the Loan Documents, including without limitation advances made by Lender pursuant to the terms of this Security Instrument;

(k) pursue such other remedies as Lender may have under applicable law; or

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

In the event of a sale, by foreclosure, power of sale or otherwise, of less than all of Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority.

Section 7.2 APPLICATION OF PROCEEDS. The purchase money, proceeds and avails of any disposition of the Property, and or any part thereof, or any other sums collected by Lender pursuant to the Loan Documents may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper.

Section 7.3 RIGHT TO CURE DEFAULTS. Upon the occurrence and during the continuance of any Event of Default or if Borrower fails to make any payment or to do any act as herein provided, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, make or do the same in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by applicable law), with interest as provided in this Section 7.3, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

Section 7.4 ACTIONS AND PROCEEDINGS. Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its discretion, decides should be brought to protect its interest in the Property.

Section 7.5 RECOVERY OF SUMS REQUIRED TO BE PAID. Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

Section 7.6 EXAMINATION OF BOOKS AND RECORDS. At reasonable times and upon reasonable notice, Lender, its agents, accountants and attorneys shall have the right to examine the records, books, management and other papers of Borrower which reflect upon its financial condition, at the Property or at any office regularly maintained by Borrower where the books and records are located. Lender and its agents shall have the right to make copies and extracts from the foregoing records and other papers. In addition, at reasonable times and upon reasonable notice, Lender, its agents, accountants and attorneys shall have the right to examine and audit the books and records of Borrower pertaining to the income, expenses and operation of the Property during reasonable business hours at any office of Borrower where the books and records are located. This Section 7.6 shall apply throughout the term of the Loan and without regard to whether an Event of Default has occurred or is continuing.

Section 7.7 OTHER RIGHTS, ETC. (a) The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Borrower or any guarantor or indemnitor with respect to the Loan to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Loan Documents.

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

(c) Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Security Instrument. The rights of Lender under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed

under any one provision herein to the exclusion of any other provision. Lender shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

Section 7.8 RIGHT TO RELEASE ANY PORTION OF THE PROPERTY. Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

Section 7.9 VIOLATION OF LAWS. If the Property is not in material compliance with Legal Requirements, Lender may impose additional requirements upon Borrower in connection herewith including, without limitation, monetary reserves or financial equivalents.

Section 7.10 RECOURSE AND CHOICE OF REMEDIES. Notwithstanding any other provision of this Security Instrument or the Loan Agreement, including, without limitation, Section 11.22 of the Loan Agreement, Lender and the Lender Indemnitees are entitled to enforce the obligations of Borrower, any guarantor and indemnitor contained in Sections 9.1, 9.2 and 9.3 and Section 9.2 of the Loan Agreement without first resorting to or exhausting any security or collateral and without first having recourse to the Note or any of the Property, through foreclosure or acceptance of a deed in lieu of foreclosure or otherwise, and in the event Lender commences a foreclosure action against the Property, Lender is entitled to pursue a deficiency judgment with respect to such obligations against Borrower and any guarantor or indemnitor with respect to the Loan. The provisions of Sections 9.1, 9.2 and 9.3 and Section 9.2 of the Loan Agreement are exceptions to any non-recourse or exculpation provisions in the Loan Agreement and the other Loan Documents, and Borrower and any guarantor or indemnitor with respect to the Loan are fully and personally liable for the obligations pursuant to Sections 9.1, 9.2 and 9.3 and Section 9.2 of the Loan Agreement. The liability of Borrower and any guarantor or indemnitor with respect to the Loan pursuant to Sections 9.1, 9.2 and 9.3 and Section 9.2 of the Loan Agreement is not limited to the original principal amount of the Note. Notwithstanding the foregoing, nothing herein shall inhibit or prevent Lender from foreclosing or exercising any other rights and remedies pursuant to the Loan Agreement and the other Loan Documents, whether simultaneously with foreclosure proceedings or in any other sequence. A separate action or actions may be brought and prosecuted against Borrower pursuant to Sections 9.1, 9.2 and 9.3 and Section 9.2 of the Loan Agreement, whether or not action is brought against any other Person or whether or not any other Person is joined in the action or actions. In addition, Lender shall have the right but not the obligation to join and participate in, as a party if it so elects, any administrative or judicial proceedings or actions initiated in connection with any matter addressed in the Environmental Indemnity.

Section 7.11 RIGHT OF ENTRY. Upon reasonable notice to Borrower, Lender and its agents shall have the right to enter and inspect the Property at all reasonable times.

Article 8 –**INTENTIONALLY OMITTED**

Article 9 - **INDEMNIFICATION**

Section 9.1 GENERAL INDEMNIFICATION. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Lender Indemnitees from and against any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement, punitive damages, foreseeable and unforeseeable consequential damages, of whatever kind or nature (including but not limited to reasonable attorneys' fees and other costs of defense) (collectively, the "**Losses**") imposed upon or incurred by or asserted against any Lender Indemnitees and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) ownership of this Security Instrument, the Property or any interest therein or receipt of any Rents; (b) any amendment to, or restructuring of, the Debt and any Loan Documents; (c) any and all lawful action that may be taken by Lender in connection with the enforcement of the provisions of any of the Loan Documents, whether or not suit is filed in connection with same, or in connection with Borrower, any guarantor or indemnitor and/or any partner, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding; (d) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (e) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (f) any failure on the part of Borrower to perform or be in compliance with any of the terms of this Security Instrument; (g) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (h) the failure of any person to file timely with the Internal Revenue Service an accurate Form 1099-B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions, which may be required in connection with this Security Instrument, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Security Instrument is made; (i) any failure of the Property to be in compliance with any Legal Requirements; (j) the enforcement by any Lender Indemnitee of the provisions of this Article 9; (k) any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; (l) the payment of any commission, charge or brokerage fee to anyone claiming through Borrower which may be payable in connection with the funding of the Loan; or (m) any misrepresentation made by Borrower in any Loan Document. Any amounts payable to Lender by reason of the application of this Section 9.1 shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by any of the Lender Indemnitees until paid.

Section 9.2 MORTGAGE AND/OR INTANGIBLE TAX. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Lender Indemnitees from and against any and all Losses imposed upon or incurred by or asserted against any Lender Indemnitees and directly or indirectly arising out of or in any way relating to any tax on the

making and/or recording of this Security Instrument or any of the other Loan Documents, but excluding any income, franchise or other similar taxes. Borrower hereby agrees that, in the event that it is determined that any documentary stamp taxes or intangible personal property taxes are due hereon or on any mortgage or promissory note executed in connection herewith (including, without limitation, the Note), Borrower shall indemnify and hold harmless the Lender Indemnitees for all such documentary stamp and/or intangible taxes, including all penalties and interest assessed or charged in connection therewith.

Section 9.3 ERISA INDEMNIFICATION. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Lender Indemnitees 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 that may be required, in Lender's sole discretion) that Lender may incur, directly or indirectly, as a result of a default under Sections 3.1.8 or 4.2.6 of the Loan Agreement.

Section 9.4 DUTY TO DEFEND; FEES AND EXPENSES. Upon written request by any Lender Indemnitee, Borrower shall defend such Lender Indemnitee (if requested by any Lender Indemnitee, in the name of the Lender Indemnitee) by attorneys and other professionals approved by the Lender Indemnitees. Notwithstanding the foregoing, if the defendants in any such claim or proceeding include both Borrower and any Lender Indemnitee and Borrower and such Lender Indemnitee shall have reasonably concluded that there are any legal defenses available to it and/or other Lender Indemnitees that are different from or additional to those available to Borrower, such Lender Indemnitee shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Lender Indemnitee, provided that no compromise or settlement shall be entered without Borrower's consent, which consent shall not be unreasonably withheld. Upon demand, Borrower shall pay or, in the sole and absolute discretion of the Lender Indemnitees, reimburse, the Lender Indemnitees for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

Section 9.5 ENVIRONMENTAL INDEMNITY. Simultaneously with this Security Instrument, Borrower and Guarantor have executed that certain Environmental Indemnity. The obligations of Borrower and Guarantor under the Environmental Indemnity are not part of the Debt and are not secured by this Security Instrument.

Article 10 - **WAIVERS**

Section 10.1 WAIVER OF COUNTERCLAIM. To the extent permitted by applicable law, Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with any of the Loan Documents or the Obligations.

Section 10.2 MARSHALLING AND OTHER MATTERS. To the extent permitted by applicable law, Borrower hereby waives the benefit of all appraisal, valuation, stay,

extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Borrower, and on behalf of each and every Person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all Persons to the extent permitted by applicable law.

Section 10.3 WAIVER OF NOTICE. To the extent permitted by applicable law, Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Security Instrument 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 Lender is required by applicable law to give notice, and Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Security Instrument or any of the other Loan Documents does not specifically and expressly provide for the giving of notice by Lender to Borrower.

Section 10.4 WAIVER OF STATUTE OF LIMITATIONS. To the extent permitted by applicable law, Borrower hereby expressly waives and releases to the fullest extent permitted by applicable law, the pleading of any statute of limitations as a defense to payment of the Debt or performance of the Other Obligations.

Section 10.5 SURVIVAL. The indemnifications made pursuant to Article 9 herein and the representations, warranties, covenants, and other obligations arising under the Environmental Indemnity, shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by: (a) any satisfaction, release, or other termination of this Security Instrument, (b) any assignment or other transfer of all or any portion of this Security Instrument or Lender's interest in and to the Property (but, in such case, shall benefit both the Lender Indemnitees and any assignee or transferee), (c) any exercise of Lender's rights and remedies pursuant hereto including, but not limited to, foreclosure or acceptance of a deed in lieu of foreclosure, (d) any exercise of any rights and remedies pursuant to the Loan Documents, (e) any transfer of all or any portion of the Property or any interest therein (whether by Borrower or by Lender following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), (f) any amendment to any Loan Documents, and (g) any act or omission that might otherwise be construed as a release or discharge of Borrower from the Obligations.

Article 11 - **EXCULPATION**

The provisions of Section 11.22 of the Loan Agreement are hereby incorporated by reference into this Security Instrument to the same extent and with the same force as if fully set forth herein.

Article 12 - **NOTICES**

All notices or other written communications hereunder shall be delivered in accordance with Section 11.6 of the Loan Agreement.

Article 13 - APPLICABLE LAW

Section 13.1 **GOVERNING LAW.** (A) THIS SECURITY INSTRUMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, AND MADE BY BORROWER AND ACCEPTED BY LENDER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE NOTE SECURED HEREBY WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THEM AND THE LOAN, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS SECURITY INSTRUMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT LAWS) AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS WITH RESPECT TO THE PROPERTY SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS SECURITY INSTRUMENT, AND THIS SECURITY INSTRUMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(B) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS SECURITY INSTRUMENT MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW

YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

Section 13.2 USURY LAWS. Notwithstanding anything to the contrary, (a) all agreements between Borrower and Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed interest on account of the Debt, the interest contracted for, charged or received by Lender shall never exceed the Maximum Legal Rate, (b) in calculating whether any interest exceeds the Maximum Legal Rate, all such interest shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Borrower to Lender so that the rate of interest does not exceed the Maximum Legal Rate, and (c) if through any contingency or event, Lender receives or is deemed to have received interest in excess of the Maximum Legal Rate, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Borrower to Lender, or if there is no such indebtedness, shall immediately be returned to Borrower.

Section 13.3 PROVISIONS SUBJECT TO APPLICABLE LAW. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

Article 14 - **DEFINITIONS**

Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "Borrower" shall mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "Lender" shall mean "Lender and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument," the word "Property" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees", "legal fees" and "counsel fees" shall include any and all attorneys', paralegal

and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder.

Article 15 - **MISCELLANEOUS PROVISIONS**

Section 15.1 NO ORAL CHANGE. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 15.2 SUCCESSORS AND ASSIGNS. This Security Instrument shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

Section 15.3 INAPPLICABLE PROVISIONS. If any term, covenant or condition of any Loan Document is held to be invalid, illegal or unenforceable in any respect, such Loan Document shall be construed without such provision.

Section 15.4 HEADINGS, ETC. The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 15.5 NUMBER AND GENDER. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 15.6 SUBROGATION. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property or any part of the Property, then, to the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property or any part thereof heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the payment of the Debt, the performance and discharge of Borrower's obligations under the Loan Documents and the performance and discharge of the Other Obligations.

Section 15.7 ENTIRE AGREEMENT. The Loan Documents constitute the entire understanding and agreement between Borrower and Lender with respect to the transactions arising in connection with the Debt and supersede all prior written or oral understandings and agreements between Borrower and Lender with respect thereto. Borrower hereby acknowledges that, except as incorporated in writing in the Loan Documents, there are not, and were not, and no Persons are or were authorized by Lender to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Loan Documents.

Section 15.8 LIMITATION ON LENDER’S RESPONSIBILITY. No provision of this Security Instrument shall operate to place any obligation or liability for the control, care, management or repair of the Property or any part thereof upon Lender, nor shall it operate to make Lender responsible or liable for any waste committed on the Property or any part thereof by the tenants or any other Person, or for any dangerous or defective condition of the Property or any part thereof, or for any negligence in the management, upkeep, repair or control of the Property or any part thereof resulting in loss or injury or death to any tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Lender a “mortgagee in possession.”

Article 16 – **STATE-SPECIFIC PROVISIONS**

Section 16.1 PRINCIPLES OF CONSTRUCTION. In the event of any inconsistencies between the terms and conditions of this Article 16 and the other terms and conditions of this Security Instrument, the terms and conditions of this Article 16 shall control and be binding.

Section 16.2 REMEDIES. Without limiting any other remedies available under this Security Instrument, under any of the other Loan Documents or under applicable law, following an Event of Default hereunder, Lender shall be entitled to exercise any remedies available under Hawaii Revised Statutes Chapter 667.

Section 16.3 ACKNOWLEDGEMENT. Borrower hereby acknowledges receipt, without charge, of a true copy of this Security Instrument.

Section 16.4 INSURANCE. Notwithstanding any provision in the Loan Documents to the contrary, Borrower is not required to obtain insurance from or through any particular insurer, agent or broker and is free to obtain insurance through any insurer, agent or broker licensed to do business in the State of Hawaii.

Section 16.5 BUSINESS LOAN TRANSACTION. The Loan evidenced by the Note is made for commercial purposes and the Loan is neither a consumer credit transaction nor a home business loan, as defined in Section 478-1, Hawaii Revised Statutes, as amended.

Section 16.6 SECURED OBLIGATIONS. With respect to the Property, the obligations secured by this Security Instrument shall include all amounts payable under this Security Instrument and the other Loan Documents including, without limitation, the repayment of all future advances or costs in an amount not to exceed \$108,000,000.00 (which future advances shall include, without limitation, advances to pay for such items as real property taxes, insurance premiums, ground lease rents, attorneys’ fees, or any other sums) which Lender may, but is not obligated to, make or incur in accordance with the terms of this Security Instrument or any of the other Loan Documents

Article 17- **GROUND LEASE PROVISIONS**

Section 17.1 NO MERGER OF FEE AND LEASEHOLD ESTATES; RELEASES. So long as any portion of the Debt shall remain unpaid, unless Lender shall otherwise consent, the fee title to the Land and the Leasehold Estate shall not merge but shall always be kept separate and distinct, notwithstanding the union of such estates in Borrower, Ground Lessor or in any other Person by

purchase, operation of law or otherwise. Lender reserves the right, at any time, to release portions of the Property, including, but not limited to, the Leasehold Estate, with or without consideration, at Lender's election, without waiving or affecting any of its rights hereunder or under the Note or the other Loan Documents and any such release shall not affect Lender's rights in connection with the portion of the Property not so released.

Section 17.2 BORROWER'S ACQUISITION OF FEE ESTATE. In the event that Borrower, so long as any portion of the Debt remains unpaid, shall become the owner and holder of Ground Lessor's fee interest in the portion of the Property demised pursuant to the Ground Lease, the lien of this Security Instrument shall be spread to cover such interest and such interest shall be deemed to be included in the Property. Borrower agrees, at its sole cost and expense, including without limitation, Lender's reasonable out-of-pocket attorney's fees, to (i) execute any and all documents or instruments necessary to subject the foregoing interest to the lien of this Security Instrument; and (ii) provide a title insurance policy which shall insure that the lien of this Security Instrument is a first lien on such interest. The foregoing shall not be construed to permit Borrower to acquire the aforesaid fee interest and Borrower rights to acquire additional property shall remain subject to the restrictions relating thereto contained in the Loan Agreement and the other Loan Documents.

Section 17.3 REJECTION OF THE GROUND LEASE.

(a) If the Ground Lease is terminated by Ground Lessor for any reason in the event of the rejection or disaffirmance of the Ground Lease by Ground Lessor pursuant to the Bankruptcy Code or any other law affecting creditor's rights, (i) Borrower, immediately after obtaining notice thereof, shall give notice thereof to Lender, (ii) Borrower, without the prior written consent of Lender, shall not elect to treat the Ground Lease as terminated pursuant to Section 365(h) of the Bankruptcy Code or any comparable federal or state statute or law, and any election by Borrower made without such consent shall be void and (iii) this Security Instrument and all the liens, terms, covenants and conditions of this Security Instrument shall extend to and cover Borrower's possessory rights under Section 365(h) of the Bankruptcy Code and to any claim for damages due to the rejection of the Ground Lease or other termination of the Ground Lease. In addition, Borrower hereby assigns irrevocably to Lender Borrower's rights to treat the Ground Lease as terminated pursuant to Section 365(h) of the Bankruptcy Code and to offset rents under the Ground Lease in the event any case, proceeding or other action is commenced by or against Ground Lessor under the Bankruptcy Code or any comparable federal or state statute or law, provided that Lender shall not exercise such rights and Borrower shall be permitted to exercise such rights only with the prior written consent of Lender, not to be unreasonably withheld or delayed, unless an Event of Default shall have occurred and be continuing.

(b) Borrower hereby assigns to Lender Borrower's right to reject the Ground Lease under Section 365 of the Bankruptcy Code or any comparable federal or state statute or law with respect to any case, proceeding or other action commenced by or against Borrower under the Bankruptcy Code or comparable federal or state statute or law, provided Lender shall not exercise such right, and Borrower shall be permitted to exercise such right only with the prior written consent of Lender, not to be unreasonably withheld or delayed, unless an Event of Default shall have occurred and be continuing. Further, if Borrower shall notify Lender of its intent to reject the Ground Lease, at Lender's request, to the extent not prohibited by the terms of

the Ground Lease and applicable law, Borrower shall assign its interest in the Ground Lease to Lender in lieu of rejecting the Ground Lease as described above, upon receipt by Borrower of written notice from Lender of such request together with Lender's agreement to cure any existing defaults of Borrower under the Ground Lease and to provide adequate assurance of future performance of Borrower's obligations thereunder.

(c) Borrower hereby assigns to Lender Borrower's right to seek an extension of the 60-day period within which Borrower must accept or reject the Ground Lease under Section 365 of the Bankruptcy Code or any comparable federal or state statute or law with respect to any case, proceeding or other action commenced by or against Borrower under the Bankruptcy Code or comparable federal or state statute or law, provided Lender shall not exercise such right, and Borrower shall be permitted to exercise such right only with the prior written consent of Lender, not to be unreasonably withheld or delayed, unless an Event of Default shall have occurred and be continuing. Further, if Borrower shall notify Lender of its intent to reject the Ground Lease, at Lender's request, to the extent not prohibited by the terms of the Ground Lease and applicable law, Borrower shall assign its interest in the Ground Lease to Lender in lieu of rejecting such Ground Lease as described above, upon receipt by Borrower of written notice from Lender of such request together with Lender's agreement to cure any existing defaults of Borrower under the Ground Lease and to provide adequate assurance of future performance of the applicable Borrower's obligations thereunder.

(d) Borrower hereby agrees that if the Ground Lease is terminated for any reason in the event of the rejection or disaffirmance of the Ground Lease pursuant to the Bankruptcy Code or any other law affecting creditor's rights, any Personal Property of Borrower not removed from the Property by Borrower as permitted or required by the Ground Lease, shall at the option of Lender be deemed abandoned by Borrower, provided that Lender may remove any such Personal Property required to be removed by Borrower pursuant to the Ground Lease and all reasonable out-of-pocket costs and expenses associated with such removal shall be paid by Borrower within five (5) days of receipt by Borrower of an invoice for such removal costs and expenses.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, this Security Instrument has been executed by Borrower as of the date first written above.

BORROWER:

WHR, LLC, a
Hawaii limited liability company

By: **TOWER DEVELOPMENT INC.**, a
Hawaii corporation, its [_____]

By: _____
Name: Stuart Miller
Title: President

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

On this ____ day of _____, 2023, before me personally appeared **STUART MILLER**, to me personally known or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the instrument, who, being by me duly sworn (or affirmed), did say that the person is the **PRESIDENT** of **TOWER DEVELOPMENT INC.**, a Hawaii corporation, [_____] of **WHR, LLC**, a Hawaii limited liability company and that the instrument was signed on behalf of the limited liability company by authority of its members, and **STUART MILLER** acknowledged the instrument to be the free act and deed of the limited liability company.

Description of Document: Leasehold Mortgage, Security Agreement, Financing
Statement and Fixture Filing

Date of Document: _____, 2023

No. of Pages: _____

Signature of Notary Public

(Seal)

Printed Name of Notary Public

Commission Expiration Date: _____

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT E

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail () Pickup () or Recorded Electronically ()

To:

Total Number of Pages:

Affects Certificates of Title
Nos. 106,776 and 108,763

Tax Map Key Nos.(3) 2-1-005-
013, 016, 017, 027, 032, 046
and(3) 2-1-001-012

CONSENT TO MORTGAGE OF GENERAL LEASE NO. S-5844

This Consent is dated _____ ("**Effective Date**").

CONSENT is hereby given by the STATE OF HAWAII, by the Chairperson of the Board of Land and Natural Resources ("**Lessor**"), acting pursuant to Section 171-22, Hawaii Revised Statutes, as amended, in connection with that certain State of Hawaii Department of Land and Natural Resources General Lease No. S-5844 dated January 20, 2006, recorded in the State of Hawaii Office of Assistant Registrar ("**Land Court**") as Document No. 3385990 and in the State of Hawaii Bureau of Conveyances ("**Bureau**") as Document No. 2006-021241 (the "**Lease**"), leased by Lessor to WHR LLC, a Hawaii limited liability company ("**Lessee**"), as successor in

interest to Hawaii Outdoor Tours, Inc., pursuant to that certain Quitclaim Assignment and Assumption of Ground Lease recorded in the Land Court as Document No. T-8751081 and in the Bureau as Document No. A-50990611 ("**Quitclaim Assignment**"), executed by David Farmer, duly appointed Trustee of the Bankruptcy Estate of Hawaii Outdoor Tours, Inc., in the United States Bankruptcy Court for the District of Hawaii in that certain proceeding entitled "In re Hawaii Outdoor Tours, Inc." designated as Case No. 12-02279 (Chapter 11), and which such Lease and Quitclaim Assignment were duly noted on Certificates of Title No. 106,776 and 108,763.

Lessor hereby consents to that certain Mortgage and Security Agreement dated on or about even date herewith, in substantially the form attached hereto and made a part hereof as Exhibit A and to be recorded concurrently herewith in the Bureau and in the Land Court and noted on Certificates of Title No. 106,776 and 108,763 ("**Leasehold Mortgage**"), executed by Lessee for the benefit of UBS AG, a Swiss banking corporation, by and through its Branch Office at 1285 Avenue of the Americas, New York, New York and its successors and assigns ("**Lender**"), which secures that certain loan (the "**Loan**") from Lender to Lessee, which Leasehold Mortgage encumbers the "Property" (as defined in the Leasehold Mortgage and which includes the Resort Site (as defined in the Lease), the Golf Course and Allied Facilities Site (as defined in the Lease), the buildings and the Improvements (as defined in the Leasehold Mortgage) located thereon). Lessor reaffirms the terms of the Lease with respect to the Lender named herein. Lessor acknowledges that Lessor has approved the plans and specifications for the renovation of the Improvements. The Leasehold Mortgage (as the same may be amended or modified from time to time) is an "Authorized Mortgage" under the Lease and Lender is an "Authorized Mortgagee" under the Lease.

This Consent shall serve as evidence that Lessor has received a copy of the Leasehold Mortgage and the notice address for purposes of the notices under the Lease shall be sent to Lender as follows, or such other address as may be designated by Lender in writing from time to time:

UBS AG, by and through its branch office
at 1285 Avenue of the Americas, New York, New York
1285 Avenue of the Americas
New York, New York 10019
Attention: Transaction Management - Naja Armstrong
E-mail: naja.armstrong@ubs.com

with a copy to:

UBS AG, by and through its branch office
at 1285 Avenue of the Americas, New York, New York
1285 Avenue of the Americas
New York, New York 10019
Attention: Transaction Management - Racquel Small
E-mail: racquel.small@ubs.com

with a copy to:

McGuireWoods LLP
1251 Avenue of the Americas, 20th Floor
New York, New York 10020
Attention: Dennis W. Mensi, Esq.
Email: dmensi@mcguirewoods.com

Lessor hereby confirms that:

(a) Until the Loan has been paid in full, Lessor shall not:

(i) Agree to any mutual termination or cancellation or accept any surrender of the Lease, except upon the expiration of the term of the Lease or its termination pursuant to any express provision of the Lease; or

(ii) Permit any amendment, alteration or modification of the Lease (including, without limitation, any amendment or other modification to the economic terms of the Lease, any provisions addressed in this Consent, any provisions relating to Lender's rights under the Lease, the term of the Lease and/or any material increase in Lessee's obligations or material decrease in Lessee's rights under the Lease), unless Lender has given its prior written consent to such amendment or modification, which consent shall not be unreasonably withheld and shall be deemed given if a written refusal to consent together with a written explanation of the reasons for such refusal to consent is not received from Lender within ten (10) Business Days after receipt by Lender of a written request for Lender's consent to a proposed amendment, alteration or modification.

(iii) As used herein, "Business Day" shall mean any day other than a Saturday, a Sunday or a legal holiday in the State of Hawaii or day on which national banks are not open for general business in the State of New York or in the State of Hawaii.

(b) The Loan may be transferred or assigned without the consent of Lessor and any such transferee or assignee shall also be deemed an "Authorized Mortgagee" under the Lease.

(c) Until the Loan has been paid in full, Lessor will not exercise any lien rights it may have pursuant to Section 19 of the Lease on any buildings and improvements owned or placed on the Property by Lessee, any property kept or used on the Property, or any sublease rents of the improvements and buildings located on the Property; provided, however, that the foregoing shall in no way affect Lessor's reversionary interest in the Property as a result of, among other things, expiration of the Lease term or earlier termination of the Lease.

(d) With respect to Section 20.d. of the Lease, any new ground lease entered into between Lessor and any successor Lessee, Lessor shall assign to the successor Lessee all space leases and subleases under which the tenants have attorned to Lessor (if any), or which are deemed by their terms to continue in effect, within 10 days following execution of the new ground lease.

(e) The renting of rooms in the ordinary course of Lessee's business does not constitute renting or subletting for purposes of Section 14 of the Lease.

Lessor hereby certifies that, the following statements are true and correct, recognizing that Lender and its successors and assigns will rely on such statements:

(1) As of the date of execution of this document, Lessee is the current lessee under the Lease.

(2) As of the Effective Date, the following events have occurred and remain uncured which with the passage of time and/or the giving of notice may constitute a default:

NONE.

(3) Except as set forth in Paragraph (2) above, as far as Lessor is aware, the Lessee is not in default in any respect as of this date nor has any event occurred which with the passage of time or the giving of notice would constitute a default.

(4) Except as set forth in Paragraph (2) above, there are no claims for damages, rents due, or other liability Lessor is aware of against Lessee arising out the Lease or performance of the

terms, covenants or conditions of the Lease.

(5) The Lease is in full force and effect and has not been modified, supplemented, extended or amended as of this date.

(6) As of the date hereof, no Base Rent is due from Lessee under the Lease.

(7) Base Rent has been paid through July 31, 2023. The Base Rent currently payable by Lessee under the Lease is \$580,270.44 per annum. The next installment of Base Rent, in the amount of \$290,135.22, is due on August 1, 2023. Base Rent escalates 1.5% per year, effective February 1 of each year, and will re-set in accordance with Exhibit D to the Lease as of each of February 1, 2037, February 1, 2047 and February 1, 2057.

(8) Percentage Rent due under the Lease for 2021 in the amount of \$_____ has been paid. Percentage Rent due under the Lease for 2022, in the amount of (a) two percent (2%) of the annual gross revenue from the Property minus (b) the annual Base Rent for 2022, is due not later than June 29, 2023.

(9) The term of the Lease commenced on February 1, 2006, and expires on January 31, 2071, unless sooner terminated as provided in the Lease.

(10) The proceeds of any insurance coverages maintained by Lessee shall, until the Loan has been paid in full, be paid to Lender, as the primary loss payee as contemplated by Section 20(c) of the Lease, and held by Lender for application as required pursuant to Section 42 of the Lease.

(11) If the Lease is terminated in accordance with Section 42 of the Lease, the payment of the balance owing on any mortgage loan (including, without limitation, the Loan) shall be made prior to the allocation of the insurance proceeds between Lessor and Lessee.

(12) Section 22 of the Lease does not prohibit Lessee from making a separate claim against any condemning authority for the full value of Lessee's interest in the premises demised by the Lease and the improvements thereon and the business operated thereon by Lessee.

(13) The fee and leasehold estate in the premise and improvements referenced in the Lease shall not merge, even if owned

by the same party, for so long as the Loan remains outstanding.

(14) Lessor shall, with not less than thirty (30) days' prior written notice (but not more frequently than once in any 12-month period if no default is continuing under the Lease, and not more frequently than twice in any 12-month period otherwise), deliver a certification to the then-current (or any prospective) Authorized Mortgagee, substantially in the form of items (1) through (13) above, together with such revisions as are reasonably necessary so as to make the statements set forth therein true, correct and complete.

[Signature Page to Follow]

IN WITNESS WHEREOF, the STATE OF HAWAII, by the Chairperson of the Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and these presents to be duly executed this _____ day of _____, 20____.

STATE OF HAWAII

Approved by the Chairperson of the Board of Land and Natural Resources on _____.

By _____
Chairperson
Board of Land and
Natural Resources

APPROVED AS TO FORM:

Deputy Attorney General

Dated: _____

EXHIBIT F



Colliers

The Grand Nanioloa, Hilton Double Tree

93 Banyan Drive Hilo, HI

Loan Synopsis / DLNR "D - 2" Clarifications
May 5, 2023



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Colliers

Executive Summary

The Grand Naniloa,
Hilton Double Tree

Executive Summary

Colliers



Colliers Mortgage was exclusively engaged to secure the “Cash-In Refinance” of The Grand Naniloa, Hilton Double Tree (the “Property,” or “Project”), a 388-key Upscale Full-Service Hotel located in Hilo, Hawai’i.

WHR, LLC, the “Borrower,” has owned and operated this property since they acquired it for a **\$7.258MM “Purchase Price”** in December 2013, after the previous owner “Fujiyama,” filed for bankruptcy. From 2014 – 2017 the current owner renovated the hotel and brought the property to a modernized condition, addressing all major deferred maintenance.

Additionally, WHR should receive a “Mahalo Nui” for its fantastic turnaround of the Grand Naniloa’s Zero-Net Income in 2020, then hit a record year in 2022 at \$7.8MM in Net Income.

SUMMARY: LTV: 54% | DY: 14.2% | Term: 5 YRS | Rate: 7.25% | Amort: 30 | IO: 24 MOS

COVID Lockdown

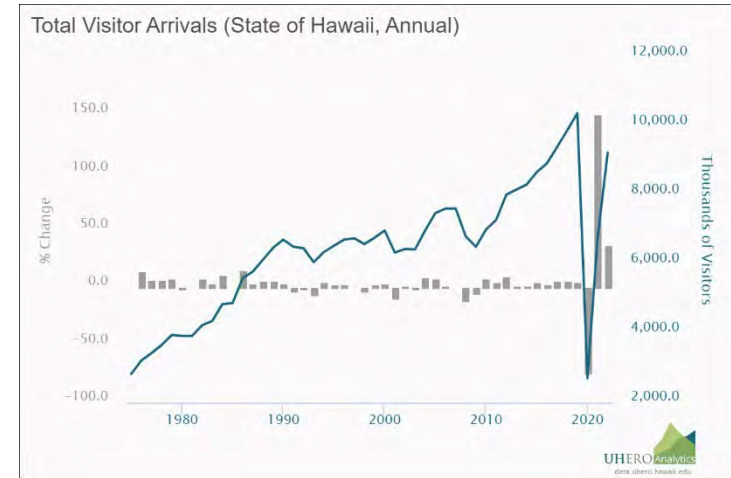
Hilo – MSA



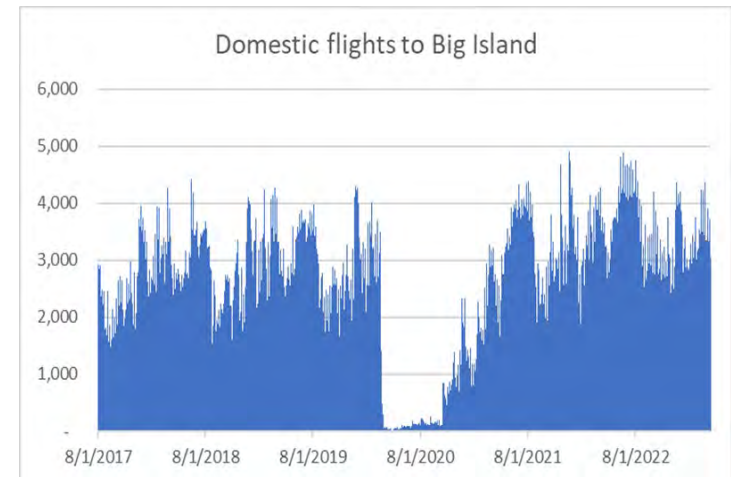
Throughout 2020-2021, the Grand Naniloa suffered immensely from Hawai'i's COVID Lockdowns. WHR began to feel the negative externalities associated with shutting down Hawai'i's tourism industry by March 2020, like everyone else affected within the hospitality industry.⁽¹⁾

WHR, LLC showed their commitment to the property by curing all outstanding late payments to the State for ground lease, past utilities, insurance payments, and behind taxes.

The Hilo, HI Hospitality MSA is exceptionally vulnerable, to begin with, one of the main reasons being the lack of available upscale lodging units within the market. Ultimately, when COVID-19 came along, it decimated Hilo's tourism industry to an abysmal state. Total Island of Hawai'i Visitor Arrivals beginning in March of 2020 and flatlined from nearly 3,500 visitors/day to 0 visitors/day.⁽²⁾



(1) [UHERO DATA Total Visitor Arrivals 1975-2022](#)



(2) <https://dbedt.hawaii.gov/visitor/dailypax-dashboard/>

Hospitality Workforce Hilo – MSA

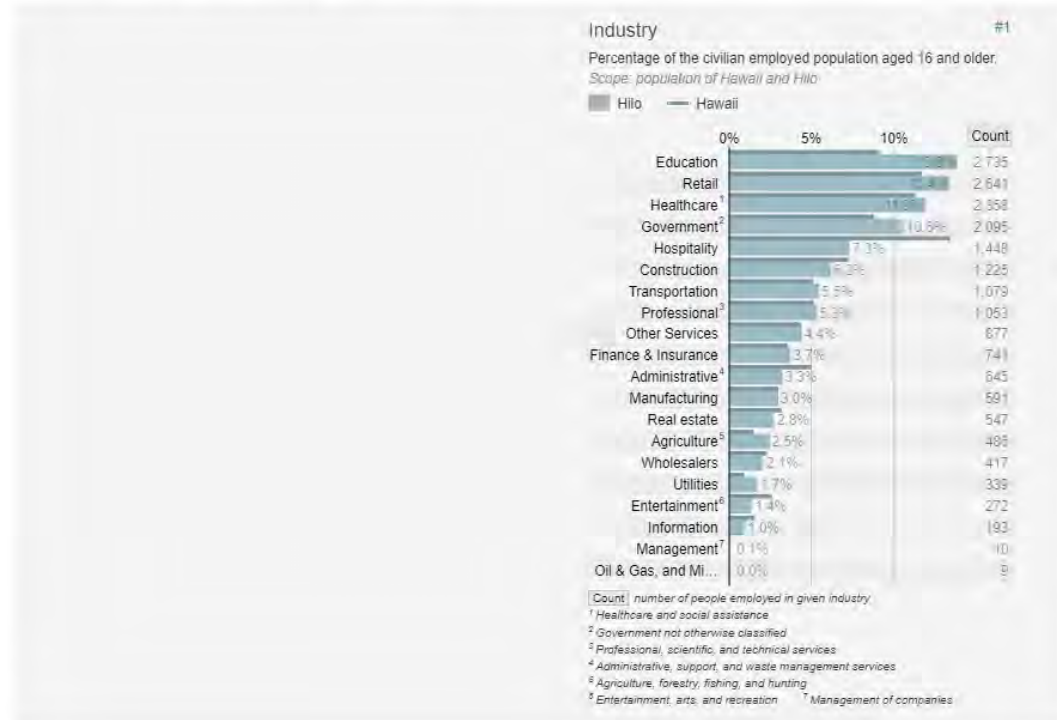


As the only major flagged hotel in Hilo, HI, The Grand Naniloa bears the most significant “Kuleana” within the Hilo hospitality sector.

The Naniloa employs **9.1%**, or **130**, of the **1,443** Hilo MSA hospitality workforce. Ultimately, this accounts for **7.3%** of the entire Hilo MSA workforce.⁽³⁾

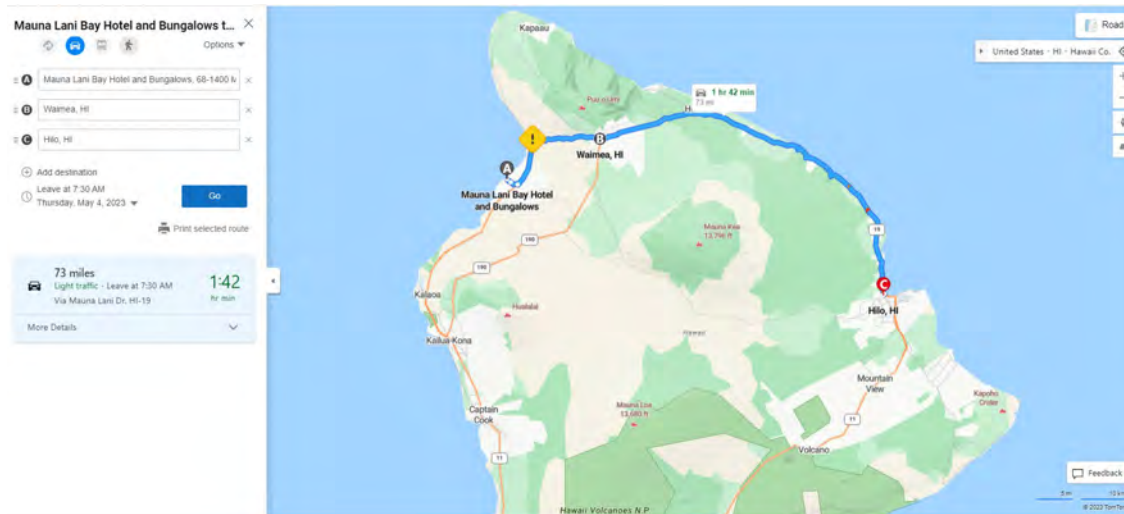
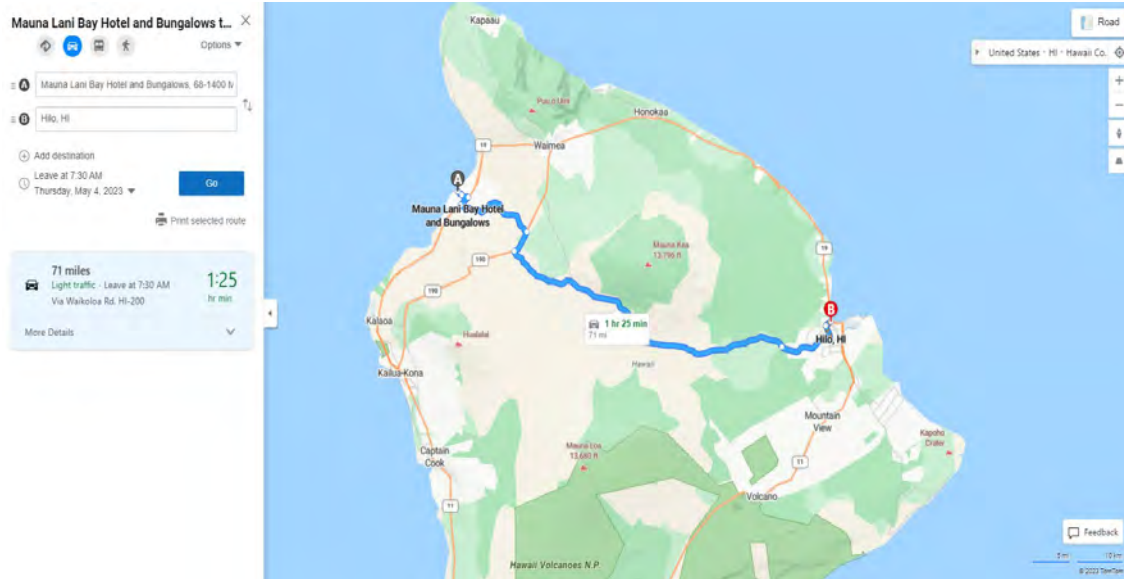
Ultimately, this makes the Grand Naniloa the most essential hospitality employer in Hilo, HI.

Industries in Hilo, Hawaii (Unincorporated Place)



(3) <https://statisticalatlas.com/place/Hawaii/Hilo/Industries#figure/industry>

Hospitality Workforce Hilo – MSA Disruption



Naniloa Shutdown Implications:

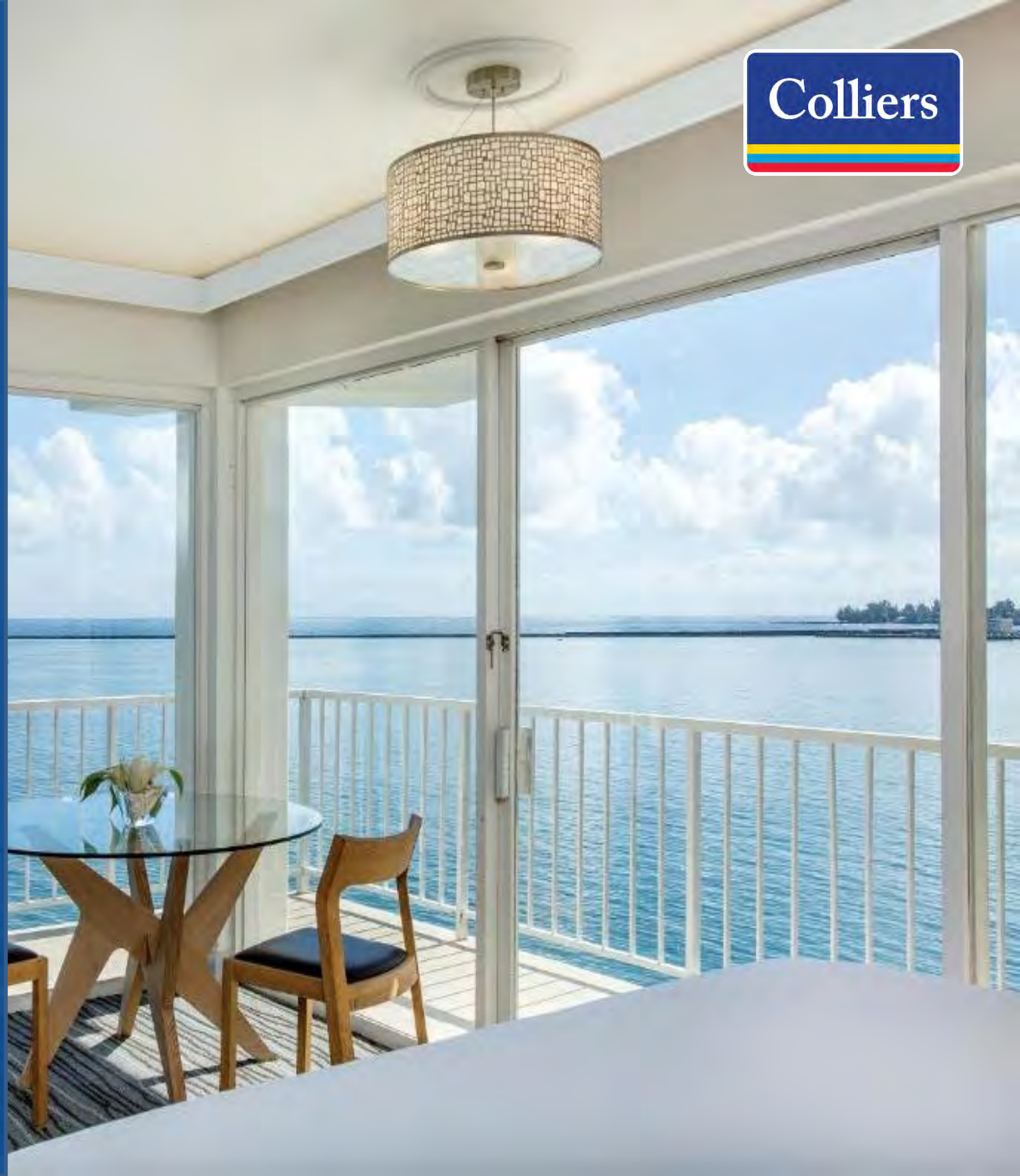
Displaced Hilo hospitality workers would likely gravitate to the next major hospitality zone, which is the Kamuela/Waikoloa MSA.

Using a hypothetical 5-days a week work-week for each employee, they would incur an additional 2 hours & 40-minute commute each day, 13 hours & 20-minutes weekly, or roughly 694-minutes a year. Accounting for all employees, that adds up to 90,110-hours displaced on commuting alone.

694 hours becomes the multiplier for each employee. Fixed costs would likely increase ranging from additional childcare costs, gasoline, and auto repair. Not to mention, the biggest travesty of all, which is the loss of family time.

CMBS Hospitality
Dynamics & Hawai'i
MSA

The Grand Naniloa,
Hilton Double Tree





Active Lodging CMBS Loans Hawai'i

- Total Active Lodging CMBS Loans Hawaii: 28
- Fixed Rate CMBS Loans: 10
- Floating Rate CMBS Loans: 18
- Term 10-Year CMBS Loans: 6
- Term 7-Year CMBS Loans: 1
- Term 5-year CMBS Loans: 10
- Term <4-year CMBS Loans: 11
- Full Term Interest Only CMBS Loans: 25
- Partial Interest Only CMBS Loans: 1
- Fully Amortizing CMBS Loans: 2
- Total Remaining CMBS Lodging Loan Amounts Hawaii: \$7.025B

⁽⁷⁾ RCA CMBS Data Extraction: <https://app.rcanalytics.com/>

Current 5-Year Term CMBS Hospitality Loans Hawai'i



Property Name	LTV	Debt Yield	Appraisal Value	Appraised Date	Cap Rate	Origination Date	Originator	Original Balance	Loan Rate%	Original Term	Rate Type	Amortization Type
Hyatt Regency Waikiki Beach Resort & Spa	51.15		782,000,000	07/18/2016	-5.84	09/13/2016	Unknown	400,000,000	4.020	60	Fixed	Interest Only
Hilton Waikoloa Village	51.20		376,500,000	09/01/2013	8.05	10/25/2013	Unknown	69,431,250	4.465	60	Fixed	Interest Only
Hilton Hawaiian Village 2nd Piece	51.20		1,899,300,000	09/01/2013	7.12	10/25/2013	Unknown	409,500,000	4.465	60	Fixed	Interest Only
Grand Wailea	48.30	12.10	1,058,000,000	03/20/2018	5.58	04/17/2018	JP Morgan/Deutsche Bank	510,500,000	5.506	60	Floating	Interest Only
Waikiki Beach Marriott Resort & Spa	48.02	7.63	700,700,000	10/03/2018	2.95	12/05/2018	Wells Fargo/Goldman Sachs/JP Morgan	336,500,000	6.017	60	Floating	Interest Only
Four Seasons Resort Hualalai	48.70	13.10	718,600,000	05/15/2018	7.40	07/03/2018	Goldman Sachs	315,000,000	6.375	60	Floating	Interest Only
Ritz-Carlton Kapalua	76.50	10.05	280,900,000	09/24/2018	5.85	11/01/2015	Goldman Sachs	215,000,000	6.094	60	Floating	Interest Only
Four Seasons Resort Hualalai Freely Prepayable	48.70	18.28	718,600,000	05/15/2018	7.40	07/03/2018	Goldman Sachs	35,000,000	6.375	60	Floating	Interest Only
Waikiki Beach Marriott Resort & Spa	42.10		522,400,000	10/10/2013	6.07	12/09/2013	JP Morgan	220,000,000	4.784	60	Floating	Interest Only

(7) RCA CMBS Data Extraction: <https://app.rcanalytics.com/>

Case Study: Newest Hotel CMBS Transaction



Queen Kapiolani Hotel

Sources and Uses

Loan Purpose	Refinance		
Sources	Amount (\$)	Uses	Amount (\$)
Whole Loan	60,300,000	Return of Equity	55,795,702
		Reserves	612,160
		Closing Costs	3,892,139
Total	60,300,000	Total	60,300,000

Source: Fitch Ratings, BANK5 2023-5YR1

Loan Details

Interest Rate (%)	6.71
Original Loan Term	60
Original Amortization Term	0
Original IO Periods	60
Seasoning (Months)	1
Amortization Type	Interest Only
Origination Date	3/8/2023
Maturity Date	3/11/2028
Maturity Balance (\$ Mil)	60.3

Source: BANK5 2023-5YR1

(8) <https://www.fitchratings.com/research/structured-finance/bank5-2023-5yr1-23-03-2023>

Newest CMBS Transaction Hawai'i

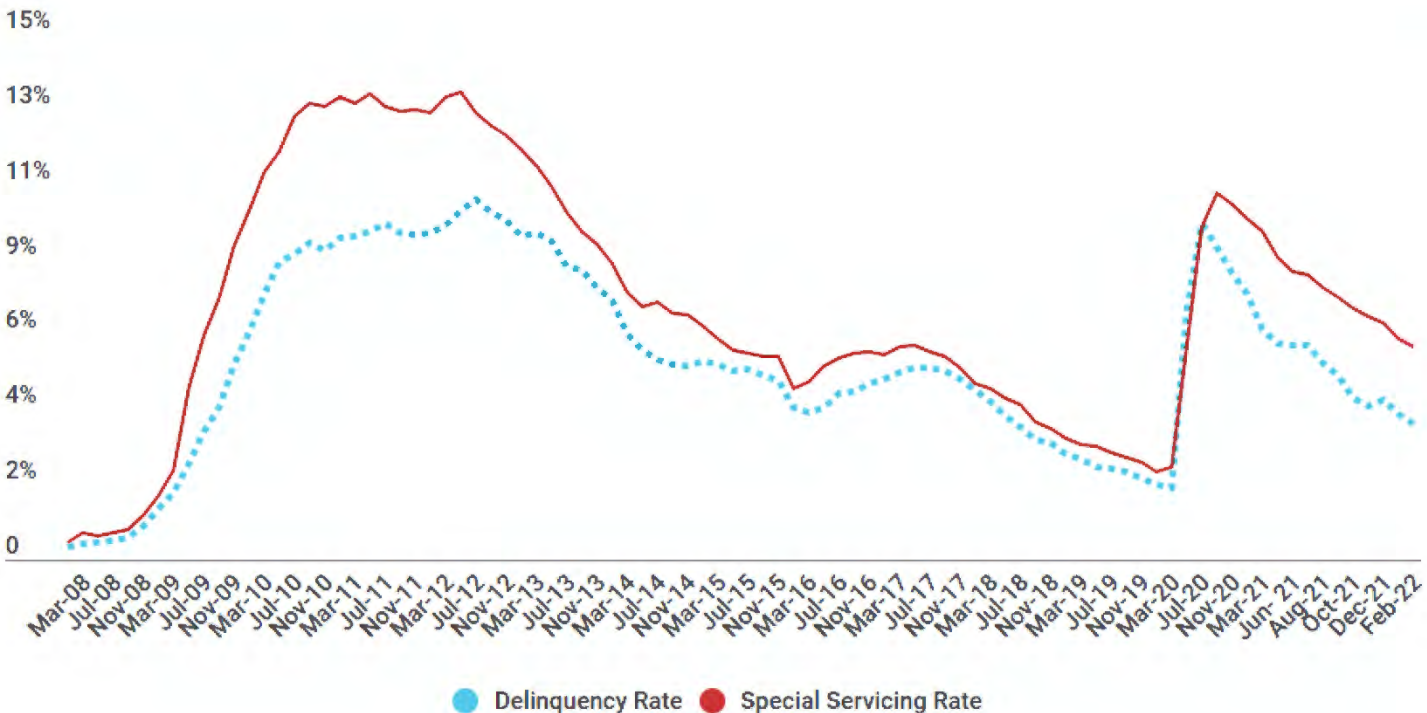
The Queen Kapiolani is currently packaged under Wells Fargo's newest 5 – year securitization that went out for presale dated March 23, 2023.

Loan Overview

- Master Servicer: Wells Fargo
- Special Servicer: CWCapital Asset MGT
- DY Range: 10% - 13.7%
- Trustee: Computershare Trust Co. N.A.
- Term: 5 – Years
- Interest Only: 5 – Years
- Max LTV bucket: 75%
- Appraisal LTV: 46%
- Acquired property Dec 2022: \$134MM
- Loan Purpose: Cash – Out Refinance
- Whole Loan: \$60.3MM
- Cash – Out: \$55.8MM
- Closing Costs: \$3.9MM
- Reserves: \$612,160
- Fee Simple or Ground Lease: Ground Lease with Cunha 'Aina, LLC



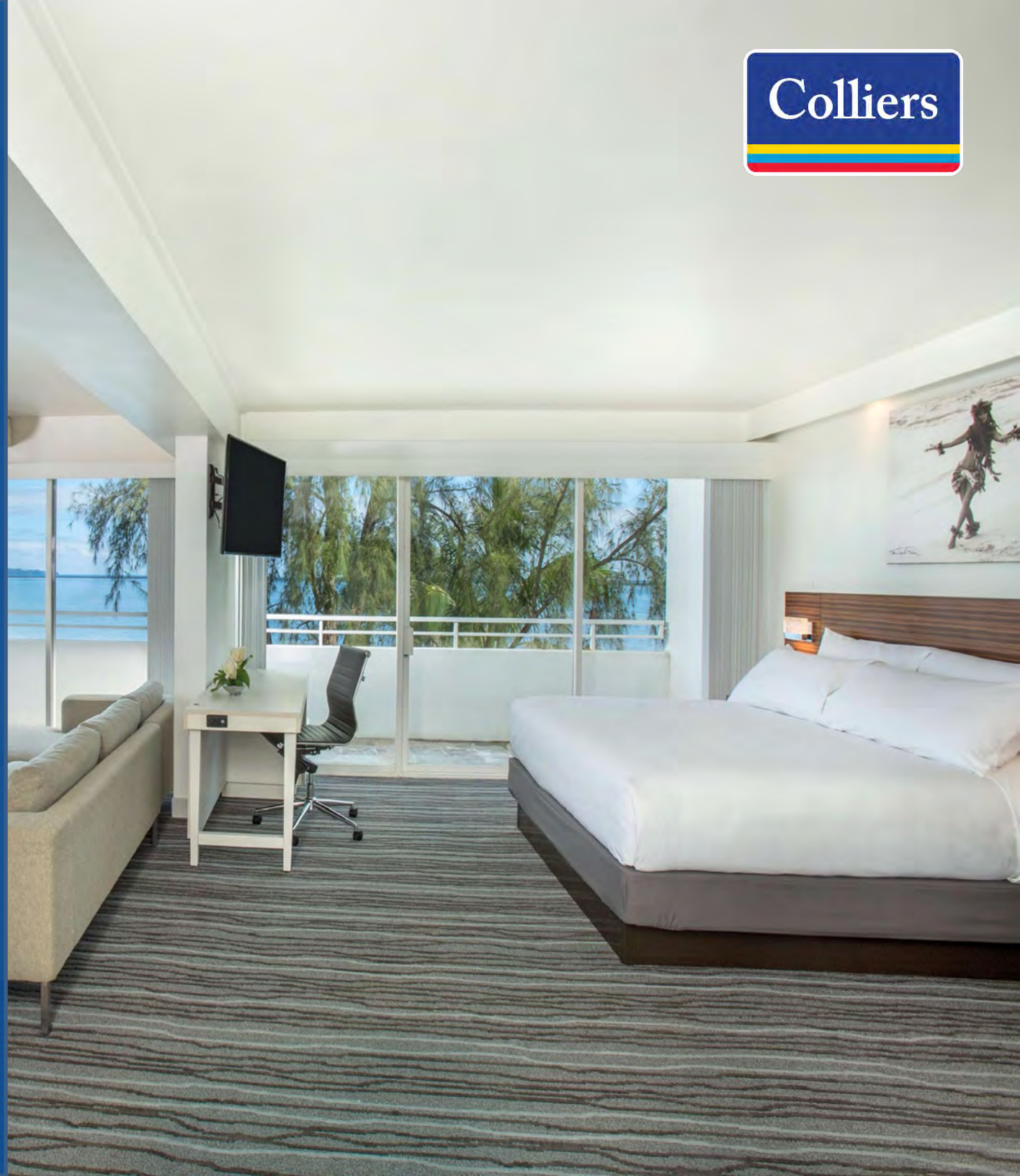
CMBS Delinquency and Special Servicing Rates
(March 2008 - February 2022)



(9) [TREPP CMBS Delinquencies 2022](#)

UBS Loan Overview

The Grand Naniloa,
Hilton Double Tree



UBS Maximum Loan Request



- **Lender:** UBS
- **Term:** 5–Year
- **DSCR:** 1.40x
- **Rate Floor:** 7.25%
- **Loan Type:** CMBS
- **Max Loan Amount:** \$54MM
- **Interest Only:** 2 – years
- **30 – Year Amortization:** 3 - years
- **UBS Loan Spread:** 3.40%
- **Designated Benchmark Index:** 5–Year SOFR SWAP
- **Rate Derivation May 5th, 2023:** (Loan Spread: **3.40%** + SWAP Index: **3.22%**) = **6.62%**
- **Today’s Rate/Floor Rate:** Floor Rate:**7.25%**

Based on the Naniloa’s **2022 T-12 Net Income of \$7.8MM**, the Naniloa can pay its future Debt Service without issue as seen below.

Additionally, having a confirmed with the most recent appraisal, we know the Naniloa also has a value of **\$94.6MM**. The State was concerned whether the property could afford the balloon. The Naniloa can easily refinance the **\$52MM “Balloon”** which puts the property at **54% Loan-to-Value** at maturity, ultimately making this a reasonable and sustainable loan.

Debt Service Floor Rate: 7.25%

- **2022 Net Income:** \$7.8MM
- **Year 1 Interest Only:** \$3,915,000
- **Year 2 Interest Only:** \$3,915,000
- **Year 3 Principle & Interest:** \$4,420,502
- **Year 4 Principle & Interest:** \$4,420,502
- **Year 5 Principle & Interest:** \$4,420,502

UBS Loan Repayability

Today's Rate: 5/5/2024



LOAN SIZING

MAX LTV	60.0%	\$56,760,000
MIN DSCR	1.40	\$63,274,000
MIN DEBT YIELD (U/W NCF)	12.50%	\$54,407,000
COSTS TO CLOSE		\$63,205,000
SIZING CONSTRAINT	MIN DEBT YIELD (U/W NCF)	\$54,407,000
LOAN TERMS		Index Cap
TERM	5 Years	0-YR
INDEX	5-YR SOFR SWAP	0.00%
INDEX RATE	3.22%	5/2/23
INDEX FLOOR	3.22%	
CREDIT SPREAD	3.40%	+/- 0.00%
SPREAD RANGE	3.40%	3.40%
Interest Rate	6.62%	
INTEREST RATE RANGE	6.62%	6.62%
TYPE	Fixed	
AMORTIZATION	30	
INTEREST ONLY PERIOD	24 Months	
LOAN CONSTANT	7.68%	
PREPAYMENT	Defeasance	

LOAN METRICS

LTV	57.5%	
DEBT YIELD (NOI)	14.09%	
DEBT YIELD (U/W NOI)	14.32%	
DEBT YIELD (U/W NCF)	12.50%	
DEBT YIELD (YEAR 1)	14.75%	
DSCR (P&I)	1.84x	
DSCR (IO)	2.13x	
ANNUAL DS (P&I)	\$4,177,035	
ANNUAL DS (IO)	\$3,600,111	
NCF AFTER DS (P&I)	\$3,491,550	
NCF AFTER DS (IO)	\$4,068,474	
LOAN ORIGINATION DATE	Feb-23	
LOAN MATURITY DATE	Jan-2028	
LOAN BALANCE @ MATURITY	\$52,498,284	\$135,305/Unit
LOAN BALANCE @ SPECIFIED DATE	\$52,020,320	Sep-2028

UBS Loan Repayability Floor Rate



LOAN SIZING

MAX LTV	60.0%	\$56,760,000
MIN DSCR	1.40	\$59,342,000
MIN DEBT YIELD (U/W NCF)	12.50%	\$54,407,000
COSTS TO CLOSE		\$63,205,000
SIZING CONSTRAINT	MIN DEBT YIELD (U/W NCF)	\$54,407,000
LOAN TERMS		Index Cap
TERM	5 Years	0-YR
INDEX	5-YR SOFR SWAP	0.00%
INDEX RATE	3.22%	5/2/23
INDEX FLOOR	3.85%	
CREDIT SPREAD	3.40%	+/- 0.00%
SPREAD RANGE	3.40%	3.40%
Interest Rate	7.25%	
INTEREST RATE RANGE	7.25%	7.25%
TYPE	Fixed	
AMORTIZATION	30	
INTEREST ONLY PERIOD	24 Months	
LOAN CONSTANT	8.19%	
PREPAYMENT	Defeasance	

LOAN METRICS

LTV	57.5%	
DEBT YIELD (NOI)	14.09%	
DEBT YIELD (U/W NOI)	14.32%	
DEBT YIELD (U/W NCF)	12.50%	
DEBT YIELD (YEAR 1)	14.75%	
DSCR (P&I)	1.72x	
DSCR (IO)	1.94x	
ANNUAL DS (P&I)	\$4,453,820	
ANNUAL DS (IO)	\$3,944,508	
NCF AFTER DS (P&I)	\$3,214,765	
NCF AFTER DS (IO)	\$3,724,077	
LOAN ORIGINATION DATE	Feb-23	
LOAN MATURITY DATE	Jan-2028	
LOAN BALANCE @ MATURITY	\$52,705,881	\$135,840/Unit
LOAN BALANCE @ SPECIFIED DATE	\$52,275,091	Sep-2028

UBS Loan Repayability

Hypothetical Rate: 9.00%



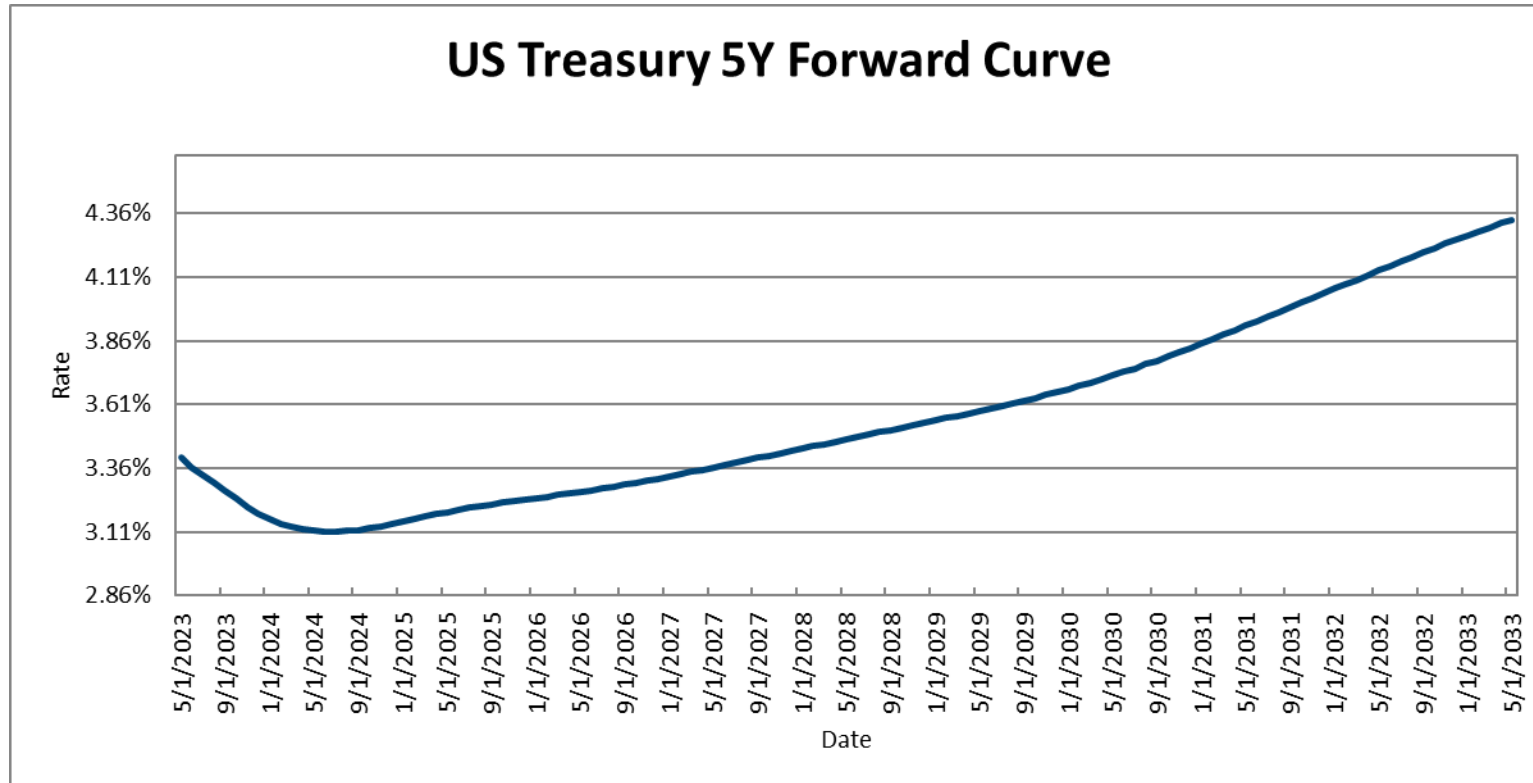
LOAN SIZING

MAX LTV	60.0%	\$56,760,000
MIN DSCR	1.40	\$50,312,000
MIN DEBT YIELD (U/W NCF)	12.50%	\$54,407,000
COSTS TO CLOSE		\$63,123,000
SIZING CONSTRAINT	MIN DSCR	\$50,312,000
LOAN TERMS		Index Cap
TERM	5 Years	0-YR
INDEX	5-YR SOFR SWAP	0.00%
INDEX RATE	3.22%	5/2/23
INDEX FLOOR	5.60%	
CREDIT SPREAD	3.40%	+/- 0.00%
SPREAD RANGE	3.40%	3.40%
Interest Rate	9.00%	
INTEREST RATE RANGE	9.00%	9.00%
TYPE	Fixed	
AMORTIZATION	30	
INTEREST ONLY PERIOD	24 Months	
LOAN CONSTANT	9.66%	
PREPAYMENT	Defeasance	

LOAN METRICS

LTV	53.2%	
DEBT YIELD (NOI)	15.24%	
DEBT YIELD (U/W NOI)	15.49%	
DEBT YIELD (U/W NCF)	13.52%	
DEBT YIELD (YEAR 1)	15.96%	
DSCR (P&I)	1.58x	
DSCR (IO)	1.69x	
ANNUAL DS (P&I)	\$4,857,861	
ANNUAL DS (IO)	\$4,528,080	
NCF AFTER DS (P&I)	\$2,810,724	
NCF AFTER DS (IO)	\$3,140,505	
LOAN ORIGINATION DATE	Feb-23	
LOAN MATURITY DATE	Jan-2028	
LOAN BALANCE @ MATURITY	\$49,181,052	\$126,755/Unit
LOAN BALANCE @ SPECIFIED DATE	\$48,885,675	Sep-2028

UBS Conditional Approval Maximum Loan Request



DLNR D-2 Clarifications

The Grand Naniloa,
Hilton Double Tree



Benchmark Index Overview: Transition to SOFR SWAPS



DLNR D-2: Page 10 Paragraph 1 & 2

“Paragraph 1: On March 3, 2023, WHR contacted staff about a new request for consent to mortgage and submitted an application for consent on March 6, 2023, but despite staff’s repeated requests, WHR has not provided sufficient information for staff to determine whether the loan terms are commercially reasonable. WHR provided a Term Sheet that indicates the loan would be from UBS AG for a 5-year term and payments for the first two years will be applied toward interest only. WHR represented in its application that the interest rate is fixed, although the Term Sheet states the interest rate is equal to:

340 basis points plus the five (5) year SOFR swap rate, as determined by Lender. However, in no event shall the interest rate be less than 7.25% per annum.

Paragraph 2: By definition, the interest rate appears to be variable because it is tied to an index that fluctuates daily. WHR’s counsel assured staff that despite this definition, the interest rate will be fixed at the time of the closing of the loan. See Exhibit 5 attached, question 3 and answer. Staff notes that if the requested consent is truly for a fixed rate loan, the SOFR should be deleted as irrelevant, because inclusion of that term makes the document ambiguous.

Correction 1: The D-2, Page-10, Paragraph-2, misinterprets the basic loan parameters presented to the Board in the Term Sheet. The fixed interest is not in dispute but is calculated based on the date of the closing of the loan and the fixed rate is equal to the formula 340 Basis Points Plus five (5) year SOFR swap rate that exists on the day of a closing. However, in no event shall the fixed interest rate be less than the rate floor of 7.25% per annum.

Correction 2: As an example, if the loan closed on 05/05/2023, the "5-year SOFR SWAP's" Index was $3.22\% + 3.40\% = 6.62\%$ for 5-years.

Correction 3: If the calculation of the interest rate is lower than 7.25%, then the formula is replaced by the minimum floor interest rate $= 7.25\%$ for 5-years

UBS's rate description: “340 Basis Points Plus five (5) year SOFR swap rate as determined by the lender. However, in no event shall the interest rate be less than 7.25% per annum.”

SWAP Definition

*“Benchmark rates such as SOFR itself are essential in trading derivatives—particularly interest-rate swaps, which corporations and other parties use to manage interest-rate risk and speculate on changes in borrowing costs. **Interest-rate swaps are agreements in which the parties exchange fixed-rate interest payments for floating-rate interest payments.** In a “vanilla” swap, one party agrees to pay a fixed interest rate, and, in exchange, the receiving party agrees to pay a floating interest rate based on the SOFR—the rate may be higher or lower than SOFR, based on the party’s credit rating and interest-rate conditions.”* ⁽⁵⁾<https://www.investopedia.com/secured-overnight-financing-rate-sofr-4683954>

“Terms Sheet” Extrapolated

- 1) UBS explicitly states that the term is **(five) years** in length.
- 2) UBS explicitly states that the Banker Spread is **3.40%**.
- 3) UBS explicitly designates the **"5-year SOFR SWAP"** as the rate index utilized in this transaction to derive the final interest rate on the day of close.
- 4) The Floor Rate is higher than today's derived rate, so the floor rate takes priority; as of today, the fixed rate is **7.25%**.
- 5) UBS explicitly states that the max Loan Amount is **\$54MM**.

There's no ambiguity, here as the **D-2 “Page 10 – Paragraph 2”** would suggest. UBS explicitly states how the fixed interest rate derives; the D-2 also acknowledges that the DLNR Land Division is aware that the rate is affixed the day the loan closes. Moreover, the transition from "LIBOR" based indices to SOFR and SOFR – based Derivatives occurred on December 31, 2021, and has been the industry standard ever since. ⁽⁴⁾<https://www.jpmorgan.com/commercial-banking/insights/the-global-move-away-from-LIBOR>

Benchmark Index Overview: Transition to SOFR SWAPS



Correction 1: The D-2 misinterprets the difference between **“SOFR” & “SOFR SWAP Rates,”** as shown below.

Illustration (3) The **“Secured Overnight Financing Rate” (SOFR)**, used for short-term/bridge loans, typically floats in unison with the Federal Funds Rate; its current value is 5.0600%.

Illustration (2) **“5-year SOFR Swap Rates,”** on the other hand, are used for deriving fixed-rate term loans; in the case of this loan, their value on May 5th, 2023, was 3.222%.

1

U.S. Treasuries				
	Current	04 May 2023	05 Apr 2023	05 May 2022
1 Year	4.740%	4.633%	4.443%	2.016%
2 Year	3.921%	3.754%	3.801%	2.694%
3 Year	3.640%	3.481%	3.576%	2.891%
5 Year	3.422%	3.296%	3.369%	2.994%
7 Year	3.426%	3.319%	3.342%	3.057%
10 Year	3.449%	3.362%	3.301%	3.034%
30 Year	3.768%	3.727%	3.559%	3.135%

On the run Treasuries, published on a 2 hour delay. Updated 05 May 2023 | 16:45 ET

2

SOFR swap rate (annual/annual)				
	Current	04 May 2023	05 Apr 2023	05 May 2022
1 Year	4.636%	4.526%	4.521%	2.269%
2 Year	3.878%	3.735%	3.817%	2.747%
3 Year	3.502%	3.369%	3.448%	2.820%
5 Year	3.222%	3.120%	3.147%	2.798%
7 Year	3.162%	3.078%	3.045%	2.799%
10 Year	3.170%	3.104%	3.016%	2.823%
15 Year	3.226%	3.183%	3.056%	2.836%
30 Year	3.053%	3.035%	2.865%	2.592%

Updated 05 May 2023 | 16:15 ET

3

Secured Overnight Financing Rate (SOFR)				
	04 May 2023	03 May 2023	04 Apr 2023	04 May 2022
SOFR	5.06000%	4.81000%	4.83000%	0.30000%
30-Day Average SOFR	4.81432%	4.81533%	4.67186%	0.28637%
90-Day Average SOFR	4.69968%	4.69687%	4.53349%	0.17615%
1-month Term SOFR	5.04345%	5.04042%	4.82805%	0.80766%
3-month Term SOFR	5.07270%	5.05947%	4.93736%	1.18070%

Updated 07 May 2023

4

Swaps – Semi-bond				
	Current	04 May 2023	05 Apr 2023	05 May 2022
1 Year	4.928%	4.821%	4.821%	2.560%
2 Year	4.166%	4.024%	4.106%	3.034%
3 Year	3.787%	3.655%	3.734%	3.104%
5 Year	3.511%	3.409%	3.433%	3.082%
7 Year	3.450%	3.366%	3.332%	3.090%
10 Year	3.458%	3.392%	3.302%	3.107%
15 Year	3.513%	3.470%	3.342%	3.122%
30 Year	3.337%	3.322%	3.151%	2.876%

Updated 05 May 2023 | 16:45 ET

5

1-month Term SOFR swap rates				
	Current	04 May 2023	05 Apr 2023	05 May 2022
1 Year	4.555%	4.451%	4.444%	2.217%
2 Year	3.824%	3.686%	3.760%	2.699%
3 Year	3.456%	3.327%	3.400%	2.775%
5 Year	3.181%	3.082%	3.105%	2.757%
7 Year	3.120%	3.040%	3.006%	2.759%
10 Year	3.127%	3.063%	2.976%	2.783%
15 Year	3.181%	3.139%	3.015%	2.797%
30 Year	3.012%	2.995%	2.828%	2.560%

Updated 05 May 2023 | 16:15 ET

6

Swaps – Monthly Money				
	Current	04 May 2023	05 Apr 2023	05 May 2022
1 Year	4.653%	4.539%	4.538%	2.402%
2 Year	3.923%	3.778%	3.860%	2.848%
3 Year	3.558%	3.425%	3.503%	2.911%
5 Year	3.289%	3.188%	3.217%	2.886%
7 Year	3.231%	3.147%	3.118%	2.890%
10 Year	3.239%	3.173%	3.090%	2.906%
15 Year	3.292%	3.250%	3.128%	2.919%
30 Year	3.121%	3.106%	2.943%	2.677%

Updated 05 May 2023 | 16:45 ET

(5) [10-Year Swap Rates, Treasuries, LIBOR, SOFR, Term...](#) | Chatham Financial

The Benefits of a 5-year Loan



DLNR D-2: Page 10 – Paragraph 3

“D-2 Statement: Page 10 – Paragraph 3: Beginning in loan year 3, payments will include principal and interest on a 30-year amortization schedule. The loan will not be paid off at the end of five years, which will result in a large balloon payment due. WHR states in its application that the balloon amount will be \$52.5 million and that it will refinance the loan at that time. See Exhibit 5, question 2 and answer. The short-term financing proposal seems intended to only “kick the can down the road” without offering a long-term solution to the financial woes of the hotel.”

Correction 1: "DLNR D-2 Page-10 Paragraph-3," misreports the fundamental differences between a "Bridge Loan/Short-Term Financing" and a "5 – year Permanent Fixed Rate Loan," which is not considered a short-term solution.

Correction 2: Experts do not consider 5-year CMBS loans to be short-term financing solutions. In fact, DLNR approved the current CMBS 5-year loan term as “reasonable.” CMBS 5-year terms are one of the most utilized fixed-rate loans for large commercial real estate deals. Furthermore, the 5-year term provides borrower flexibility while allowing the management team to closely align their internal real estate cycle within the ever-changing marketplace. Moreover, the owner can either sell the asset in 5 years or refinance the property, as there might be a need for a rehabilitation loan, thereby addressing any major issues should they arise. Additionally, this helps alleviate the potential of worrying about significant defeasance payment, which would arise from refinancing the property before the “Prepayment Penalty Period” ends, in this case, the Defeasance Period.

Correction 3: Furthermore, loans with terms of **36–24 months and less** generally are considered shorter-term loans. Short-term loans also possess unique underwriting characteristics that differ from fixed-rate loans, mainly when calculating the prepayment period. Short-term loans utilize what's known as a "**Minimum Interest Period**" vs. a **Defeasance or Yield Maintenance Period**; as the loan term ends so fast, the lender requires the borrower to hold the loan for the "minimum period" to meet their minimum IRR yield requirements. Therefore, most lenders would likely refrain from providing a loan that is too short, without origination/Exit Fees; otherwise, the cost-to-risk associated with lending more significant sums of money for shorter periods would outweigh the benefit.

Defeasance Penalty Example: 10-year Loan: Origination Date March 1, 2023; Original Loan Amount: \$54MM; Major rehabilitation needed September 1, 2028; By refinancing the loan 4.5 – years early, the borrower would have to pay a **\$7.56MM defeasance payment** to refinance their loan to perform the required rehabilitation necessary, please see on next page. Classically, newer properties without major CAPEX requirements tend to lean more toward 10 – year+ deals. However, typically older vintage assets, the 1980s and prior, which need continual improvements, utilize the flexibility of a 5-year loan to stay nimble and adjust accordingly with the property's needs.

The D-2 conveys that the Grand Naniloa's current day performance is in a state of "financial woes." However, the property's recent appraisal would suggest otherwise; ultimately, the independent assessment illustrates how the property turned the corner once Hawai'i resumed Post-COVID travel without visitor restrictions. As a result, the Naniloa is now a performing asset with an appraised value of **\$94.6MM**; from 2021 forward, the property hit another record year of performance in 2022 for the first time since the Fujiyama bankruptcy. With this type of performance and fresh equity injection, Naniloa will reposition itself with a Cash-In refinance, ultimately curing any loan penalties and pending litigation without a loss to a lender and providing a reasonable and sustainable loan instrument for a performing property.

The Benefits of a 5-year Loan



Chatham FINANCIAL

Your Defeasance Estimate

Securities cost	\$58,464,021
<i>Loan Balance at Defeasance</i>	<i>\$50,904,937</i>
<i>Defeasance Penalty</i>	<i>\$7,559,084</i>
Third Party Fees	\$78,100
Chatham Financial Fee	\$9,500
Total cost	\$58,551,621



Loan information

Original Loan Amount	\$54,000,000.00
Loan Balance on 18-Apr-2023	\$53,904,476
Interest Rate	7.25%
Amortization Type	Amortizing
Interest Rate Calculation	Actual/360
First Full Payment Date	01-Mar-2023
Final Interest Only Payment	N/A
Final Payment Date	01-Apr-2033
Amortization Months	360

Loan Servicer
Property Name

Defeasance options

Defeasance Date	06-Sep-2028
Rates As Of	17-Apr-2023
Yield Curve Shock	0 bps
Forecasted Rates	No

Chatham Financial fee

Defeasance Consulting	\$9,500
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Third-party fees

Servicer Processing	\$25,000
Servicer Legal	\$18,000
Securities Intermediary	\$7,600
Accountant	\$3,500
Successor Borrower Legal	\$6,500
Rating Agency	\$17,500

Securities cost sensitivity

The dollar value of 1 basis point (DV01) provides the amount that the Securities Cost will decrease if interest rates increase by 0.01%.

DV01	(\$22,319)
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⁽⁵⁾ <https://www.chathamfinancial.com/technology/defeasance-calculator>

DLNR D-2 Clarifications



D-2 Page 2-4 Defaults

The D-2 Page 2-4 discusses COVID Defaults.

Confirmation 1: The Naniloa cured all COVID defaults.

Explanation: Note the Receiver has explained that there have been accounting “Snafus,” see attached emails to the right. WHR, LLC hasn’t had control of the property’s banking or operations for the last 2-years. Prior to COVID-19 WHR, LLC paid their rents and expenses and were never behind on mortgage payments. When COVID Lockdowns occurred March 21, 2020, in Hawai’i, this became the catalyst for Naniloa’s troubles.

Items fall outside the current scope of WHR, LLC authority. The Court Appointed Receiver: **George Van Buren**, who also confirms that the recent misses in payment are not due to the asset’s lack of performance. Rather, the **Management Company—Evolution Mgt.** is responsible for these payments, and WHR, LLC again has no management control to attend to these matters.

Late Payments

Jordi deHoyos
To: George Van Buren

George—why are ground rents being paid late, when the property is performing?

A sixth Notice of Default was served by hand delivery February 9, 2023, for:

- Failure to keep lease rental payments current (\$290,185.22 lease rent 2/01/2023 – 7/31/2023)
- Failure to post required performance bond
- Failure to post required fire insurance policy

Aloha,

Jordi deHoyos

Re: Late Payments

George <gvb>
To: Jordi deHoyos
Mon 5:25 PM

There have been some snafus with Evolution. Merely procedural and nothing to do with not having money.

On May 8, 2023, at 2:09 PM, Jordi deHoyos <Jordi.deHoyos@colliers.com> wrote:

George—why are ground rents being paid late, when the property is performing?

<image001.png>

Aloha,



Mon 5/8/2023 2:09 PM



D-2 Page-10 Paragraph-4

*“Another issue with the Term Sheet for the proposed loan is that it expressly states that it is not an offer, commitment, or an agreement by lender to make the loan, which means the Department cannot rely on that document to reflect that actual terms and conditions of the loan or mortgage. While WHR and its counsel also provided the forms of the Loan Agreement, Promissory Note, and Leasehold Mortgage, Security Agreement, Financing Statement and Fixture Filing, these documents are not signed and **do not contain some key terms such as the interest rate.**”*

Correction 1: The initial document provided to the DLNR, in which UBS executed in originating the CMBS loan on behalf of the Naniloa is the only agreement used in CMBS loans originations until the loan closing, wherein the loan documents are executed within 3 business days of the loan closing.

Correction 2: WHR, LLC paid \$125,000 as specified in the Term Sheet to process and close the loan.

Correction 3: The **D-2 Page-10 Paragraph-2**, *“WHR’s counsel assured staff that despite this definition, the interest rate will be fixed at the time of the closing of the loan. See Exhibit 5 attached, question 3 and answer.”* illustrates that the DLNR Land Division is now aware the final interest rate locks when the loan closes.

Explanation: Ultimately, based on the initial "Terms Sheet," UBS concluded that the max loan that Naniloa could bear, based on the last 24 months of income performance, is **\$54MM**. Furthermore, it would be highly irresponsible that any bank or reputable financial institution would provide or commit to a loan without performing its due diligence, 3rd party reports, and a deep underwriting of the property's performance first and foremost—especially, real estate transactions with extra layers, such as a ground lease with the State.



D-2 Page-11 Paragraph-2

“The total due under the Wilmington Trust mortgage as of the date of the declaration was \$65,017,078.17, including principal, interest, default interest, late fees and other fees and charges. According to the Gauer Declaration, per diem interest/default interest accruing in the principal balance is \$14,463.46. The declaration also details how loans and advances were taken out of the mortgage proceeds in favor of the principals of WHR in violation of the parties' loan agreement. These defaults and others described in the Gauer Declaration led to the court's appointment of a receiver for the operation of the hotel, which continues to this day. Wilmington Trust's motion for summary judgment and a decree of foreclosure was granted on Monday, March 20, 2023...”

Correction 1: WHR, LLC assets have commitments to pay any amount above the “New UBS Loan” in order to finalize the settlement with Wilmington Trust/Rialto as condition to the consent by DLNR to the New UBS Loan. WHR, LLC's attorney is in the process of a settlement and closing of the New UBS Loan requires the settlement to be executed.



D-2 Page-11 Paragraph-2 Continued:

*"A default judgment would occur if the sales proceeds were insufficient to cover the existing debt and mortgage. **Accordingly, there seems to be an issue of whether the Naniloa is even worth the amount of the existing debt and mortgage.**"*

***Correction 1:** The full appraisal has been delivered to the DLNR Land Division and states the "Leasehold Value" as \$94.6MM.*

***Correction 2:** The Naniloa is worth 160% more than the existing debt and mortgage.*

***Correction 3:** A CMBS loan is reasonable if the Loan-to-Value (LTV) is within a reasonable range and certainly $\$54\text{MM} / \$94.6\text{MM} = 57.08\%$ LTV, which is, more than reasonable. Any expert hired by the State of Hawai'i would agree.*

***Correction 4:** The DLNR Land Division was concerned as to whether WHR would be able to pay back its "Balloon Payment" at the maturity of the loan. Utilizing the implied Balloon Payment: $\$52\text{MM} / \text{Appraisal Value: } \$94.6\text{MM} = 54\%$ LTV. Using today's value and the future balloon payment, Naniloa would still be deemed a low refinance risk at anything 60% LTV and below.*

Explanation: The DLNR Land Division received an initial shorthand appraisal snapshot on May 1st, 2023, after the owner, WHR, LLC, initially provided verbal results to the DLNR Land Division. The DLNR Land Division took exception to WHR, LLC's oral presentation and then took exception to the shorthand 4-page version provided.

The lender was accommodating and provided the full Appraisal, which concluded its assessment within 60-days of receipt. Additionally, within 4-days of receiving the shorthand copy of the Appraisal, the DLNR Land Division received the full Appraisal on May 5th, 2023.

The DLNR Land Division now knows that Naniloa is valued far above the point of contention described within the **D-2 Page-11 Paragraph-2**. In addition, the following page includes the email snips between the DLNR Land Division and WHR, LLC, corroborating the exchange timeline. Moreover, upon receipt of the full Appraisal, the DLNR Land Division implied, after misinterpreting the results, that the Appraiser utilized a fee-simple value approach for a property with a ground lease. The Appraiser decisively corrected the DLNR Land Division's assumptions in detail; we've also included their response on the next slide.

DLNR D-2 Clarifications



1. DLNR Land Division taking exception to the format, upon receiving the 4-page shorthand appraisal.

3. The Appraiser confirms their value methodology. The Appraiser also confirms that the Fee Simple Value Approach DLNR Land Division misinterpreted was in fact a moot point.

From: Tsuji, Russell Y <Russell.Y.Tsuji@hawaii.gov>
Date: Monday, May 1, 2023 at 11:42 AM
To: Ed Bushor <ed@towerdevcon.com>, Moore, Kevin E <kevin.e.moore@hawaii.gov>, Chang, Dawn <dawn.chang@hawaii.gov>
Subject: RE: Naniloa

If you want us to consider the appraised value, you will need to send us the complete appraisal report for our review and to assure of compliance with USPAP standards. Thank you.

Russell

2. Email after 4-page shorthand appraisal submission, where DLNR Land Division misinterprets the Leasehold Value, for Fee a Simple Value. Typically, an appraiser would not use a fee simple value for real estate with a ground lease.

From: Tsuji, Russell Y <Russell.Y.Tsuji@hawaii.gov>
Date: Monday, May 1, 2023 at 2:17 PM
To: Ed Bushor <ed@towerdevcon.com>, Moore, Kevin E <kevin.e.moore@hawaii.gov>, Chang, Dawn <dawn.chang@hawaii.gov>
Subject: RE: Naniloa

I'm not sure why the appraiser is valuing the leased fee interest, that's the State's interest. It appears the appraiser combined the leasehold interest and the leased fee interest to value the property in fee simple. My guess, the appraiser was instructed to do so. That is one of the reasons we require the entire appraisal report to review—to be on the look out for hypothetical or extraordinary instructions/assumptions which are red flags upon our review.

To be clear, the State does not allow lessees to mortgage the State's leased fee interest. That would be improper.

Very truly yours,

Russell Y. Tsuji
Administrator

RE: See Below

John Borean <jborean@hvs.com>
To: Jordi deHoyos
You forwarded this message on 5/2/2023 2:55 PM

Reply Reply All Forward Tue 5/2/2023 11:04 PM

Hi Jordi,

HVS appraised the combined leasehold and leased fee interest in the property, not the fee simple interest.

As clearly outlined on Page 10 (Property Rights Appraised), the leasehold interest refers to Tower Development's leasehold ownership of the Grand Naniloa. Moreover, the leased fee interest pertains to the lobby-level retail outlet and concierge desk, lower-level restaurant, and two rooftop space leases, which measure a total of 10,200 square feet.

The HVS appraisal includes projections pertaining to the ground lease payments (Page 142 and 143), which are detailed in the detailed and 10-year proformas (Page 130 and Page 131), and correlate to the cash flows in the "as is" DCF analysis on Page 150.

Hypothetical conditions and extraordinary assumptions are detailed on Pages 18 and 19, and make no mention of appraising a hypothetical fee simple interest, as DLNR seems to have implied.

Hope this helps with your response to DLNR, let me know if there's anything else we can provide. Thanks!

John Borean | 白健儀
Senior Vice President
Hawaii & Northern California Region Leader
HVS

4. Within 4-days of the DLNR Land Division taking exception to the shorthand appraisal, the DLNR Land Division was provided with the full version.

Confidential Financial Information of Lessee - Naniloa Appraisal

Ed Bushor <ed@towerdevcon.com>
To: Russell.Y.Tsuji@hawaii.gov; Chang, Dawn; Kevin Moore
You forwarded this message on 5/4/2023 3:57 PM

Reply Reply All Forward Thu 5/4/2023 3:29 PM

HVS Appraisal - Grand Naniloa, a DoubleTree by Hilton - Hilo, HI - 04.20.23.pdf
5 MB



D-2 Page-11 Paragraph-2

“Staff has many of the same concerns that were conveyed to the Board when the 2022 mortgage consent was under consideration; and now, even more concerns. If WHR is unable to meet its monthly payment obligations or pay off the balloon due at the end of the 5-year term of the loan, the mortgage will end up in foreclosure again, which will likely result in ownership of the lease changing hands in a way that does not require Board consent.”

Correction 1: Staff should have no similar concerns as any expert would understand that the 2022 “Bridge Loan” is not similar in way whatsoever to the new CMBS loan. This CMBS loan is not a “Bridge Loan,” and Staff should have disclosed the difference to the Board.

Correction 2: While the bridge loan was a decisive way forward, it was during a time that 2022 Net Income was unknown. Thus, that bridge likely reasonable given the time period of the Consent Request Submittal. It would have been the only solution at such time to cure the foreclosure and would have allowed for the foreclosure taint to be removed from the property allowing for a **\$95MM-\$110MM** sale/refinance.

Correction 3: UBS is a robust and reputable Banking Institution, even during trying times in the marketplace. The targeted fixed rate is approximately **7.25%**, which mandates the Board to know this is loan is reasonable and sustainable. WHR can easily pay the debt service.

Correction 4: Ultimately, the current **\$54MM** max loan request is lower leverage than **2022’s** request at **\$62MM**. If one of the State’s main concerns is over-encumbering State lands with excessive debt, it should be welcomed news that WHR, LLC found a solution where the new max loan request is effectively **13%** lower than the previous request, making this more than reasonable.

Correction 5: UBS also sets a conservative **Debt Service Coverage Ratio (DSCR) at 1.40x**; meaning that the maximum debt service payment the property could afford is 1.40x less than the annual income. Russell Tsuji’s states at BLNR Meeting **“6-09-2022”** time stamped **“7:23:00”** that the DLNR Land Division would consider a **DSCR of 1.25x** as reasonable for commercial real estate underwriting. Meeting Link: <https://youtu.be/0lbQ5HzKkUI?t=26563>



D-2 Page-11 Paragraph-2

Another concern staff has about the loan is an unusual provision in the Loan Agreement for "New Mezzanine Loans." Apparently, UBS AG, as the lender, has the right to unilaterally divide the mortgage/loan to another new mortgage/loan and other mezzanine loans at the "rate" and "debt service" or payments as provided for in the loan documents, but other terms and conditions of the loan and new mortgage appear to be at the discretion of the UBS AG to decide, including but not limited to the amortization rate, the accrual of interest due at maturity (if any), partial or full interest-only, etc. Staff has concerns about the Board consenting to the current mortgage request because the Board may be barred from later raising an objection to any such new or mezzanine loan with different terms and conditions as aforesaid that would encumber State public trust lands. WHR responded that any such mortgage would still require consent as required by the State lease. See Exhibit 2, question 7 and answer. However, staff's concerns have not been allayed.

Correction 1: The D-2, misinterprets the "Terms Sheet" & UBS's reference or ability to create one of the many available CMBS structures for an individual property's needs.

Correction 2: The UBS Term's sheet clearly states that "**Additional Financing**" is not permitted. WHR agrees that at no time has there been a Mezzanine loan underwritten in connection with this term sheet. WHR agrees that Board's consent may condition that no additional financing is permitted in connection with the New UBS Loan/Term Sheet.



2018 Wells Fargo Loan Mezzanine Option: Also, please see below, the snip was pulled from the original Wells Fargo Loan Agreement 2018. The BLNR approved this loan back in 2018, and the language regarding “Mezzanine Rights,” is nearly identical. At no point has WHR, LLC ever put a second lien on State Lands without prior consent.

Section 11.6 Mezzanine Option.

Lender shall have the option (the “**Mezzanine Option**”) at any time to divide the Loan into two parts, a mortgage loan and a mezzanine loan, provided, that (i) the total loan amounts for such mortgage loan and such mezzanine loan shall equal the then outstanding amount of the Loan immediately prior to Lender’s exercise of the Mezzanine Option, and (ii) the weighted average interest rate of such mortgage loan and mezzanine loan shall equal the Interest Rate (other than in connection with prepayments, default interest, late charges and other, similar charges already referenced in the Loan Documents). Borrower shall, at Borrower’s sole cost and expense (not to exceed \$15,000), cooperate with Lender in Lender’s exercise of the Mezzanine Option in good faith and in a timely manner, which such cooperation shall include, but not be limited to, (i) executing such amendments to the Loan Documents and Borrower or any SPE Component Entity’s organizational documents as may be reasonably requested by Lender or requested by the Rating Agencies, (ii) creating one or more Single Purpose Entities (the “**Mezzanine Borrower**”), which such Mezzanine Borrower shall (A) own, directly or indirectly, 100% of the equity ownership interests in Borrower (the “**Equity Collateral**”), and (B) together with such constituent equity owners of such Mezzanine Borrower as may be designated by Lender, execute such agreements, instruments and other documents as may be required by Lender in connection with the mezzanine loan (including, without limitation, a promissory note evidencing the mezzanine loan and a pledge and security agreement pledging the Equity Collateral to Lender as security for the mezzanine loan); and (iii) delivering such opinions, title endorsements, UCC title insurance policies and other materials as may be required by Lender or the Rating Agencies.

Page 107 Original Wells Fargo Loan Agreement



D-2 Page-12 Paragraph-2&3

“ Paragraph 2: The loan is not sustainable and WHR has not shown the ability to pay off the loan at maturity. Staff suspects WHR seeks approval of this loan and mortgage that is substantially short of paying off the existing \$65 million plus attorneys' fees and costs to somehow be used later against Wilmington Trust in the foreclosure action or as a weapon in bankruptcy court by seeking a cramdown order against Wilmington Trust. Staff does not believe interjecting the State into this loan dispute or lawsuit between the WHR and the Wilmington Trust is good public policy. Significant public trust assets are at stake. Staff does not believe it is appropriate to allow the leveraging or mortgaging of a public trust asset involving ceded lands to fund a "settlement" involving the WHR and its owners and the Wilmington Trust where the allegations are more than the delinquency and collection of a debt. Here, an auditor found among other improprieties, evidence of significant self-dealing between WHR and its affiliates at a time when loan was in default and no payments were being made to Wilmington Trust; the diversion of hotel revenues for other uses away from hotel operations and in violation of the express terms of the loan documents.

Paragraph 3: In other words, WHR is seeking not only a bailout of its monetary default under the mortgage, but a bailout of Mr. Bushor and other WHR affiliates who allegedly funneled hotel revenues away from payment of the debt service on the Washington Mutual/Wilmington Trust mortgage, instead directing the funds to WHR affiliates. In staff's view, the State should avoid any action that would give the appearance of ratifying the alleged actions of WHR and its affiliates in this case. Based on the foregoing, staff therefore recommends denial of the March 2023 mortgage consent request.”

Correction 1: The **D-2 Page-12 Paragraph-2** falsely asserts that the loan request is unsustainable. The two most important factors of sustainability have been ignored in the report: 1) The net income of the property at \$7.8MM easily pays the loan payments, which equals sustainability; 2) The appraisal of \$94.6MM easily supports that property could be sold at maturity and pay \$52MM is only 54% LTV based on today's value, which also equals sustainability.

Correction 2: There is no dispute that every expert in the financial industry would agree, that income of \$7.8MM and the appraised value of \$94.6MM, mandates the conclusion that the New UBS Loan is more than reasonable and the Naniloa can easily sustain this New UBS Loan.

Final Thoughts



Our scope of research extended back through the previous **6 – years of operations**, pre & post-renovation. Additionally, we have had the opportunity to walk the entire asset front & back of the house and meet many current staff working day-to-day operations. As a result, the conclusion is that without the advent of COVID-19, the Grand Naniloa would likely have never gone into default in the first place.

Moreover, after its major renovation, The Naniloa's performance turned the corner entirely post-bankruptcy 2013. However, it wasn't until 2020, amid Hawai'i's complete shutdown, which provided the only major catalyst uncovered, which truly stifled Naniloa's newfound ascent.

After reviewing BLNR's meeting minutes from the 2013 agenda regarding the bankruptcy of the Naniloa, a board member asked the Chapter 11 Trustee one question: *"Has the Naniloa ever been profitable, monthly or annually?"* Based on the Trustee's answer, during ownership *"Circa Fujiyama,"* the Naniloa, up to that point, had never been a profitable business within the Hilo – MSA. "

Upon WHR, LLC taking control of the helm, they rehabbed and modernized the Naniloa from 2014-2017; from 2017 forward, the Naniloa has shown steady progress and has ultimately set the tone for Banyan Drive. Several remaining improvements would take the Grand Naniloa to the next level, from the "Polynesian Room" to the "Naniloa Pool Club," which several Hilo residents have expressed they would love to see back in action.

Banyan Drive's current condition is disheartening, and it has a long way to go before achieving its full market potential. The region has several significant issues that need to be addressed, from condemned buildings to the gall wasps wreaking havoc on the iconic Banyans that line the drive itself. The Naniloa is the single most significant driving force and within the Hilo hospitality MSA.

Again, the hotel currently employs nearly **10% of Hilo's entire hospitality workforce**; moreover, the Grand Naniloa is also very important to its employees and their families, who would otherwise **commute more than 3.4 hours a day** to reach the next closest hospitality zone in Kamuela / Waikoloa.

After reviewing Naniloa's present performance, CMBS lending dynamics in the Hawai'i MSA, & the proposed 5-year loan refinance on behalf of UBS, Colliers Mortgage has deduced that the loan request is a reasonable loan by current-day CMBS Underwriting standards. Furthermore, it's a viable low-cost option that The Naniloa can repay without accounting for future income growth. Overall, this is the best finance option available by a significant & reputable Banking Institution and will help reposition The Naniloa to move forward as a high-performing property for the first time in its history.





Accelerating success.

Our mission

Maximize the potential of property to accelerate the success of our clients and our people.

Advisor

JORDI DEHOYOS
Vice Président
+1 808 345 4177
Jordi.deHoyos@colliers.com

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EXHIBIT G

April 11, 2023

VIA EMAIL

Michael L. Lam, Esq.
Case Lombardi, a Law Corporation
Pacific Guardian Center, Mauka Tower
737 Bishop Street, Suite 2600
Honolulu, Hawaii 96813-3283

Re: WHR LLC (the "Borrower") /Grand Naniloa Hotel, South Hilo, Hawaii (the "Property") - proposed loan (the "Loan") to Borrower by UBS AG, by and through its branch at 1285 Avenue of the Americas, New York, New York ("Lender")

Dear Michael:

As you know, we represent Lender in connection with the Loan.

We have reviewed the recommendation of the Staff of the Department of Land and Natural Resources of the State of Hawaii ("DLNR") dated April 14, 2023 (the "Recommendation"), as to the requested consent to a leasehold mortgage securing the Loan, as required under the related ground lease.

As correctly noted in the final paragraph of page 8 of the Recommendation, the Loan is still being underwritten and negotiated, and thus the terms of the Loan (were it to be approved by Lender) are not final. As such, this correspondence is not intended to (and shall not be deemed to) obligate Lender to provide the Loan, or as to the terms of any financing that may be offered.

That said, I want to clarify that the proposed Loan is, in fact, going to be a fixed rate loan. Assuming approval of the Loan, acceptance of the terms by the Borrower, and satisfaction of all conditions to closing, the fixed interest rate for the Loan would be set immediately prior to closing; the fixed interest rate for the Loan would be based on a spread above the five (5) years SOFR swap rate, subject to a floor, but the rate would be fixed for the term of the Loan (except if there were to be one or more "Events of Default" by the Borrower, in which case a higher, fixed, default interest rate would apply while the Event(s) of Default remained outstanding.

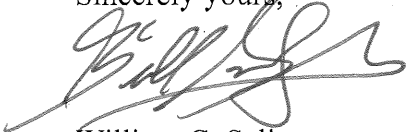
Further, with regard to the concern in the Recommendation regarding "New Mezzanine Loans", I want to make it clear that any such "New Mezzanine Loan" would not be secured by the leasehold mortgage encumbering the Property for which consent is now sought, but instead by a pledge of the ownership interests in the Borrower. Creation of a New Mezzanine Loan would reduce the

Michael L. Lam, Esq.
April 11, 2023
Page 2

amount secured by the leasehold mortgage, by shifting a portion of the original Loan to the New Mezzanine Loan.

Please feel free to share this letter with DLNR and the Board of Land and Natural Resources.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'William C. Seligman', written over a horizontal line.

William C. Seligman
Partner

cc: Client
Katie Baskin, Esq.

EXHIBIT H

From: [Ed Bushor](#)
To: Russell.Y.Tsuji@hawaii.gov; [Kevin Moore](#); [Heit, Gordon C](#)
Cc: [Benjamin Rafter](#); [Chang, Dawn](#)
Subject: Adding Controlling Interest and Manager to WHR, LLC ("Lessee") - General Lease S-5844
Attachments: [Grand Naniiloa Statement.pdf](#)
[BRafter_cv_2023.pdf](#)
[1-Muutally Executed Manager Change Consent Request 050823.pdf](#)

Aloha Russell, Kevin and Gordon,

- A. Request. WHR is requesting the consent of the Board to adding a new controlling party of WHR, LLC, as lessee ("Lessee"), under the General Lease S-5844, which WHR will process the change and it will happen simultaneous with our UBS New Loan.
- B. Background.
1. As part of the UBS New Loan closing, we have a new controlling interest party and Manager of WHR, LLC ("Lessee") and thus WHR will allow the addition of Mr. Benjamin Rafter to be the controlling interest party and Manager of WHR, LLC, upon the UBS New Loan closing, and thus, we need to gain the consent of the Board as part of the UBS New Loan closing for this to occur.
 2. Existing Managers of WHR, LLC include Tower Development Inc. and Tower Hotels Hilo, LLC ("Co-Managers") will resign upon Mr. Rafter becoming the new controlling interest party and Manager in WHR/Lessee upon: (A) DLNR's Board approval for the Manager Consent Request below and (B) the UBS New Loan Closing.
 3. As the new controlling interest party and Manager of WHR, LLC, Benjamin Rafter will be the controlling interest party of WHR, LLC with full and complete decision making for WHR, LLC, as was the case for the prior Co-Managers, who will no longer have any controlling interests of WHR.
- C. Attachments.
- a. Application Adding Ben Rafter, an individual, as controlling interest party and Manager of WHR, LLC, which has been mutually signed by both Ed Bushor for Tower Development Inc. and Ed Bushor for Tower Hotels Hilo, LLC, and also signed by Benjamin Rafter as the new controlling interest party and New Manager
 - b. Resume of Benjamin Rafter. As stated in the Resume, Mr. Rafter is involved in 12 hotels on 4 islands of Hawaii and is one of the leaders in the hotel industry in the State of Hawaii
 - c. Statement of Benjamin Rafter

Please email both myself and Mr. Rafter (cc above) with any questions you may have and we will do our best to respond promptly.

Ed Bushor

WHR, LLC
1050 Bishop 530
Honolulu, Hawaii 96813
Ph. 808.268.1903
ed@towerdevcon.com
www.towerdevcon.com

**State of Hawaii
Department of Land and Natural Resources
Land Division**

REQUEST FOR CONSENT TO ASSIGNMENT - APPLICATION FORM

This Application Form is for current tenants requesting:

- Consent to agreement of sale
- Consent to assignment of lease
- Consent to assignment of sublease
- Consent to assignment of grant of easement

NOTE, THIS IS A REQUEST FOR CONSENT TO APPOINTMENT OF NEW MANAGER OF LESSEE (WHR, LLC OF THE GRAND NANILOA RESORT. THERE IS NO CHANGE TO LESSEE AND THERE IS NO ASSIGNMENT OF LESSEE, BUT MERELY APPOINTMENT OF A NEW MANAGER THAT WILL BE THE CONTROLLING DECISION MAKER OF OWNERSHIP OF LESSEE WHR LLC)

Please note the following important points:

- 1) We will not process your request unless you are in full compliance with your lease terms and conditions, including but not limited to, the rent, insurance, performance bond, and Conservation Plan requirements.
- 2) Persons who have had, during the five years preceding, a previous sale, lease, license, permit or easement canceled for failure to satisfy the terms and conditions are not eligible to purchase or lease public lands, including via assignments.
- 3) For pasture and agriculture leases, proposed Assignees are required to submit their qualifications and experience (Attachment A) to allow us to determine whether they are qualified ranchers or farmers.
- 4) In some leases, the Land Board has the right to review and approve the consideration paid by the Assignee and may condition its consent to the assignment on the revision of lease rent or the payment by the Lessee of a premium based on the amount by which the consideration for the assignment exceeds the straight-line depreciated cost of improvements and trade fixtures being transferred to the Assignee.
- 5) You will be responsible for paying processing fees.

All applications must be complete to be considered for processing. Please submit two copies of the completed application form to the District Branch office in your county:

Oahu District Branch
1151 Punchbowl Street, Room 220
Honolulu, Hawaii 96813
Phone: (808) 587-0433; Fax: (808) 587-0455

Maui District Branch
130 Mahalani St.
Wailuku, Hawaii 96793
Phone: (808) 984-8103; Fax: (808) 984-8111

Hawaii District Branch
75 Aupuni Street, Room 204
Hilo, Hawaii 96720
Phone: (808) 974-6203; Fax: (808) 974-6222
LD-80 (rev. 12/02/08)

Kauai District Branch
3060 Eiwa Street, Room 205A
Lihue, Hawaii 96766
Phone: (808) 274-3491; Fax: (808) 241-3537

STATE OF HAWAII
DEPARTMENT OF LAND & NATURAL RESOURCES
REQUEST FOR CONSENT TO ASSIGNMENT

For DLNR use only:
Date of request: _____
Date request recvd: _____
Type of Request: _____
Assigned Land Agent: _____

I. GENERAL INFORMATION

General Lease No. S-5488

Type of Request:

- Consent to agreement of sale
- Consent to assignment of lease***
- Consent to assignment of sublease
- Consent to assignment of grant of easement

*****Note, this is deemed an "assignment" by Section 13 of General Lease S-5844, but is accurately stated as a change in the WHR ownership structure by adding Benjamin Rafter, an individual, as controlling interest party and Manager of WHR, LLC**

II. ASSIGNOR/ASSIGNEE INFORMATION

Should the consent be approved, the following information will be used in the preparation of the legal documents. Therefore, please include all applicable parties and legal names.

Assignor: Tower Development Inc., as Manager, and Tower Hotels Hilo, LLC, as Manager of Lessee WHR, LLC

_____	_____
Last name	First Name
_____	_____
Last name	First Name
_____	_____
Last name	First Name

Assignee(s): Rafter Benjamin

_____	_____
Last name	First Name

Marital status: Single Widow/widower Married – spouse of: Lenz, Kari
Held as: Tenant in Severalty Tenants in Common Joint Tenants Tenants by Entirety
Percentage held: _____%

Benjamin Rafter shall hold the controlling interest party in WHR, LLC and be the Manager of WHR, LLC with full control of WHR, LLC

_____	_____
Last name	First Name
_____	_____
Last name	First Name

Marital status: Single Widow/widower Married – spouse of: _____
Held as: Tenant in Severalty Tenants in Common Joint Tenants Tenants by Entirety
Percentage held: _____%

_____	_____
Last name	First Name
_____	_____
Last name	First Name

Marital status: Single Widow/widower Married – spouse of: _____
Held as: Tenant in Severalty Tenants in Common Joint Tenants Tenants by Entirety
Percentage held: _____%

Mailing address: _____
No. and Street

City State Zip Code

4) Consideration: \$ zero paid, but investment of \$2M into WHR is required to become Manager

5) What is the reason for the assignment?

The appointment of a New Manager and controlling party for the New Loan underwriting and also to invest in WHR of \$2M is sought by Mr. Rafter for the purposes of being the controlling interest holder and manager of WHR.

6) Has any of the assignees had a sale, lease, permit, easement, license or any other land disposition canceled within the past five years for failure to satisfy the terms and conditions of such disposition? NO

V. ATTACHMENTS

- 1) Attach two (2) copies the assignment document, both bearing original signatures. Not applicable. The appointment of the new Manager is for the New Loan and will be completed upon the New Loan Closing. The Appointment will be issued upon the New Loan Closing.
- 2) If the subject lease is for pasture or agricultural use, the proposed Assignee is required to complete Attachment A.
- 3) Attach copy of State and county tax clearances for the Assignee(s). Refer to Attachment B for information. Not Applicable.

VI. CERTIFICATION

I/We hereby certify that the statements and information contained in this application, including all attachments, are true and accurate to the best of my/our knowledge and understand that if any statements are shown to be false or misrepresented, this application may be rejected.

Tower Development Inc.
Printed Name

X 
Signature

Tower Hotels Hilo, LLC
Printed Name

X 
Signature

NEW MANAGER

BENJAMIN RAFTER
Printed Name

X 
Signature

DATE May 3, 2023
Date

<u>For DLNR Use Only:</u>	TO CLOSE REQUEST:
Reason for closing: _____	

Approved by DLA: _____	
Date request closed: _____	

**Attachment A
Qualification Questionnaire**

Qualifications and Experience

1. Indicate experience to qualify as a bona fide farmer pursuant to Section 171-14.5, HRS. For husband and wife, at least one individual shall qualify. For partnerships, joint ventures and corporations, "Applicant" in the following questions refers to the entity itself, and, therefore, only 1.A, 1.B, 1.G and 1.J below will apply.
- A. Has the Applicant spent not less than two years, full-time, in farming operations? If yes, explain in Question 3. () Yes () No
- B. Is the Applicant an owner-operator of an established farm conducting a substantial farming operation? If yes, explain in Question 3. () Yes () No
- C. Has the Applicant, for a substantial period of the individual's adult life, resided on a farm and depended on farm income for a livelihood? If yes, explain (number of years, location, income, etc):

_____ () Yes () No
- D. Is the Applicant an individual who has been a farm tenant or farm laborer or other individual, who has for the two years last preceding the auction obtained the major portion of their income from farming operations? If yes, explain in Question 3. () Yes () No
- E. Does the Applicant have a college degree in agriculture? If yes, explain in Question 2. () Yes () No
- F. Is the Applicant an individual who, by reason of ability, experience, and training as a vocational trainee, is likely to successfully operate a farm? If yes, explain in Question 2. () Yes () No
- G. Has the Applicant received a commitment for a loan under the Bankhead-Jones Farm Tenant Act for the acquisition of a farm? If yes, attach copy of executed loan document or notification letter. () Yes () No
- H. Is the Applicant an individual who is displaced from employment in an agricultural production enterprise? If yes, explain in Question 3. () Yes () No
- I. Is the Applicant a member of the Hawaii Young Farmer Association or a Future Farmer of America graduate with two years of training with farming projects? If yes, attach letter confirming membership and training and explain in Question 2. () Yes () No
- J. Does the Applicant possess the qualifications under the new farmer program pursuant to section 155-1(3), HRS? If yes, explain: () Yes () No

K. Does the Applicant possess such other qualifications? () Yes () No
 If yes, briefly describe any other information which you may consider pertinent to assessing your qualifications and experience and which is not contained in your responses to Questions 2 & 3:

2. Education and Training

A. List all vocational training, business, trade, college or university, graduate or professional schools:

Name & Location of School (and Name of Person, if applicable)	Field of Study	Degree Type	Date Received

B. Attach evidence of your graduation from college (copy of transcripts or diploma).

C. Describe any vocational or other training you have received which relates to your qualifications and experience to successfully operate your farm/ranch:

3. In chronological order starting with the Applicant's most current experience, briefly describe Applicant's farming/ranching experience and business experience (management, financial and marketing) as it relates to the land intended to be bid on. For partnerships, joint ventures and corporations, include both experience of business entity itself as well as experience of principals or managers. **Copy and attach additional sheets as needed.**

Business Name _____ Address _____ Name & Title of Supervisor _____ Your Position _____ Commodity Produced _____ Size of Operations (no. of employees , acres) _____ Duties & Responsibilities _____ _____ _____ _____	From: _____ Month Year To: _____ Month Year Full-time () Part-time () Average hours worked per week: _____
Business Name _____ Address _____ Name & Title of Supervisor _____ Your Position _____ Commodity Produced _____ Size of Operations (no. of employees , acres) _____ Duties & Responsibilities _____ _____ _____ _____	From: _____ Month Year To: _____ Month Year Full-time () Part-time () Average hours worked per week: _____
Business Name _____ Address _____ Name & Title of Supervisor _____ Your Position _____ Commodity Produced _____ Size of Operations (no. of employees , acres) _____ Duties & Responsibilities _____ _____ _____ _____	From: _____ Month Year To: _____ Month Year Full-time () Part-time () Average hours worked per week: _____

4. For any experience listed above which the Applicant would like to be considered in order to qualify as a bona fide farmer pursuant to Section 171-14.5, HRS, under Question 11, attach verification, including but not limited to: 1) pay stubs or W-2 forms where Applicant was employed as an individual or 2) Schedule F of federal income tax returns or General Excise tax returns where Applicant was a self-employed individual or a corporation.
5. Attach at least two (2) reference letters from people, who are not related to you, verifying agricultural background (applies to farm laborer or previous farm experience).

Business Plan

6. What will the land be used for? List the goals and objectives to utilize and develop the land:

7. What products will be sold?

8. What is the projected yearly level of production?

9. What is the demand for your products in the near- and long-term?

10. Who are your primary customers and how will the products be distributed?

11. What is your pricing strategy?

12. How will you market your products?

13. Who are your major competitors and what is your competitive strategy?

14. What improvements to the land do you intend to make and at what cost?

15. How will you develop the land from the beginning of your use of the lease area until it is in full operation? Give estimated times required by each major activity and projected percentages of development.

16. How will you finance the operations?

17. What is the most lease rent that you can pay before net profit will be zero? \$ _____ per year

18. What problems are anticipated in carrying out this plan and how will you resolve them?

19. Attach a completed Cash Flow Projection. You must show **all** income and expenses applicable to your business for a five-year period or one crop rotation **whichever is greater**. Attachment C provides a sample form. You may use your own format.

20. Attach a Preliminary Map Plan (can be drawn free hand). Please note:

- A. Pasture leases should show fencing, stock watering troughs, water distribution system if needed and topography with physical features to be protected, such as streams, eroded land, steep areas, etc.
- B. Intensive agriculture leases should show crop rows, roadways, structures, windbreaks if necessary and water distribution system plus topography with physical features such as streams, gullies, step areas, etc. If you are proposing crops that are not prevalent in the area, letters from agricultural experts testifying to the viability of the crop within the area should be included.

Financial Capacity

21. All Applicants must attach the following: (NOT APPLICABLE AS THE FINANCIAL OBLIGATIONS ARE OF WHR, LLC ONLY)

- a. Federal income tax returns for the most recent three years. If the most recent year of operation will not be submitted, please explain why:
- b. At least one (1) credit reference letter from a bank or other financial institution with which the Applicant regularly does business.
- c. If Applicant is an individual, husband and wife, sole proprietorship or partnership, attach Personal Financial Statement for each person (Attachment D).
- d. If Applicant is as a corporation, attach financial statements (current balance sheet and

income/expense statement) for the most recent two years.

- e. If Applicant is a corporation, partnership or joint venture which was formed within the last three years, Applicant must also submit Personal Financial Statements (Attachment D) for each principal stockholder in the case of a corporation, each partner in the case of a partnership, or each member in the case of a joint venture, for the years previous to the formation of the organization so that a minimum of three consecutive years of statements are submitted.

22. Are there any outstanding judgments against you? If yes, explain: Yes/No

_____ NO _____

23. Have you filed bankruptcy within the past seven years? NO Yes/No

24. Have you had property foreclosed upon or given title or deed in lieu thereof in the last seven years? NO Yes/No

25. Are you a party in any legal action? If yes, explain: NO Yes/No

26. Have you directly or indirectly been obligated on any loan, which resulted in foreclosure, transfer of title in lieu of foreclosure, or judgment? If yes, provide details, including date, name and address of lender and reasons for the action: NO Yes/No

27. Are you presently delinquent or in default on any Federal, State or county rent, debt or any other loan, mortgage, financial obligation, bond, or loan guarantee? If yes, explain: NO Yes/No

Criminal Convictions

28. Have you ever been convicted of the crime of cruelty to animals and/or have you been convicted of a violation of law? If yes, explain. NO Yes/No

Yes/No

Attachment B
Information on Obtaining Tax Clearances

For information on obtaining State tax clearances, contact the State Department of Taxation:

State District Tax Offices:

Oahu District Tax Office
830 Punchbowl Street
Post Office Box 259
Honolulu, Hawaii 96809-0259
Phone: (808) 587-4242
Toll-free: 1-800-222-3229

Kauai District Tax Office
3060 Eiwa Street, #105
Lihue, Hawaii 96766-1889
Phone: (808) 274-3456

Hawaii District Tax Office
75 Aupuni Street
Post Office Box 833
Hilo, Hawaii 96721-0833
Phone: (808) 974-6321

Maui District Tax Office
54 South High Street
Post Office Box 1169
Wailuku, Hawaii 96793-1169
Phone: (808) 984-8511

Tax Clearance Application (Form A-6): <http://www.hawaii.gov/tax/current/a6.pdf>
Instructions for filing Form A-6: <http://www.hawaii.gov/tax/current/a6ins.pdf>

For information on obtaining county tax clearances, contact the Real Property Tax Office in your county.

City & County of Honolulu
City Hall
Treasury Office, Room 115
530 South King Street
Honolulu, Hawaii 96813
OR call 523-4856 (tax clearance forms
can be mailed or e-mailed to you)

County of Hawaii
Real Property Tax Office/Collections Div
Aupuni Center
101 Pauahi Street, Suite 4
Hilo, Hawaii 96720
Phone: (808) 961-8282
Fax: (808) 961-8415

County of Kauai
Real Property Tax Collection
4444 Rice Street, Suite 463
Lihue, Hawaii 96766
Phone: (808) 241-6555

County of Maui
Real Property Tax Division
70 E. Kaahumanu Avenue, Suite A-16
Kahului, Hawaii 96732
Phone: (808) 270-7697

Benjamin G. Rafter

808-349-0670 ben@jororo.com

Summary of Accomplishments

Highly analytical executive with a deep technical background and a successful career in both technology and hospitality startups. Started and led companies that generated significant financial returns for investors and employees, most notably by building disruptive business models in traditional industries.

- Purchased, renovated and relaunched some of Hawaii's oldest hotels and resorts including the Surfjack Hotel & Swim Club and the White Sands.
- Created one of the biggest Hawaii hotel success stories by growing Aqua Hospitality to 29 properties before merging the company with a large regional competitor, creating a portfolio of approximately 11,000 hotel rooms.
- Founded, led and grew several startups, including one acquired by Amazon.com in a transaction that produced significant returns for investors.
- Led a worldwide consulting practice for a 3,000-person systems integrator, creating multiple new business lines for various G2000 clients.

Experience

SPRINGBOARD HOSPITALITY (formerly OLS), *PRESIDENT AND CEO*

2018–CURRENT

Acquired OLS Hotels & Resort in 2018 when it was a small, regional operator based in LA. Currently it has grown to one of the largest pure independent operators with 47 properties in thirteen states with concentrations primarily in urban and resort markets on the West Coast and Hawaii. OLS moved to Hawaii in 2018 upon expiration of a non-compete and currently has 12 properties on four islands. Recent additions also include Sedona, Stowe, Park City, Jackson Hole, Los Angeles, Anchorage, Lake Tahoe, Mammoth, Myrtle Beach and Ft. Myers Beach.

JORORO, *MANAGING MEMBER*

2013–CURRENT

SPRINGBOARD INVESTMENT ADVISORS, *PARTNER*

2019–CURRENT

During a non-compete, created a personal investment vehicle, Jororo, focused on buying and repositioning hospitality assets in Hawaii. Jororo's target acquisitions benefit from highly curated, localized experiences and completed efforts have won numerous awards and accolades. Jororo currently has ownership stakes and is managing member/GP in approximately \$300 million of real estate.

Subsequently co-founded Springboard Investment Advisors ("SIA") to invest in assets benefiting the Springboard management platform. SIA investments include new build hotels, repositioning opportunities and conversions from alternative uses. Recent investments have included Ft. Myers Beach, FL; Denver, CO; Maui, HI; Hawaii Island, HI; Anchorage, AK and Myrtle Beach, SC.

AQUA HOSPITALITY, *PRESIDENT AND CEO*

2008–2014

ASTON HOTELS & RESORTS, *PRESIDENT*

2013–2014

At time of departure, Aqua Hospitality and Aston Hotels & Resorts consisted of 56 hotels and resorts with 11,000 hotel rooms across five U.S. states and Guam. Combined, Aqua and Aston represented the largest concentration of rooms in Hawaii. Prior to its sale to Interval Leisure Group (Nasdaq: IILG, now Marriott Vacations), Aqua Hospitality was the largest operator in Hawaii by number of properties. Highlights include:

- Sold Aqua to Aston's parent company, resulting in a significant return for ownership. Agreed to take dual president role with Aston, creating responsibility for several thousand employees and more than \$400 million of revenue.
- Developed relationships with over twenty hotel and resort owners ranging from Asian and North American high net worth to REITs and private equity firms.
- Grew Aqua in less than five years from a break-even, small Waikiki operator to a major, highly profitable force in Hawaii tourism. Eventually became Hawaii's only operator on all six tourism islands. Without investment capital, hired over 2,000 employees while quintupling the size of the company, as measured by rooms and rooms revenue.
- Won multiple awards including Fastest-Growing Companies ([Pacific Business News](#)) and Best Places to Work ([Hawaii Business](#)).

Benjamin G. Rafter

808-349-0670 ben@jororo.com

- Sold majority share of company to Och-Ziff, at the time a \$48 billion NY-based private equity firm. Reinvested all ownership and exit bonuses before creating a triple digit IRR during Och-Ziff's exit to IILG.
- Successfully fused together quant and traditional hotel resources. Recruited resources from banking, technology, ecommerce, economics and other areas, and cross-trained them in hotel operations and analytics respectively.

JETAWAY/TRAVELWORM, *PRESIDENT AND CEO*

2005–2008

Owned by Wasserstein and Co, a NY-based private equity firm, JetAway and its associated brands sold several hundred thousand hotel room nights per year via both consumer-direct and affiliate/wholesale channels. Over a two-year period, successfully stabilized the company and sold it to an Atlanta-based private equity firm.

GET2HAWAII (GET2) *PRESIDENT AND CEO*

2001–2005

Get2 was a private label technology vendor providing dynamic packaging, yield management and fulfillment. Recruited by the acting president to define and execute the company's business strategy. Led the buildout of the technology, growing booking (top line) revenue from \$3 million in 2002 to approximately \$90 million in 2005.

CAMBRIDGE TECHNOLOGY PARTNERS, *PRINCIPAL STRATEGIST (AND OTHER ROLES)* 1998–2001

Cambridge was a Nasdaq 100-listed professional services organization that focused on digital strategy and fixed price, mission critical systems integration projects. Highlights of Cambridge roles include:

- Started and directed Cambridge's "Innovation Center" practice and acted as principal strategist. Innovation Center partnered with G2000 companies to create new businesses by leveraging core technology assets across emerging technologies and new markets.
- Directly sold several global, multi-million dollar projects to C-suite executives.
- Educated the global sales force and created the selling and implementation methodology for Innovation Center.
- Speaker for "Jumpsmart" workshops – a series of traveling seminars for top Fortune 500 clients and prospects.
- As regional practice lead, prior to Innovation Center, led several implementations at companies such as Microsoft, Intel and Russell Investments.

LIVEBID (INNERLINX TECHNOLOGIES), *CO-FOUNDER*

1996–1998

Co-founded with two high school friends a successful startup that harnessed streaming and other Internet technologies to become the recognized leader in the real-time auction space. Livebid hosted several notable auctions, including the sale of the Batmobile, O.J. Simpson's estate and Titanic artifacts. In March 1999, Amazon.com acquired Livebid.

WESTIN HOTELS AND RESORTS, *VARIOUS*

1992–1996

Started career at Westin Hotels & Resorts in various roles including database marketing analyst and emerging technologies manager. In this role, created and implemented one of the first e-commerce enabled sites in the travel industry. Other activities included statistical output and personalization efforts for Westin's Premier frequency program and various data mining and analysis campaigns to help Westin execute marketing and advertising campaigns.

Notable Board member and budget chair, Hawaii Tourism Authority; board member and former chairperson, Hawaii Lodging and Tourism Association; co-founder and board member Hawaii Hotel Association. Donated thousands of room nights for various organizations (please inquire). Created Aqua Blue Foundation to support Aqua's efforts for ocean preservation.

Speaking Numerous speaking engagements at both conference and board levels in North America and Asia.

Education B.A. Communications, University of Washington. Phi Beta Kappa.



**STATEMENT BY BENJAMIN RAFTER
CHIEF EXECUTIVE OFFICER, SPRINGBOARD HOSPITALITY**

Re: Managing and Owning the Grand Naniloa Hotel Hilo, a Doubletree by Hilton

Ever since arriving to Hawaii in the early 2000s, I have been a believer in the uniqueness of Hawaii's hotel industry. I've been fortunate to manage almost seventy hotels in Hawaii, probably more than anyone on Earth, for hotel luminaries such as Dr. Richard Kelley (Outrigger's patriarch and son of Roy Kelley), Andre Tatibouet (founder of Aston), and Mike Paulin (founder of Aqua). I've renovated over twenty Hawaii hotels, worked with most of the major local hotel investors and worked hard to ensure that local ownership and management keeps a place at the table amongst the large equity shops on the mainland and in Japan and Korea.

Throughout this journey I've learned a lot of things. Confidence in the Aqua team persuaded me to put my cell phone in all of our hotels rooms. This led to almost 10,000,000 visitors having direct access to my cell phone, whether they were staying in two star or five star accommodations, pre renovation or post launch. A gentle reminder from a Hawaii mentor that every guest is a de facto member of my ohana led me to build our values around both hospitality and traditional Hawaiian values of family. This has served me well, especially as we expand my new company, Springboard, to what is now thirteen states and 47 properties in Hawaii and on the mainland.

I've been lucky enough to achieve several "firsts" during the journey. Aqua was the first company in more than a generation to operate hotels on all six tourism islands. The Surfjack Hotel & Swim Club was generally regarded as the first true boutique hotel in the islands (and has since been replicated by many, many others). We lovingly restored the last "walk up" hotel in Waikiki, the White Sands, reflecting an homage to the early jet age and the 1960s that would have ceased to exist.

All of the items above are why I'm excited to invest in and manage the Grand Naniloa. Hilo is in need of a great hotel. The renovation of the Naniloa and the affiliation with Hilton have set the groundwork, and the hotel is producing decent cash flow and customer award scores. All that is needed is a more localized manager and a hands on approach. I and Springboard are well suited to provide this.

Why believe my opinion? I have extensive experience investing in Hawaii hotels across all four major tourism islands. I'm currently owner or partial owner of eight hotels in Hawaii and nearly twenty across the United States. My Springboard Investment Advisors investment vehicle is majority owned by me and contains no institutional money – no mainland funds, no hedging risk with large capital sources. Thus each decision is well thought out and pragmatic.

The current manager of the hotel has no other investments in or ties to Hawaii. Springboard manages twelve properties in Hawaii and, as noted above, our principals have extensive Hawaii experience. Our office is in Waikiki and we have a large team here, with locally trained sales people, revenue managers, renovation experts, finance people and people and culture professionals. We are extensively familiar with Hawaii's distribution channels and the difficulties of the Hilo market for both local visitors and tourists.

The logo consists of the letters "SB." in a white, serif font, centered within a dark blue square.

Springboard is also deeply familiar with Hilton and its Doubletree brand. We manage the Doubletree in Park City and a full service Hilton in St. Louis. We've managed Hiltons for more than twenty years, ironically owning a Hilton product in Denver with the Kelley family of Outrigger fame. We know Hilton's systems, reward programs, technology and guests. We are working on two Hilton products in Maui and, at a previous company, introduced the Hampton by Hilton brand to the islands.

I firmly believe that the Grand Nanihoa is a great hotel that can add to Banyan Drive while acting as a hub for the Hilo community and I'm looking forward to directing that journey on behalf of both a personal investment and management of the hotel.

Aloha,

Ben Rafter
808-349-0670

EXHIBIT I

IMPACTS / BENEFITS OF REASONABLE LOAN

What if Make Correct Decision The New Loan is "Reasonable"

What if Make Incorrect Denial of a Reasonable Loan?

IMPACTS / BENEFITS

IMPACTS / DETRIMENTS

1. TRUSTED KNOWN LOCAL COMPANY RUNNING NANILOA - BEN RAFTER - NO FORECLOSURE

1. UNKNOWN LITIGATION FOR YEARS & RISK OF NEW YORK ENTITY OWNING NANILOA AFTER FORECLOSURE - AGGRESSIVE LENDER WITH NO LOCAL INTERESTS

2. GREAT SOLUTION FOR 5 YEARS WITH NEW CMBS LOAN AND SUCCESS IN HILO WITH OPERATOR THAT HAS OWNED AND MANAGED OVER 100 HOTELS IN HAWAII WITHOUT EVER HAVING AN UNSUCCESSFUL HOTEL OPERATION

2. NEXT 2 YEARS OF FORECLOSURE/BANKRUPTCY MESS THAT IS UNNECESSARY IF LOAN IS APPROVED - 2 YEARS OF LOST JOBS, LEGAL FEES INCURRED BY STATE AND NEGATIVE PERCEPTION TO HILO COMMUNITY & STATE

3. NO NEED TO BE BACK IN DLNR REVIEWING NEW LOAN PROPOSAL WITH AN UNKNOWN FUTURE OWNER AS SOLVED TODAY

3. DLNR WILL JUST HAVE TO COME BACK WITH UNKNOWN OWNER REVIEWING A LIKELY CMBS LOAN WITH NEW UNKNOWN BUYER/OWNER ON SAME TERMS AS THESE GREAT TERMS SINCE THEY ARE THE MARKET HOTEL CMBS TERMS THAT WILL BE AVAILABLE TO THE NEXT BUYER AFTER FORECLOSURE/BANKRUPTCY

4. POSITIVE NEWS FOR ALL EMPLOYEES & TOURISM ENDING ALL NEGATIVE PRESS

4. NEGATIVE IMPACTS TO EMPLOYEES & ENTIRE COMMUNITY OF HILO

5. NO RISK OF HOTEL SHUT DOWN

5. CONTINUED FEARS OF LOSS OF JOBS HOTEL SHUT DOWN

6. \$30M-\$45M+ VALUE TO OUR HOTEL OWNERSHIP & PARTNERS \$94.6M-\$111M APPRAISED VALUE (2 APPRAISALS 2023 & 2018)

6. \$4.7M LOST BY CURRENT INDIVIDUALS IMMEDIATELY (LOCALS WHO HAVE INVESTED IN HARD DOLLARS), AND LIKELY \$30M-\$45M MORE LOST TO ALL OWNERS

7. CULTURAL BENEFITS GUARANTEED TO CONTINUE WITH THIS OWNERSHIP TO HOKULEA RELATIONSHIPS AND HALAUS HAVE HOME AT NANILOA AND MERRIE MONARCH HAS GREAT RELATIONSHIP WITH OWNERSHIP ...TO NAME A FEW OUT OF A LONG LIST

7. NO GUARANTY HOKULEA HAS FREE HOUSING UPON ITS RETURN OR MERRIE MONARCH WILL HAVE A HOME AT NANILOA

8

8

CONCLUSION: THIS CMBS LOAN IS A MARKET RATE LOAN THAT IS REASONABLE IN ALL RESPECTS, 7.25% INTEREST RATE, DEBT COVERAGE RATIO 1.4 AND LTV OF BELOW 60% BUT EQUALLY IMPORTANT IS LOAN PROVIDES NO NEGATIVE IMPACTS ON HILO AND THIS GREAT STATE OF HAWAII



Colliers

The Grand Nanioloa, Hilton Double Tree

93 Banyan Drive Hilo, HI

Loan Synopsis / DLNR "D - 2" Clarifications
May 5, 2023



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Colliers

Executive Summary

The Grand Naniloa,
Hilton Double Tree

Executive Summary



SUMMARY: LTV: 54% | DY: 14.2% | Term: 5 YRS | Rate: 7.25% | Amort: 30 | IO: 24 MOS

Colliers Mortgage was exclusively engaged to secure the “Cash-In Refinance” of The Grand Naniloa, Hilton Double Tree (the “Property,” or “Project”), a 388-key Upscale Full-Service Hotel located in Hilo, Hawai’i.

WHR, LLC, the “Borrower,” has owned and operated this property since they acquired it for a **\$7.258MM “Purchase Price”** in December 2013, after the previous owner “Fujiyama,” filed for bankruptcy. From 2014 – 2017 the current owner renovated the hotel and brought the property to a modernized condition, addressing all major deferred maintenance.

Additionally, WHR should receive a “Mahalo Nui” for its fantastic turnaround of the Grand Naniloa’s Zero-Net Income in 2020, then hit a record year in 2022 at \$7.8MM in Net Income.

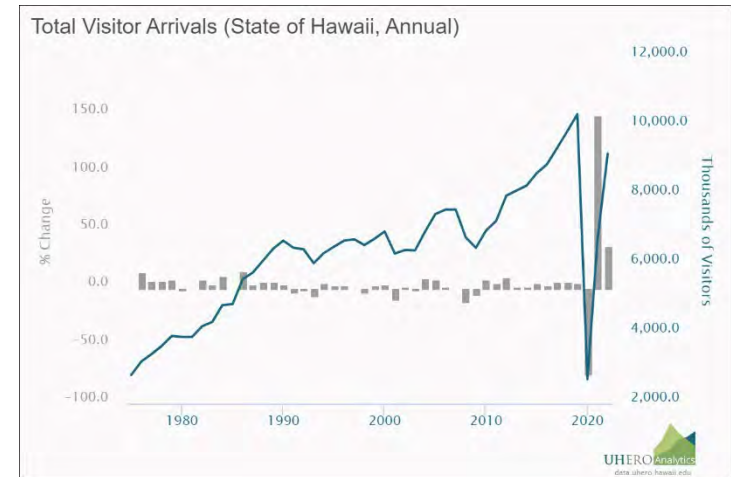
COVID Lockdown Hilo – MSA



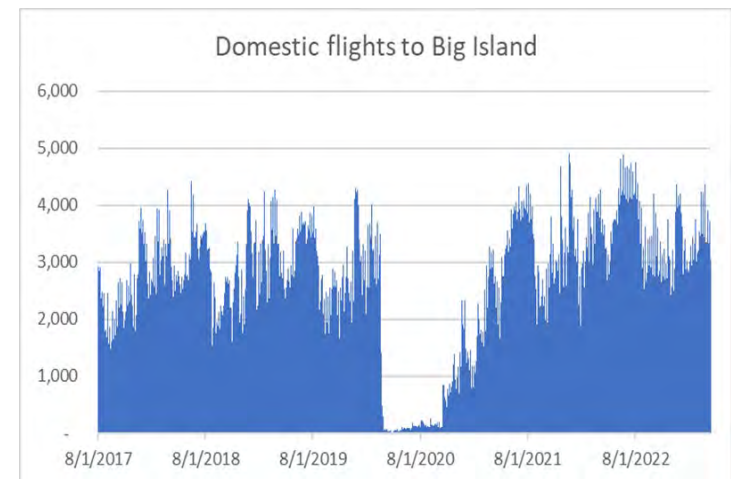
Throughout 2020-2021, the Grand Naniloa suffered immensely from Hawai'i's COVID Lockdowns. WHR began to feel the negative externalities associated with shutting down Hawai'i's tourism industry by March 2020, like everyone else affected within the hospitality industry.⁽¹⁾

WHR, LLC showed their commitment to the property by curing all outstanding late payments to the State for ground lease, past utilities, insurance payments, and behind taxes.

The Hilo, HI Hospitality MSA is exceptionally vulnerable, to begin with, one of the main reasons being the lack of available upscale lodging units within the market. Ultimately, when COVID-19 came along, it decimated Hilo's tourism industry to an abysmal state. Total Island of Hawai'i Visitor Arrivals beginning in March of 2020 and flatlined from nearly 3,500 visitors/day to 0 visitors/day.⁽²⁾



(1) [UHERO DATA Total Visitor Arrivals 1975-2022](#)



(2) <https://dbedt.hawaii.gov/visitor/dailypax-dashboard/>

Hospitality Workforce Hilo – MSA

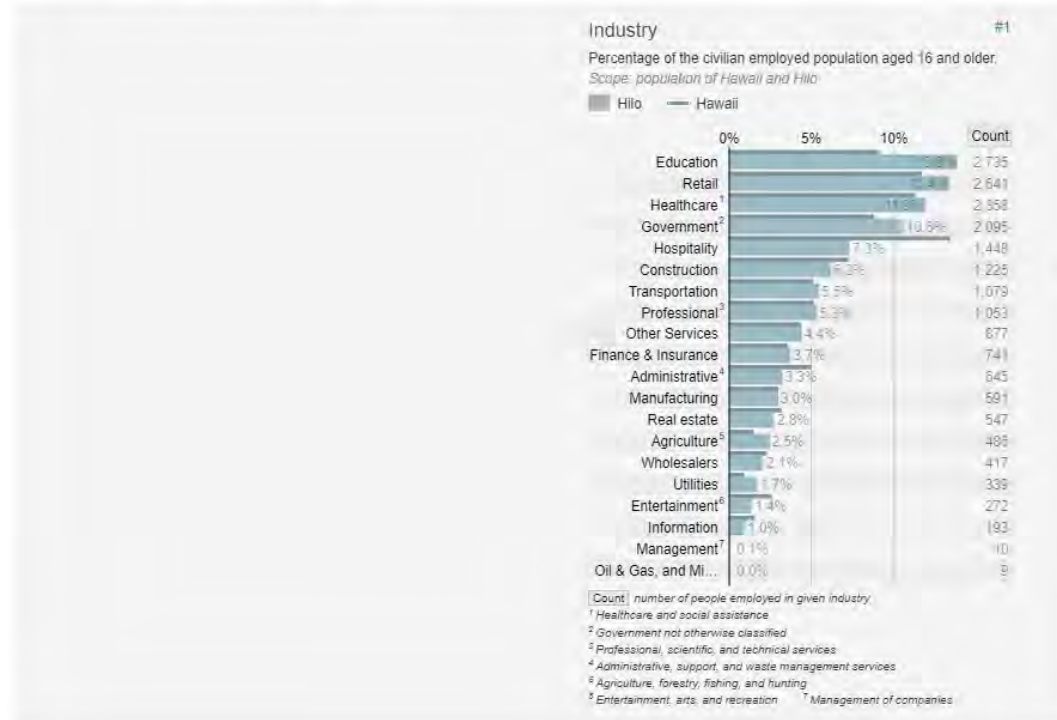


As the only major flagged hotel in Hilo, HI, The Grand Naniloa bears the most significant “Kuleana” within the Hilo hospitality sector.

The Naniloa employs **9.1%**, or **130**, of the **1,443** Hilo MSA hospitality workforce. Ultimately, this accounts for **7.3%** of the entire Hilo MSA workforce.⁽³⁾

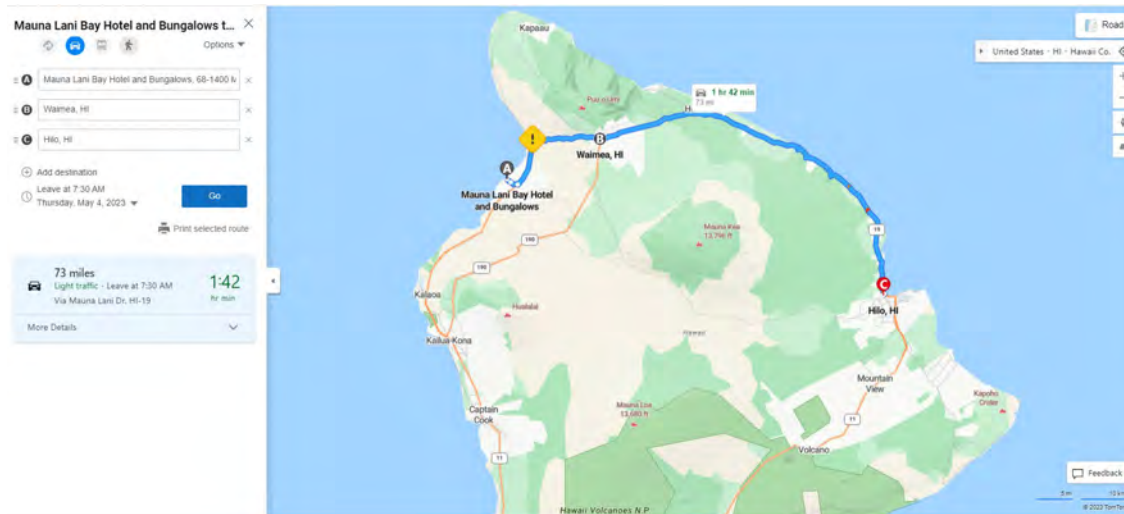
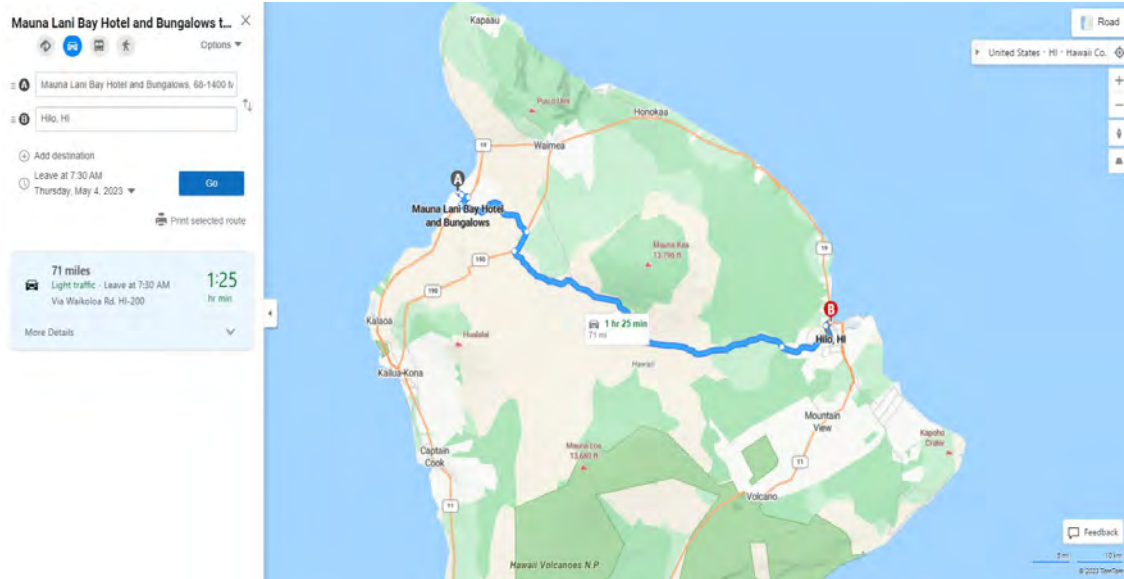
Ultimately, this makes the Grand Naniloa the most essential hospitality employer in Hilo, HI.

Industries in Hilo, Hawaii (Unincorporated Place)



(3) <https://statisticalatlas.com/place/Hawaii/Hilo/Industries#figure/industry>

Hospitality Workforce Hilo – MSA Disruption



Naniloa Shutdown Implications:

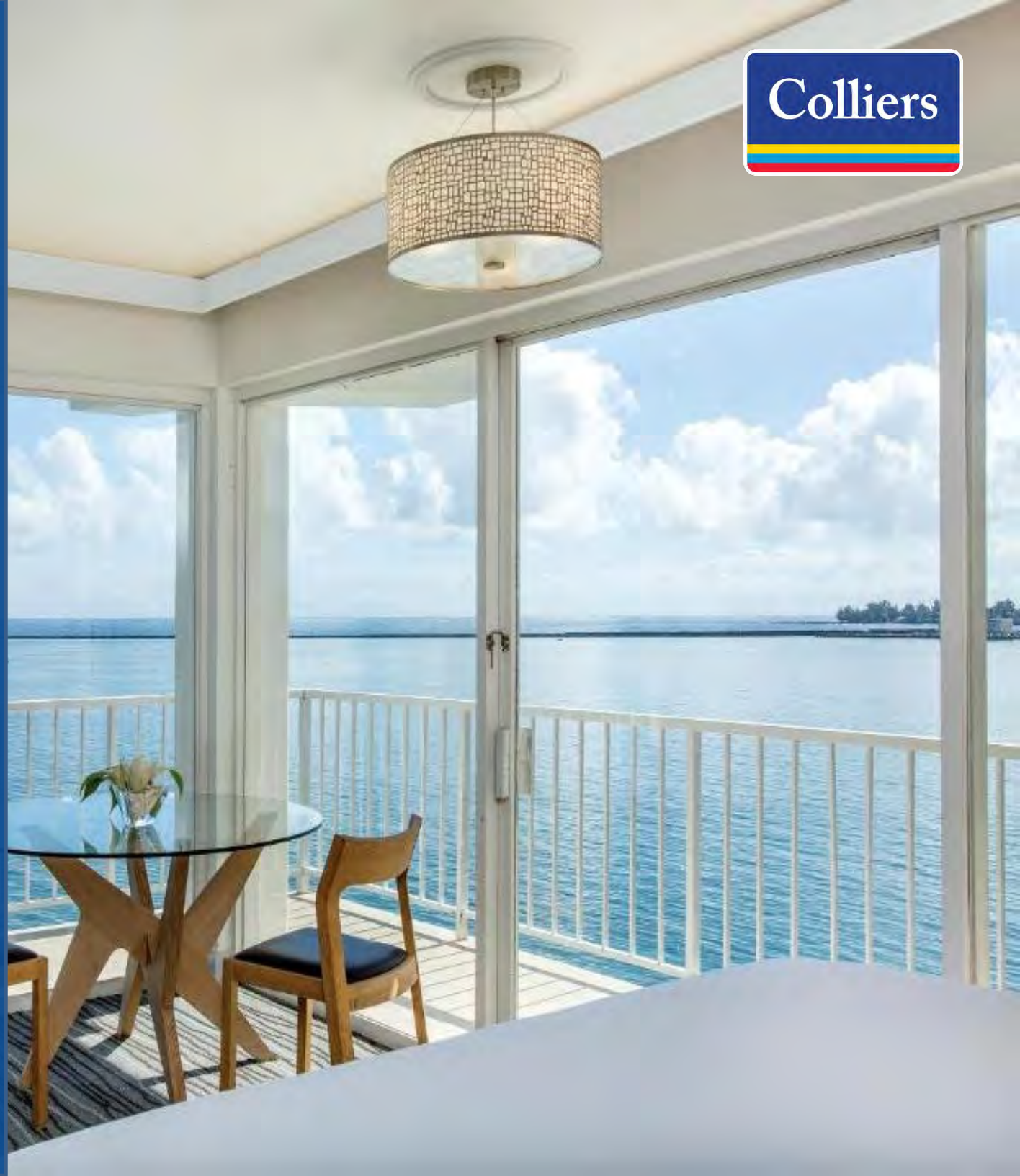
Displaced Hilo hospitality workers would likely gravitate to the next major hospitality zone, which is the Kamuela/Waikoloa MSA.

Using a hypothetical 5-days a week work-week for each employee, they would incur an additional 2 hours & 40-minute commute each day, 13 hours & 20-minutes weekly, or roughly 694-minutes a year. Accounting for all employees, that adds up to 90,110-hours displaced on commuting alone.

694 hours becomes the multiplier for each employee. Fixed costs would likely increase ranging from additional childcare costs, gasoline, and auto repair. Not to mention, the biggest travesty of all, which is the loss of family time.

CMBS Hospitality
Dynamics & Hawai'i
MSA

The Grand Naniloa,
Hilton Double Tree





Active Lodging CMBS Loans Hawai'i

- Total Active Lodging CMBS Loans Hawaii: 28
- Fixed Rate CMBS Loans: 10
- Floating Rate CMBS Loans: 18
- Term 10-Year CMBS Loans: 6
- Term 7-Year CMBS Loans: 1
- Term 5-year CMBS Loans: 10
- Term <4-year CMBS Loans: 11
- Full Term Interest Only CMBS Loans: 25
- Partial Interest Only CMBS Loans: 1
- Fully Amortizing CMBS Loans: 2
- Total Remaining CMBS Lodging Loan Amounts Hawaii: \$7.025B

⁽⁷⁾ RCA CMBS Data Extraction: <https://app.rcanalytics.com/>

Current 5-Year Term CMBS Hospitality Loans Hawai'i



Property Name	LTV	Debt Yield	Appraisal Value	Appraised Date	Cap Rate	Origination Date	Originator	Original Balance	Loan Rate%	Original Term	Rate Type	Amortization Type
Hyatt Regency Waikiki Beach Resort & Spa	51.15		782,000,000	07/18/2016	-5.84	09/13/2016	Unknown	400,000,000	4.020	60	Fixed	Interest Only
Hilton Waikoloa Village	51.20		376,500,000	09/01/2013	8.05	10/25/2013	Unknown	69,431,250	4.465	60	Fixed	Interest Only
Hilton Hawaiian Village 2nd Piece	51.20		1,899,300,000	09/01/2013	7.12	10/25/2013	Unknown	409,500,000	4.465	60	Fixed	Interest Only
Grand Wailea	48.30	12.10	1,058,000,000	03/20/2018	5.58	04/17/2018	JP Morgan/Deutsche Bank	510,500,000	5.506	60	Floating	Interest Only
Waikiki Beach Marriott Resort & Spa	48.02	7.63	700,700,000	10/03/2018	2.95	12/05/2018	Wells Fargo/Goldman Sachs/JP Morgan	336,500,000	6.017	60	Floating	Interest Only
Four Seasons Resort Hualalai	48.70	13.10	718,600,000	05/15/2018	7.40	07/03/2018	Goldman Sachs	315,000,000	6.375	60	Floating	Interest Only
Ritz-Carlton Kapalua	76.50	10.05	280,900,000	09/24/2018	5.85	11/01/2015	Goldman Sachs	215,000,000	6.094	60	Floating	Interest Only
Four Seasons Resort Hualalai Freely Prepayable	48.70	18.28	718,600,000	05/15/2018	7.40	07/03/2018	Goldman Sachs	35,000,000	6.375	60	Floating	Interest Only
Waikiki Beach Marriott Resort & Spa	42.10		522,400,000	10/10/2013	6.07	12/09/2013	JP Morgan	220,000,000	4.784	60	Floating	Interest Only

(7) RCA CMBS Data Extraction: <https://app.rcanalytics.com/>

Case Study: Newest Hotel CMBS Transaction



Queen Kapiolani Hotel

Sources and Uses

Loan Purpose	Refinance		
Sources	Amount (\$)	Uses	Amount (\$)
Whole Loan	60,300,000	Return of Equity	55,795,702
		Reserves	612,160
		Closing Costs	3,892,139
Total	60,300,000	Total	60,300,000

Source: Fitch Ratings, BANK5 2023-5YR1

Loan Details

Interest Rate (%)	6.71
Original Loan Term	60
Original Amortization Term	0
Original IO Periods	60
Seasoning (Months)	1
Amortization Type	Interest Only
Origination Date	3/8/2023
Maturity Date	3/11/2028
Maturity Balance (\$ Mil)	60.3

Source: BANK5 2023-5YR1

(8) <https://www.fitchratings.com/research/structured-finance/bank5-2023-5yr1-23-03-2023>

Newest CMBS Transaction Hawai'i

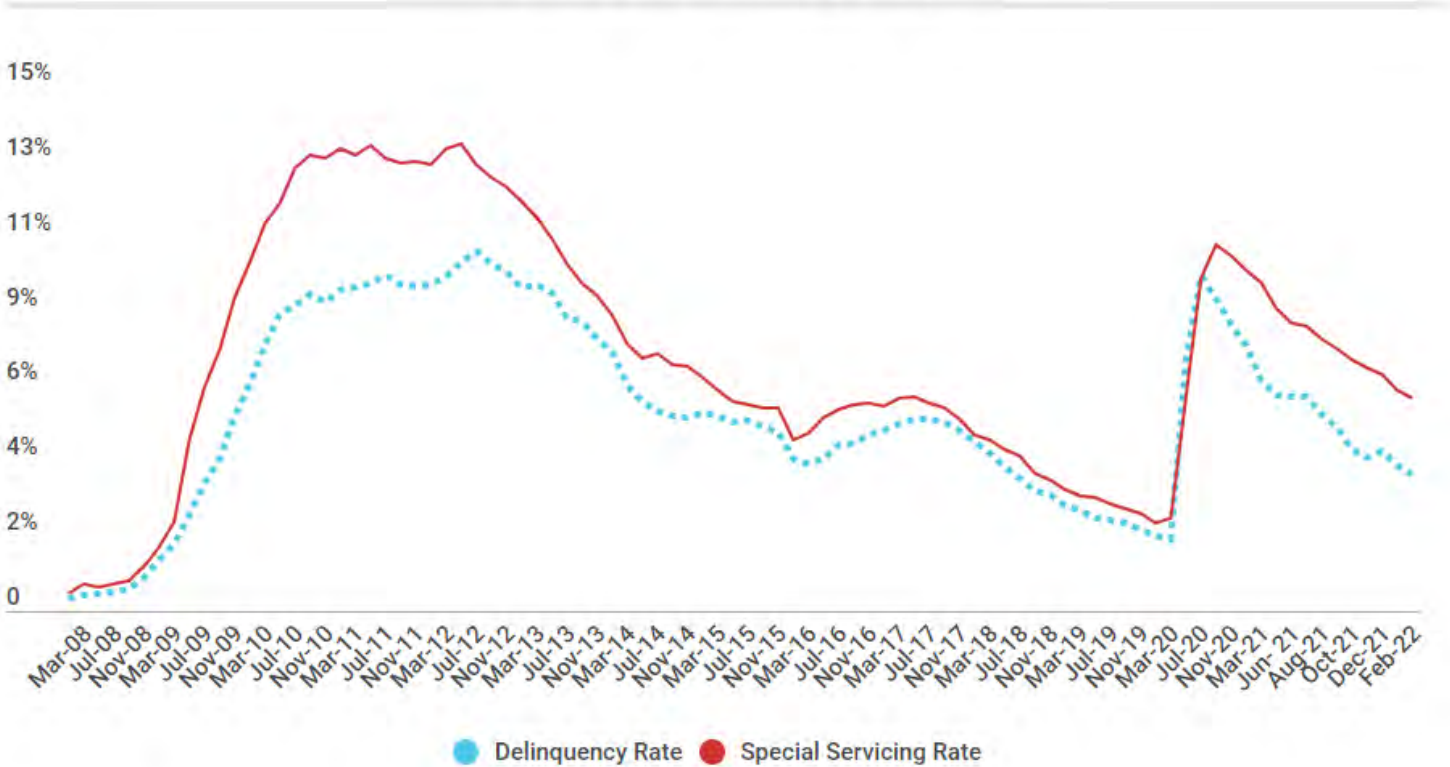
The Queen Kapiolani is currently packaged under Wells Fargo's newest 5 – year securitization that went out for presale dated March 23, 2023.

Loan Overview

- Master Servicer: Wells Fargo
- Special Servicer: CWCapital Asset MGT
- DY Range: 10% - 13.7%
- Trustee: Computershare Trust Co. N.A.
- Term: 5 – Years
- Interest Only: 5 – Years
- Max LTV bucket: 75%
- Appraisal LTV: 46%
- Acquired property Dec 2022: \$134MM
- Loan Purpose: Cash – Out Refinance
- Whole Loan: \$60.3MM
- Cash – Out: \$55.8MM
- Closing Costs: \$3.9MM
- Reserves: \$612,160
- Fee Simple or Ground Lease: Ground Lease with Cunha 'Aina, LLC



CMBS Delinquency and Special Servicing Rates
(March 2008 - February 2022)



(9) [TREPP CMBS Delinquencies 2022](#)

UBS Loan Overview

The Grand Naniloa,
Hilton Double Tree



UBS Maximum Loan Request



- **Lender:** UBS
- **Term:** 5–Year
- **DSCR:** 1.40x
- **Rate Floor:** 7.25%
- **Loan Type:** CMBS
- **Max Loan Amount:** \$54MM
- **Interest Only:** 2 – years
- **30 – Year Amortization:** 3 - years
- **UBS Loan Spread:** 3.40%
- **Designated Benchmark Index:** 5–Year SOFR SWAP
- **Rate Derivation May 5th, 2023:** (Loan Spread: **3.40%** + SWAP Index: **3.22%**) = **6.62%**
- **Today’s Rate/Floor Rate:** Floor Rate:**7.25%**

Based on the Naniloa’s **2022 T-12 Net Income of \$7.8MM**, the Naniloa can pay its future Debt Service without issue as seen below.

Additionally, having a confirmed with the most recent appraisal, we know the Naniloa also has a value of **\$94.6MM**. The State was concerned whether the property could afford the balloon. The Naniloa can easily refinance the **\$52MM “Balloon”** which puts the property at **54% Loan-to-Value** at maturity, ultimately making this a reasonable and sustainable loan.

Debt Service Floor Rate: 7.25%

- **2022 Net Income:** \$7.8MM
- **Year 1 Interest Only:** \$3,915,000
- **Year 2 Interest Only:** \$3,915,000
- **Year 3 Principle & Interest:** \$4,420,502
- **Year 4 Principle & Interest:** \$4,420,502
- **Year 5 Principle & Interest:** \$4,420,502

UBS Loan Repayability

Today's Rate: 5/5/2024



LOAN SIZING

MAX LTV	60.0%	\$56,760,000
MIN DSCR	1.40	\$63,274,000
MIN DEBT YIELD (U/W NCF)	12.50%	\$54,407,000
COSTS TO CLOSE		\$63,205,000
SIZING CONSTRAINT	MIN DEBT YIELD (U/W NCF)	\$54,407,000
LOAN TERMS		Index Cap
TERM	5 Years	0-YR
INDEX	5-YR SOFR SWAP	0.00%
INDEX RATE	3.22%	5/2/23
INDEX FLOOR	3.22%	
CREDIT SPREAD	3.40%	+/- 0.00%
SPREAD RANGE	3.40%	3.40%
Interest Rate	6.62%	
INTEREST RATE RANGE	6.62%	6.62%
TYPE	Fixed	
AMORTIZATION	30	
INTEREST ONLY PERIOD	24 Months	
LOAN CONSTANT	7.68%	
PREPAYMENT	Defeasance	

LOAN METRICS

LTV	57.5%	
DEBT YIELD (NOI)	14.09%	
DEBT YIELD (U/W NOI)	14.32%	
DEBT YIELD (U/W NCF)	12.50%	
DEBT YIELD (YEAR 1)	14.75%	
DSCR (P&I)	1.84x	
DSCR (IO)	2.13x	
ANNUAL DS (P&I)	\$4,177,035	
ANNUAL DS (IO)	\$3,600,111	
NCF AFTER DS (P&I)	\$3,491,550	
NCF AFTER DS (IO)	\$4,068,474	
LOAN ORIGINATION DATE	Feb-23	
LOAN MATURITY DATE	Jan-2028	
LOAN BALANCE @ MATURITY	\$52,498,284	\$135,305/Unit
LOAN BALANCE @ SPECIFIED DATE	\$52,020,320	Sep-2028

UBS Loan Repayability Floor Rate



LOAN SIZING

MAX LTV	60.0%	\$56,760,000
MIN DSCR	1.40	\$59,342,000
MIN DEBT YIELD (U/W NCF)	12.50%	\$54,407,000
COSTS TO CLOSE		\$63,205,000
SIZING CONSTRAINT	MIN DEBT YIELD (U/W NCF)	\$54,407,000
LOAN TERMS		Index Cap
TERM	5 Years	0-YR
INDEX	5-YR SOFR SWAP	0.00%
INDEX RATE	3.22%	5/2/23
INDEX FLOOR	3.85%	
CREDIT SPREAD	3.40%	+/- 0.00%
SPREAD RANGE	3.40%	3.40%
Interest Rate	7.25%	
INTEREST RATE RANGE	7.25%	7.25%
TYPE	Fixed	
AMORTIZATION	30	
INTEREST ONLY PERIOD	24 Months	
LOAN CONSTANT	8.19%	
PREPAYMENT	Defeasance	

LOAN METRICS

LTV	57.5%	
DEBT YIELD (NOI)	14.09%	
DEBT YIELD (U/W NOI)	14.32%	
DEBT YIELD (U/W NCF)	12.50%	
DEBT YIELD (YEAR 1)	14.75%	
DSCR (P&I)	1.72x	
DSCR (IO)	1.94x	
ANNUAL DS (P&I)	\$4,453,820	
ANNUAL DS (IO)	\$3,944,508	
NCF AFTER DS (P&I)	\$3,214,765	
NCF AFTER DS (IO)	\$3,724,077	
LOAN ORIGATION DATE	Feb-23	
LOAN MATURITY DATE	Jan-2028	
LOAN BALANCE @ MATURITY	\$52,705,881	\$135,840/Unit
LOAN BALANCE @ SPECIFIED DATE	\$52,275,091	Sep-2028

UBS Loan Repayability

Hypothetical Rate: 9.00%



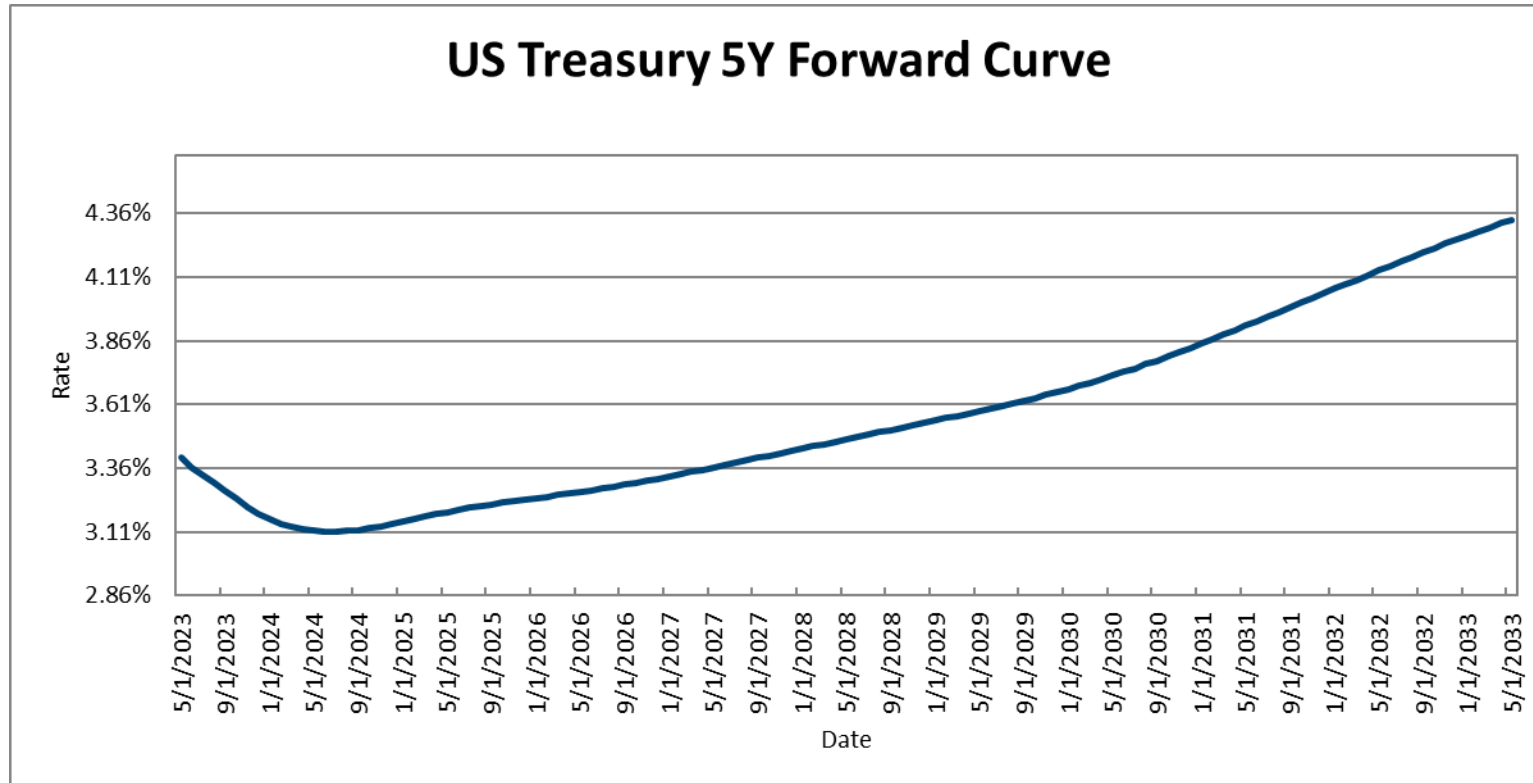
LOAN SIZING

MAX LTV	60.0%	\$56,760,000
MIN DSCR	1.40	\$50,312,000
MIN DEBT YIELD (U/W NCF)	12.50%	\$54,407,000
COSTS TO CLOSE		\$63,123,000
SIZING CONSTRAINT	MIN DSCR	\$50,312,000
LOAN TERMS		Index Cap
TERM	5 Years	0-YR
INDEX	5-YR SOFR SWAP	0.00%
INDEX RATE	3.22%	5/2/23
INDEX FLOOR	5.60%	
CREDIT SPREAD	3.40%	+/- 0.00%
SPREAD RANGE	3.40%	3.40%
Interest Rate	9.00%	
INTEREST RATE RANGE	9.00%	9.00%
TYPE	Fixed	
AMORTIZATION	30	
INTEREST ONLY PERIOD	24 Months	
LOAN CONSTANT	9.66%	
PREPAYMENT	Defeasance	

LOAN METRICS

LTV	53.2%	
DEBT YIELD (NOI)	15.24%	
DEBT YIELD (U/W NOI)	15.49%	
DEBT YIELD (U/W NCF)	13.52%	
DEBT YIELD (YEAR 1)	15.96%	
DSCR (P&I)	1.58x	
DSCR (IO)	1.69x	
ANNUAL DS (P&I)	\$4,857,861	
ANNUAL DS (IO)	\$4,528,080	
NCF AFTER DS (P&I)	\$2,810,724	
NCF AFTER DS (IO)	\$3,140,505	
LOAN ORIGINATION DATE	Feb-23	
LOAN MATURITY DATE	Jan-2028	
LOAN BALANCE @ MATURITY	\$49,181,052	\$126,755/Unit
LOAN BALANCE @ SPECIFIED DATE	\$48,885,675	Sep-2028

UBS Conditional Approval Maximum Loan Request



DLNR D-2 Clarifications

The Grand Naniloa,
Hilton Double Tree



Benchmark Index Overview: Transition to SOFR SWAPS



DLNR D-2: Page 10 Paragraph 1 & 2

“Paragraph 1: On March 3, 2023, WHR contacted staff about a new request for consent to mortgage and submitted an application for consent on March 6, 2023, but despite staff’s repeated requests, WHR has not provided sufficient information for staff to determine whether the loan terms are commercially reasonable. WHR provided a Term Sheet that indicates the loan would be from UBS AG for a 5-year term and payments for the first two years will be applied toward interest only. WHR represented in its application that the interest rate is fixed, although the Term Sheet states the interest rate is equal to:

340 basis points plus the five (5) year SOFR swap rate, as determined by Lender. However, in no event shall the interest rate be less than 7.25% per annum.

Paragraph 2: By definition, the interest rate appears to be variable because it is tied to an index that fluctuates daily. WHR’s counsel assured staff that despite this definition, the interest rate will be fixed at the time of the closing of the loan. See Exhibit 5 attached, question 3 and answer. Staff notes that if the requested consent is truly for a fixed rate loan, the SOFR should be deleted as irrelevant, because inclusion of that term makes the document ambiguous.

Correction 1: The D-2, Page-10, Paragraph-2, misinterprets the basic loan parameters presented to the Board in the Term Sheet. The fixed interest is not in dispute but is calculated based on the date of the closing of the loan and the fixed rate is equal to the formula 340 Basis Points Plus five (5) year SOFR swap rate that exists on the day of a closing. However, in no event shall the fixed interest rate be less than the rate floor of 7.25% per annum.

Correction 2: As an example, if the loan closed on 05/05/2023, the "5-year SOFR SWAP's" Index was $3.22\% + 3.40\% = 6.62\%$ fixed interest rate for 5-years.

Correction 3: If the calculation of the interest rate is lower than 7.25%, then the formula is replaced by the minimum floor interest rate $= 7.25\%$ for 5-years

UBS's rate description: *“340 Basis Points Plus five (5) year SOFR swap rate as determined by the lender. However, in no event shall the interest rate be less than 7.25% per annum.”*

SWAP Definition

*“Benchmark rates such as SOFR itself are essential in trading derivatives—particularly interest-rate swaps, which corporations and other parties use to manage interest-rate risk and speculate on changes in borrowing costs. **Interest-rate swaps are agreements in which the parties exchange fixed-rate interest payments for floating-rate interest payments.** In a “vanilla” swap, one party agrees to pay a fixed interest rate, and, in exchange, the receiving party agrees to pay a floating interest rate based on the SOFR—the rate may be higher or lower than SOFR, based on the party’s credit rating and interest-rate conditions.”* ⁽⁵⁾<https://www.investopedia.com/secured-overnight-financing-rate-sofr-4683954>

“Terms Sheet” Extrapolated

- 1) UBS explicitly states that the term is **(five) years** in length.
- 2) UBS explicitly states that the Banker Spread is **3.40%**.
- 3) UBS explicitly designates the **"5-year SOFR SWAP"** as the rate index utilized in this transaction to derive the final interest rate on the day of close.
- 4) The Floor Rate is higher than today's derived rate, so the floor rate takes priority; as of today, the fixed rate is **7.25%**.
- 5) UBS explicitly states that the max Loan Amount is **\$54MM**.

There's no ambiguity, here as the **D-2 “Page 10 – Paragraph 2”** would suggest. UBS explicitly states how the fixed interest rate derives; the D-2 also acknowledges that the DLNR Land Division is aware that the rate is affixed the day the loan closes. Moreover, the transition from "LIBOR" based indices to SOFR and SOFR – based Derivatives occurred on December 31, 2021, and has been the industry standard ever since. ⁽⁴⁾<https://www.jpmorgan.com/commercial-banking/insights/the-global-move-away-from-LIBOR>

Benchmark Index Overview: Transition to SOFR SWAPS



Correction 1: The D-2 misinterprets the difference between **“SOFR” & “SOFR SWAP Rates,”** as shown below.

Illustration (3) The **“Secured Overnight Financing Rate” (SOFR)**, used for short-term/bridge loans, typically floats in unison with the Federal Funds Rate; its current value is 5.0600%.

Illustration (2) **“5-year SOFR Swap Rates,”** on the other hand, are used for deriving fixed-rate term loans; in the case of this loan, their value on May 5th, 2023, was 3.222%.

1

U.S. Treasuries				
	Current	04 May 2023	05 Apr 2023	05 May 2022
1 Year	4.740%	4.633%	4.443%	2.016%
2 Year	3.921%	3.754%	3.801%	2.694%
3 Year	3.640%	3.481%	3.576%	2.891%
5 Year	3.422%	3.296%	3.369%	2.994%
7 Year	3.426%	3.319%	3.342%	3.057%
10 Year	3.449%	3.362%	3.301%	3.034%
30 Year	3.768%	3.727%	3.559%	3.135%

On the run Treasuries, published on a 2 hour delay. Updated 05 May 2023 | 16:45 ET

2

SOFR swap rate (annual/annual)				
	Current	04 May 2023	05 Apr 2023	05 May 2022
1 Year	4.636%	4.526%	4.521%	2.269%
2 Year	3.878%	3.735%	3.817%	2.747%
3 Year	3.502%	3.369%	3.448%	2.820%
5 Year	3.222%	3.120%	3.147%	2.798%
7 Year	3.162%	3.078%	3.045%	2.799%
10 Year	3.170%	3.104%	3.016%	2.823%
15 Year	3.226%	3.183%	3.056%	2.836%
30 Year	3.053%	3.035%	2.865%	2.592%

Updated 05 May 2023 | 16:15 ET

3

Secured Overnight Financing Rate (SOFR)				
	04 May 2023	03 May 2023	04 Apr 2023	04 May 2022
SOFR	5.06000%	4.81000%	4.83000%	0.30000%
30-Day Average SOFR	4.81432%	4.81533%	4.67186%	0.28637%
90-Day Average SOFR	4.69968%	4.69687%	4.53349%	0.17615%
1-month Term SOFR	5.04345%	5.04042%	4.82805%	0.80766%
3-month Term SOFR	5.07270%	5.05947%	4.93736%	1.18070%

Updated 07 May 2023

4

Swaps – Semi-bond				
	Current	04 May 2023	05 Apr 2023	05 May 2022
1 Year	4.928%	4.821%	4.821%	2.560%
2 Year	4.166%	4.024%	4.106%	3.034%
3 Year	3.787%	3.655%	3.734%	3.104%
5 Year	3.511%	3.409%	3.433%	3.082%
7 Year	3.450%	3.366%	3.332%	3.090%
10 Year	3.458%	3.392%	3.302%	3.107%
15 Year	3.513%	3.470%	3.342%	3.122%
30 Year	3.337%	3.322%	3.151%	2.876%

Updated 05 May 2023 | 16:45 ET

5

1-month Term SOFR swap rates				
	Current	04 May 2023	05 Apr 2023	05 May 2022
1 Year	4.555%	4.451%	4.444%	2.217%
2 Year	3.824%	3.686%	3.760%	2.699%
3 Year	3.456%	3.327%	3.400%	2.775%
5 Year	3.181%	3.082%	3.105%	2.757%
7 Year	3.120%	3.040%	3.006%	2.759%
10 Year	3.127%	3.063%	2.976%	2.783%
15 Year	3.181%	3.139%	3.015%	2.797%
30 Year	3.012%	2.995%	2.828%	2.560%

Updated 05 May 2023 | 16:15 ET

6

Swaps – Monthly Money				
	Current	04 May 2023	05 Apr 2023	05 May 2022
1 Year	4.653%	4.539%	4.538%	2.402%
2 Year	3.923%	3.778%	3.860%	2.848%
3 Year	3.558%	3.425%	3.503%	2.911%
5 Year	3.289%	3.188%	3.217%	2.886%
7 Year	3.231%	3.147%	3.118%	2.890%
10 Year	3.239%	3.173%	3.090%	2.906%
15 Year	3.292%	3.250%	3.128%	2.919%
30 Year	3.121%	3.106%	2.943%	2.677%

Updated 05 May 2023 | 16:45 ET

(5) [10-Year Swap Rates, Treasuries, LIBOR, SOFR, Term...](#) | Chatham Financial

The Benefits of a 5-year Loan



DLNR D-2: Page 10 – Paragraph 3

“D-2 Statement: Page 10 – Paragraph 3: Beginning in loan year 3, payments will include principal and interest on a 30-year amortization schedule. The loan will not be paid off at the end of five years, which will result in a large balloon payment due. WHR states in its application that the balloon amount will be \$52.5 million and that it will refinance the loan at that time. See Exhibit 5, question 2 and answer. The short-term financing proposal seems intended to only “kick the can down the road” without offering a long-term solution to the financial woes of the hotel.”

Correction 1: "DLNR D-2 Page-10 Paragraph-3," misreports the fundamental differences between a "Bridge Loan/Short-Term Financing" and a "5 – year Permanent Fixed Rate Loan," which is not considered a short-term solution.

Correction 2: Experts do not consider 5-year CMBS loans to be short-term financing solutions. In fact, DLNR approved the current CMBS 5-year loan term as “reasonable.” CMBS 5-year terms are one of the most utilized fixed-rate loans for large commercial real estate deals. Furthermore, the 5-year term provides borrower flexibility while allowing the management team to closely align their internal real estate cycle within the ever-changing marketplace. Moreover, the owner can either sell the asset in 5 years or refinance the property, as there might be a need for a rehabilitation loan, thereby addressing any major issues should they arise. Additionally, this helps alleviate the potential of worrying about significant defeasance payment, which would arise from refinancing the property before the “Prepayment Penalty Period” ends, in this case, the Defeasance Period.

Correction 3: Furthermore, loans with terms of **36–24 months and less** generally are considered shorter-term loans. Short-term loans also possess unique underwriting characteristics that differ from fixed-rate loans, mainly when calculating the prepayment period. Short-term loans utilize what's known as a "**Minimum Interest Period**" vs. a **Defeasance or Yield Maintenance Period**; as the loan term ends so fast, the lender requires the borrower to hold the loan for the "minimum period" to meet their minimum IRR yield requirements. Therefore, most lenders would likely refrain from providing a loan that is too short, without origination/Exit Fees; otherwise, the cost-to-risk associated with lending more significant sums of money for shorter periods would outweigh the benefit.

Defeasance Penalty Example: 10-year Loan: Origination Date March 1, 2023; Original Loan Amount: \$54MM; Major rehabilitation needed September 1, 2028; By refinancing the loan 4.5 – years early, the borrower would have to pay a **\$7.56MM defeasance payment** to refinance their loan to perform the required rehabilitation necessary, please see on next page. Classically, newer properties without major CAPEX requirements tend to lean more toward 10 – year+ deals. However, typically older vintage assets, the 1980s and prior, which need continual improvements, utilize the flexibility of a 5-year loan to stay nimble and adjust accordingly with the property's needs.

The D-2 conveys that the Grand Naniloa's current day performance is in a state of "financial woes." However, the property's recent appraisal would suggest otherwise; ultimately, the independent assessment illustrates how the property turned the corner once Hawai'i resumed Post-COVID travel without visitor restrictions. As a result, the Naniloa is now a performing asset with an appraised value of **\$94.6MM**; from 2021 forward, the property hit another record year of performance in 2022 for the first time since the Fujiyama bankruptcy. With this type of performance and fresh equity injection, Naniloa will reposition itself with a Cash-In refinance, ultimately curing any loan penalties and pending litigation without a loss to a lender and providing a reasonable and sustainable loan instrument for a performing property.

The Benefits of a 5-year Loan



Chatham FINANCIAL

Your Defeasance Estimate

Securities cost	\$58,464,021
<i>Loan Balance at Defeasance</i>	<i>\$50,904,937</i>
<i>Defeasance Penalty</i>	<i>\$7,559,084</i>
Third Party Fees	\$78,100
Chatham Financial Fee	\$9,500
Total cost	\$58,551,621



Loan information

Original Loan Amount	\$54,000,000.00
Loan Balance on 18-Apr-2023	\$53,904,476
Interest Rate	7.25%
Amortization Type	Amortizing
Interest Rate Calculation	Actual/360
First Full Payment Date	01-Mar-2023
Final Interest Only Payment	N/A
Final Payment Date	01-Apr-2033
Amortization Months	360

Loan Servicer
Property Name

Defeasance options

Defeasance Date	06-Sep-2028
Rates As Of	17-Apr-2023
Yield Curve Shock	0 bps
Forecasted Rates	No

Chatham Financial fee

Defeasance Consulting	\$9,500
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Third-party fees

Servicer Processing	\$25,000
Servicer Legal	\$18,000
Securities Intermediary	\$7,600
Accountant	\$3,500
Successor Borrower Legal	\$6,500
Rating Agency	\$17,500

Securities cost sensitivity

The dollar value of 1 basis point (DV01) provides the amount that the Securities Cost will decrease if interest rates increase by 0.01%.

DV01	(\$22,319)
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⁽⁵⁾ <https://www.chathamfinancial.com/technology/defeasance-calculator>

DLNR D-2 Clarifications



D-2 Page 2-4 Defaults

The D-2 Page 2-4 discusses COVID Defaults.

Confirmation 1: The Naniloa cured all COVID defaults.

Explanation: Note the Receiver has explained that there have been accounting “Snafus,” see attached emails to the right. WHR, LLC hasn’t had control of the property’s banking or operations for the last 2-years. Prior to COVID-19 WHR, LLC paid their rents and expenses and were never behind on mortgage payments. When COVID Lockdowns occurred March 21, 2020, in Hawai’i, this became the catalyst for Naniloa’s troubles.

Items fall outside the current scope of WHR, LLC authority. The Court Appointed Receiver: **George Van Buren**, who also confirms that the recent misses in payment are not due to the asset’s lack of performance. Rather, the **Management Company—Evolution Mgt.** is responsible for these payments, and WHR, LLC again has no management control to attend to these matters.

Late Payments

Jordi deHoyos
To: George Van Buren

George—why are ground rents being paid late, when the property is performing?

A sixth Notice of Default was served by hand delivery February 9, 2023, for:

- Failure to keep lease rental payments current (\$290,185.22 lease rent 2/01/2023 – 7/31/2023)
- Failure to post required performance bond
- Failure to post required fire insurance policy

Aloha,

Jordi deHoyos

Re: Late Payments

George <gvb>
To: Jordi deHoyos
Mon 5:25 PM

There have been some snafus with Evolution. Merely procedural and nothing to do with not having money.

On May 8, 2023, at 2:09 PM, Jordi deHoyos <Jordi.deHoyos@colliers.com> wrote:

George—why are ground rents being paid late, when the property is performing?

<image001.png>

Aloha,



Mon 5/8/2023 2:09 PM



D-2 Page-10 Paragraph-4

*“Another issue with the Term Sheet for the proposed loan is that it expressly states that it is not an offer, commitment, or an agreement by lender to make the loan, which means the Department cannot rely on that document to reflect that actual terms and conditions of the loan or mortgage. While WHR and its counsel also provided the forms of the Loan Agreement, Promissory Note, and Leasehold Mortgage, Security Agreement, Financing Statement and Fixture Filing, these documents are not signed and **do not contain some key terms such as the interest rate.**”*

Correction 1: The initial document provided to the DLNR, in which UBS executed in originating the CMBS loan on behalf of the Naniloa is the only agreement used in CMBS loans originations until the loan closing, wherein the loan documents are executed within 3 business days of the loan closing.

Correction 2: WHR, LLC paid \$125,000 as specified in the Term Sheet to process and close the loan.

Correction 3: The **D-2 Page-10 Paragraph-2**, *“WHR’s counsel assured staff that despite this definition, the interest rate will be fixed at the time of the closing of the loan. See Exhibit 5 attached, question 3 and answer.”* illustrates that the DLNR Land Division is now aware the final interest rate locks when the loan closes.

Explanation: Ultimately, based on the initial "Terms Sheet," UBS concluded that the max loan that Naniloa could bear, based on the last 24 months of income performance, is **\$54MM**. Furthermore, it would be highly irresponsible that any bank or reputable financial institution would provide or commit to a loan without performing its due diligence, 3rd party reports, and a deep underwriting of the property's performance first and foremost—especially, real estate transactions with extra layers, such as a ground lease with the State.



D-2 Page-11 Paragraph-2

“The total due under the Wilmington Trust mortgage as of the date of the declaration was \$65,017,078.17, including principal, interest, default interest, late fees and other fees and charges. According to the Gauer Declaration, per diem interest/default interest accruing in the principal balance is \$14,463.46. The declaration also details how loans and advances were taken out of the mortgage proceeds in favor of the principals of WHR in violation of the parties' loan agreement. These defaults and others described in the Gauer Declaration led to the court's appointment of a receiver for the operation of the hotel, which continues to this day. Wilmington Trust's motion for summary judgment and a decree of foreclosure was granted on Monday, March 20, 2023...”

Correction 1: WHR, LLC assets have commitments to pay any amount above the “New UBS Loan” in order to finalize the settlement with Wilmington Trust/Rialto as condition to the consent by DLNR to the New UBS Loan. WHR, LLC's attorney is in the process of a settlement and closing of the New UBS Loan requires the settlement to be executed.



D-2 Page-11 Paragraph-2 Continued:

*"A default judgment would occur if the sales proceeds were insufficient to cover the existing debt and mortgage. **Accordingly, there seems to be an issue of whether the Naniloa is even worth the amount of the existing debt and mortgage.**"*

***Correction 1:** The full appraisal has been delivered to the DLNR Land Division and states the "Leasehold Value" as \$94.6MM.*

***Correction 2:** The Naniloa is worth 160% more than the existing debt and mortgage.*

***Correction 3:** A CMBS loan is reasonable if the Loan-to-Value (LTV) is within a reasonable range and certainly $\$54\text{MM} / \$94.6\text{MM} = 57.08\%$ LTV, which is, more than reasonable. Any expert hired by the State of Hawai'i would agree.*

***Correction 4:** The DLNR Land Division was concerned as to whether WHR would be able to pay back its "Balloon Payment" at the maturity of the loan. Utilizing the implied Balloon Payment: $\$52\text{MM} / \text{Appraisal Value: } \$94.6\text{MM} = 54\%$ LTV. Using today's value and the future balloon payment, Naniloa would still be deemed a low refinance risk at anything 60% LTV and below.*

Explanation: The DLNR Land Division received an initial shorthand appraisal snapshot on May 1st, 2023, after the owner, WHR, LLC, initially provided verbal results to the DLNR Land Division. The DLNR Land Division took exception to WHR, LLC's oral presentation and then took exception to the shorthand 4-page version provided.

The lender was accommodating and provided the full Appraisal, which concluded its assessment within 60-days of receipt. Additionally, within 4-days of receiving the shorthand copy of the Appraisal, the DLNR Land Division received the full Appraisal on May 5th, 2023.

The DLNR Land Division now knows that Naniloa is valued far above the point of contention described within the **D-2 Page-11 Paragraph-2**. In addition, the following page includes the email snips between the DLNR Land Division and WHR, LLC, corroborating the exchange timeline. Moreover, upon receipt of the full Appraisal, the DLNR Land Division implied, after misinterpreting the results, that the Appraiser utilized a fee-simple value approach for a property with a ground lease. The Appraiser decisively corrected the DLNR Land Division's assumptions in detail; we've also included their response on the next slide.

DLNR D-2 Clarifications



1. DLNR Land Division taking exception to the format, upon receiving the 4-page shorthand appraisal.

3. The Appraiser confirms their value methodology. The Appraiser also confirms that the Fee Simple Value Approach DLNR Land Division misinterpreted was in fact a moot point.

From: Tsuji, Russell Y <Russell.Y.Tsuji@hawaii.gov>
Date: Monday, May 1, 2023 at 11:42 AM
To: Ed Bushor <ed@towerdevcon.com>, Moore, Kevin E <kevin.e.moore@hawaii.gov>, Chang, Dawn <dawn.chang@hawaii.gov>
Subject: RE: Naniloa

If you want us to consider the appraised value, you will need to send us the complete appraisal report for our review and to assure of compliance with USPAP standards. Thank you.

Russell

2. Email after 4-page shorthand appraisal submission, where DLNR Land Division misinterprets the Leasehold Value, for Fee a Simple Value. Typically, an appraiser would not use a fee simple value for real estate with a ground lease.

From: Tsuji, Russell Y <Russell.Y.Tsuji@hawaii.gov>
Date: Monday, May 1, 2023 at 2:17 PM
To: Ed Bushor <ed@towerdevcon.com>, Moore, Kevin E <kevin.e.moore@hawaii.gov>, Chang, Dawn <dawn.chang@hawaii.gov>
Subject: RE: Naniloa

I'm not sure why the appraiser is valuing the leased fee interest, that's the State's interest. It appears the appraiser combined the leasehold interest and the leased fee interest to value the property in fee simple. My guess, the appraiser was instructed to do so. That is one of the reasons we require the entire appraisal report to review—to be on the look out for hypothetical or extraordinary instructions/assumptions which are red flags upon our review.

To be clear, the State does not allow lessees to mortgage the State's leased fee interest. That would be improper.

Very truly yours,

Russell Y. Tsuji
Administrator

RE: See Below

John Borean <jborean@hvs.com>
To: Jordi deHoyos
You forwarded this message on 5/2/2023 2:55 PM

Reply Reply All Forward Tue 5/2/2023 1:04 PM

Hi Jordi,

HVS appraised the combined leasehold and leased fee interest in the property, not the fee simple interest.

As clearly outlined on Page 10 (Property Rights Appraised), the leasehold interest refers to Tower Development's leasehold ownership of the Grand Naniloa. Moreover, the leased fee interest pertains to the lobby-level retail outlet and concierge desk, lower-level restaurant, and two rooftop space leases, which measure a total of 10,200 square feet.

The HVS appraisal includes projections pertaining to the ground lease payments (Page 142 and 143), which are detailed in the detailed and 10-year proformas (Page 130 and Page 131), and correlate to the cash flows in the "as is" DCF analysis on Page 150.

Hypothetical conditions and extraordinary assumptions are detailed on Pages 18 and 19, and make no mention of appraising a hypothetical fee simple interest, as DLNR seems to have implied.

Hope this helps with your response to DLNR, let me know if there's anything else we can provide. Thanks!

John Borean | 白健儀
Senior Vice President
Hawaii & Northern California Region Leader
HVS

4. Within 4-days of the DLNR Land Division taking exception to the shorthand appraisal, the DLNR Land Division was provided with the full version.

Confidential Financial Information of Lessee - Naniloa Appraisal

Ed Bushor <ed@towerdevcon.com>
To: Russell.Y.Tsuji@hawaii.gov; Chang, Dawn; Kevin Moore
You forwarded this message on 5/4/2023 3:57 PM

Reply Reply All Forward Thu 5/4/2023 3:29 PM

HVS Appraisal - Grand Naniloa, a DoubleTree by Hilton - Hilo, HI - 04.20.23.pdf
5 MB



D-2 Page-11 Paragraph-2

“Staff has many of the same concerns that were conveyed to the Board when the 2022 mortgage consent was under consideration; and now, even more concerns. If WHR is unable to meet its monthly payment obligations or pay off the balloon due at the end of the 5-year term of the loan, the mortgage will end up in foreclosure again, which will likely result in ownership of the lease changing hands in a way that does not require Board consent.”

Correction 1: Staff should have no similar concerns as any expert would understand that the 2022 “Bridge Loan” is not similar in way whatsoever to the new CMBS loan. This CMBS loan is not a “Bridge Loan,” and Staff should have disclosed the difference to the Board.

Correction 2: While the bridge loan was a decisive way forward, it was during a time that 2022 Net Income was unknown. Thus, that bridge likely reasonable given the time period of the Consent Request Submittal. It would have been the only solution at such time to cure the foreclosure and would have allowed for the foreclosure taint to be removed from the property allowing for a **\$95MM-\$110MM** sale/refinance.

Correction 3: UBS is a robust and reputable Banking Institution, even during trying times in the marketplace. The targeted fixed rate is approximately **7.25%**, which mandates the Board to know this is loan is reasonable and sustainable. WHR can easily pay the debt service.

Correction 4: Ultimately, the current **\$54MM** max loan request is lower leverage than **2022’s** request at **\$62MM**. If one of the State’s main concerns is over-encumbering State lands with excessive debt, it should be welcomed news that WHR, LLC found a solution where the new max loan request is effectively **13%** lower than the previous request, making this more than reasonable.

Correction 5: UBS also sets a conservative **Debt Service Coverage Ratio (DSCR) at 1.40x**; meaning that the maximum debt service payment the property could afford is 1.40x less than the annual income. Russell Tsuji’s states at BLNR Meeting **“6-09-2022”** time stamped **“7:23:00”** that the DLNR Land Division would consider a **DSCR of 1.25x** as reasonable for commercial real estate underwriting. Meeting Link: <https://youtu.be/0lbQ5HzKkUI?t=26563>



D-2 Page-11 Paragraph-2

Another concern staff has about the loan is an unusual provision in the Loan Agreement for "New Mezzanine Loans." Apparently, UBS AG, as the lender, has the right to unilaterally divide the mortgage/loan to another new mortgage/loan and other mezzanine loans at the "rate" and "debt service" or payments as provided for in the loan documents, but other terms and conditions of the loan and new mortgage appear to be at the discretion of the UBS AG to decide, including but not limited to the amortization rate, the accrual of interest due at maturity (if any), partial or full interest-only, etc. Staff has concerns about the Board consenting to the current mortgage request because the Board may be barred from later raising an objection to any such new or mezzanine loan with different terms and conditions as aforesaid that would encumber State public trust lands. WHR responded that any such mortgage would still require consent as required by the State lease. See Exhibit 2, question 7 and answer. However, staff's concerns have not been allayed.

Correction 1: The D-2, misinterprets the "Terms Sheet" & UBS's reference or ability to create one of the many available CMBS structures for an individual property's needs.

Correction 2: The UBS Term's sheet clearly states that "**Additional Financing**" is not permitted. WHR agrees that at no time has there been a Mezzanine loan underwritten in connection with this term sheet. WHR agrees that Board's consent may condition that no additional financing is permitted in connection with the New UBS Loan/Term Sheet.



2018 Wells Fargo Loan Mezzanine Option: Also, please see below, the snip was pulled from the original Wells Fargo Loan Agreement 2018. The BLNR approved this loan back in 2018, and the language regarding “Mezzanine Rights,” is nearly identical. At no point has WHR, LLC ever put a second lien on State Lands without prior consent.

Section 11.6 Mezzanine Option.

Lender shall have the option (the “**Mezzanine Option**”) at any time to divide the Loan into two parts, a mortgage loan and a mezzanine loan, provided, that (i) the total loan amounts for such mortgage loan and such mezzanine loan shall equal the then outstanding amount of the Loan immediately prior to Lender’s exercise of the Mezzanine Option, and (ii) the weighted average interest rate of such mortgage loan and mezzanine loan shall equal the Interest Rate (other than in connection with prepayments, default interest, late charges and other, similar charges already referenced in the Loan Documents). Borrower shall, at Borrower’s sole cost and expense (not to exceed \$15,000), cooperate with Lender in Lender’s exercise of the Mezzanine Option in good faith and in a timely manner, which such cooperation shall include, but not be limited to, (i) executing such amendments to the Loan Documents and Borrower or any SPE Component Entity’s organizational documents as may be reasonably requested by Lender or requested by the Rating Agencies, (ii) creating one or more Single Purpose Entities (the “**Mezzanine Borrower**”), which such Mezzanine Borrower shall (A) own, directly or indirectly, 100% of the equity ownership interests in Borrower (the “**Equity Collateral**”), and (B) together with such constituent equity owners of such Mezzanine Borrower as may be designated by Lender, execute such agreements, instruments and other documents as may be required by Lender in connection with the mezzanine loan (including, without limitation, a promissory note evidencing the mezzanine loan and a pledge and security agreement pledging the Equity Collateral to Lender as security for the mezzanine loan); and (iii) delivering such opinions, title endorsements, UCC title insurance policies and other materials as may be required by Lender or the Rating Agencies.

Page 107 Original Wells Fargo Loan Agreement



D-2 Page-12 Paragraph-2&3

“ Paragraph 2: The loan is not sustainable and WHR has not shown the ability to pay off the loan at maturity. Staff suspects WHR seeks approval of this loan and mortgage that is substantially short of paying off the existing \$65 million plus attorneys' fees and costs to somehow be used later against Wilmington Trust in the foreclosure action or as a weapon in bankruptcy court by seeking a cramdown order against Wilmington Trust. Staff does not believe interjecting the State into this loan dispute or lawsuit between the WHR and the Wilmington Trust is good public policy. Significant public trust assets are at stake. Staff does not believe it is appropriate to allow the leveraging or mortgaging of a public trust asset involving ceded lands to fund a "settlement" involving the WHR and its owners and the Wilmington Trust where the allegations are more than the delinquency and collection of a debt. Here, an auditor found among other improprieties, evidence of significant self-dealing between WHR and its affiliates at a time when loan was in default and no payments were being made to Wilmington Trust; the diversion of hotel revenues for other uses away from hotel operations and in violation of the express terms of the loan documents.

Paragraph 3: In other words, WHR is seeking not only a bailout of its monetary default under the mortgage, but a bailout of Mr. Bushor and other WHR affiliates who allegedly funneled hotel revenues away from payment of the debt service on the Washington Mutual/Wilmington Trust mortgage, instead directing the funds to WHR affiliates. In staff's view, the State should avoid any action that would give the appearance of ratifying the alleged actions of WHR and its affiliates in this case. Based on the foregoing, staff therefore recommends denial of the March 2023 mortgage consent request.”

Correction 1: The **D-2 Page-12 Paragraph-2** falsely asserts that the loan request is unsustainable. The two most important factors of sustainability have been ignored in the report: 1) The net income of the property at \$7.8MM easily pays the loan payments, which equals sustainability; 2) The appraisal of \$94.6MM easily supports that property could be sold at maturity and pay \$52MM is only 54% LTV based on today's value, which also equals sustainability.

Correction 2: There is no dispute that every expert in the financial industry would agree, that income of \$7.8MM and the appraised value of \$94.6MM, mandates the conclusion that the New UBS Loan is more than reasonable and the Naniloa can easily sustain this New UBS Loan.

Final Thoughts



Our scope of research extended back through the previous **6 – years of operations**, pre & post-renovation. Additionally, we have had the opportunity to walk the entire asset front & back of the house and meet many current staff working day-to-day operations. As a result, the conclusion is that without the advent of COVID-19, the Grand Naniloa would likely have never gone into default in the first place.

Moreover, after its major renovation, The Naniloa's performance turned the corner entirely post-bankruptcy 2013. However, it wasn't until 2020, amid Hawai'i's complete shutdown, which provided the only major catalyst uncovered, which truly stifled Naniloa's newfound ascent.

After reviewing BLNR's meeting minutes from the 2013 agenda regarding the bankruptcy of the Naniloa, a board member asked the Chapter 11 Trustee one question: *"Has the Naniloa ever been profitable, monthly or annually?"* Based on the Trustee's answer, during ownership *"Circa Fujiyama,"* the Naniloa, up to that point, had never been a profitable business within the Hilo – MSA. "

Upon WHR, LLC taking control of the helm, they rehabbed and modernized the Naniloa from 2014-2017; from 2017 forward, the Naniloa has shown steady progress and has ultimately set the tone for Banyan Drive. Several remaining improvements would take the Grand Naniloa to the next level, from the "Polynesian Room" to the "Naniloa Pool Club," which several Hilo residents have expressed they would love to see back in action.

Banyan Drive's current condition is disheartening, and it has a long way to go before achieving its full market potential. The region has several significant issues that need to be addressed, from condemned buildings to the gall wasps wreaking havoc on the iconic Banyans that line the drive itself. The Naniloa is the single most significant driving force and within the Hilo hospitality MSA.

Again, the hotel currently employs nearly **10% of Hilo's entire hospitality workforce**; moreover, the Grand Naniloa is also very important to its employees and their families, who would otherwise **commute more than 3.4 hours a day** to reach the next closest hospitality zone in Kamuela / Waikoloa.

After reviewing Naniloa's present performance, CMBS lending dynamics in the Hawai'i MSA, & the proposed 5-year loan refinance on behalf of UBS, Colliers Mortgage has deduced that the loan request is a reasonable loan by current-day CMBS Underwriting standards. Furthermore, it's a viable low-cost option that The Naniloa can repay without accounting for future income growth. Overall, this is the best finance option available by a significant & reputable Banking Institution and will help reposition The Naniloa to move forward as a high-performing property for the first time in its history.





Accelerating success.

Our mission

Maximize the potential of property to accelerate the success of our clients and our people.

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Testimony of Michael V. Paulin
BLNR Meeting May 12, 2023 – Agenda Item D-3

Re: Support for Approval of Request for Consent to Mortgage and Security Agreement, General Lease No. S-5844, WHR LLC, Lessee; Waiakea, South Hilo, Hawaii, Tax Map Keys: (3) 2-1-01:012 and 2-1-05:013, 016, 017, 027, 032, and 046.

To the Chairwoman Chang and Members:

Aloha. We ask for your Kokua.

My name is Michael V. Paulin of Honolulu, Hawaii. Together with my partner in life and business, Aida Alcantra, we have been investors in Naniloa since 2013. Aida and I lead a group of investors who have invested around \$5,000,000 into the Hotel since 2013.

Our investors are looking forward to joining Ben Rafter under his new proposed: 1) \$2M ownership investment along with our \$1M plus, and 2) manager role for the ownership of the Naniloa.

Some background on myself: In '59, as Naniloa was being developed, I landed in Hilo working on an oil tanker from San Pedro. I was as an underage 17 year old merchant seaman. Hawaii was a new state. I joined the Sailors Union of the Pacific and worked the docks in Hilo, Nawilili, and Honolulu for several years.

In the intervening 64 years since statehood, I left the sea for the beach and co-founded Aston Hotels. Then with my partner in life, Aida Alcantra, we founded Aqua Hotels as Hawaii's largest Employee Stock Ownership Company for our 1,500 employees all of whom have been richly rewarded.

Aida & I gave Ben Rafter, WHR's/ownership's new proposed manager, his first job in Hawaii's hotel business. Today, Ben, with his quiet leadership style is Hawaii's most respected hotelier and our local hotel industry's undisputed leader continually being called upon by our governors and legislatures for his counsel and wisdom.

Over that span of years, Ben, Aida, and I have operated 120 hotels throughout Hawaii and never experienced a single failure. Together we will continue the success of Hilo's iconic Naniloa under LOCAL ownership and management. Plus, we will partnership with one of the world's largest most respected banks — United Bank of Switzerland thus all of us here today will avoid the pain of foreclosure to Employees, investors, and this body.

Ben & I have relationships with UBS on other islands, UBS knows Ben and I very well.

This is a unique and timely marriage for Hilo's largest private employer saving them from the agony and disruption of foreclosure or even worse risks of bankruptcy, which can be avoided with the new UBS loan. We will continue to think Local and Go Global

UBS obviously trusts us implicitly.

It is my hope you will join them today in that same trust.

Regarding the reasonableness of this Loan:

Importantly, this Loan is as reasonable or more reasonable than any loan I have seen in over 100 hotels I have managed in the State of Hawaii. With \$7M NOI in 2022, and an appraisal of \$94.6M, there is a Loan to Value of below 60% and 1.4 Debt Coverage ratio (well above a 1.2 or 1.25 ratio that is normal). Thus, any hotelier expert would conclude this loan is "reasonable." Please consider these factors and make the right decision for Hilo, the State of Hawaii and all our employees at the Naniloa. They need to end the fear of being foreclosed and having a New York Lender be the owner in charge of them...which would be catastrophic. Approving this loan is reasonable eliminates all of the negatives of this

Testimony of Michael V. Paulin
BLNR Meeting May 12, 2023 – Agenda Item D-3
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foreclosure and negative impacts on our Hilo community and will end this fear or employees to be taken over by a New York Lender.

We will never let you down.

Mahalo Nui,

Aida Alcantra-Paulin
Michael Paulin
Honolulu, Hawaii
808-864-9300