

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 8-K**

**CURRENT REPORT PURSUANT TO  
SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934**

Date of Report (Date of earliest event reported):

April 26, 2017

**DiamondRock Hospitality Company**

(Exact name of registrant as specified in charter)

**Maryland**  
(State or Other Jurisdiction  
of Incorporation)

**001-32514**  
(Commission File Number)

**20-1180098**  
(IRS Employer  
Identification No.)

**3 Bethesda Metro Center, Suite 1500**  
**Bethesda, MD 20814**  
(Address of Principal Executive Offices) (Zip Code)

**(240) 744-1150**  
(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 or Rule 12b-2 of the Securities Exchange Act of 1934.

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

**ITEM 1.01. Entry into a Material Definitive Agreement.**

On April 26, 2017, the DiamondRock Hospitality Company (the "Company") entered into a Term Loan Agreement (the "Term Loan Agreement") among the Company, DiamondRock Hospitality Limited Partnership, Regions Bank, Regions Capital Markets, KeyBank National Association, PNC Bank, National Association, U.S. Bank National Association and certain other lenders named therein. The Term Loan Agreement provides for a new \$200 million unsecured term loan maturing on April 25, 2022 (the "Term Loan"). Any principal amounts are due and payable upon maturity of the Term Loan. The Term Loan may be paid prior to maturity in whole or in part at the Company's option without penalty or premium. The Company's operating partnership, DiamondRock Hospitality Limited Partnership, is the borrower under the Term Loan Agreement and certain of the Company's material subsidiaries guarantee its obligations under the Term Loan Agreement.

The Company used a portion of the proceeds from the Term Loan to repay the \$170.4 million mortgage loan secured by the Lexington Hotel New York.

Interest is paid on the borrowings under the Term Loan Agreement at varying rates, based upon LIBOR plus an applicable margin. The applicable margin is based upon the Company's leverage ratio, as follows:

Level	Ratio of Net Indebtedness to EBITDA	Applicable Margin
1	Less than or equal to 35%	1.45%
2	Greater than 35% but less than or equal to 45%	1.60%
3	Greater than 45% but less than or equal to 50%	1.75%

4	Greater than 50% but less than or equal to 55%	1.95%
5	Greater than 55%	2.20%

As of May 1, 2017, the applicable interest rate under the Term Loan is LIBOR plus 1.45%.

The Term Loan Agreement contains various corporate financial covenants. A summary of the most restrictive covenants is as follows:

	Covenant	Actual
Maximum leverage ratio	60%	25.1%
Minimum fixed charge coverage ratio	1.50x	4.65x
Minimum tangible net worth	\$1.913 billion	\$2.612 billion
Secured Indebtedness	Less than 45% of Total Asset Value	26.7%

The Term Loan Agreement requires the Company to maintain a specific pool of unencumbered properties. The unencumbered properties must be a minimum of eight properties with a value, as defined, of not less than \$750 million.

The Term Loan Agreement contains representations, financial and other affirmative and negative covenants, events of default, and remedies typical for this type of term loan and which match in all material respects the comparable terms of the agreement governing the Company's senior unsecured credit facility and the agreement governing the Company's \$100 million unsecured term loan. In connection with the Term Loan, the Company entered into non-material amendments to these agreements. Any failure to comply with the financial and operating covenants of the Term Loan Agreement would constitute a default, which could result in, among other things, the amounts outstanding, including all accrued interest and unpaid fees, becoming immediately due and payable.

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The foregoing description of the Term Loan Agreement does not purport to be complete and is qualified in its entirety by the full terms and conditions of the Term Loan Agreement which is filed as Exhibit 10.1 to this Current Report on Form 8-K (this "Current Report") and incorporated herein by reference.

**ITEM 2.03. Creation Of A Direct Financial Obligation Or An Obligation Under An Off-Balance Sheet Arrangement Of A Registrant.**

The information set forth under Item 1.01 of this Current Report is hereby incorporated by reference into this Item 2.03.

**ITEM 9.01. Financial Statements and Exhibits.**

(d) Exhibits.

See Index to Exhibits attached hereto.

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**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

DIAMONDROCK HOSPITALITY COMPANY

Date: May 1, 2017

By: /s/ William J. Tennis  
 William J. Tennis  
 Executive Vice President, General Counsel and Corporate Secretary

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**EXHIBIT INDEX**

Exhibit No.	Description
10.1	Term Loan Agreement, dated as of April 26, 2017, by and among DiamondRock Hospitality Company, DiamondRock Hospitality Limited Partnership, Regions Bank, as administrative agent, Regions Capital Markets, KeyBanc Capital Markets, PNC Capital Markets LLC and U.S. Bank National Association, as joint lead arrangers, and KeyBank National Association, PNC Bank, National Association and U.S. Bank National Association, as co-syndication agents, and the lenders party thereto

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TERM LOAN AGREEMENT

Dated as of April 26, 2017

by and among

DIAMONDROCK HOSPITALITY LIMITED PARTNERSHIP,  
as Borrower,

DIAMONDROCK HOSPITALITY COMPANY,  
as Parent,

THE FINANCIAL INSTITUTIONS PARTY HERETO  
AND THEIR ASSIGNEES UNDER SECTION 13.5.,  
as Lenders,

and

REGIONS BANK,  
as Administrative Agent,

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REGIONS CAPITAL MARKETS,  
KEYBANC CAPITAL MARKETS,  
PNC CAPITAL MARKETS LLC,  
and  
U.S. BANK NATIONAL ASSOCIATION,  
as Joint Lead Arrangers

and

KEYBANK NATIONAL ASSOCIATION,  
PNC BANK, NATIONAL ASSOCIATION  
and  
U.S. BANK NATIONAL ASSOCIATION,  
as Co-Syndication Agents

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THIS TERM LOAN AGREEMENT (this “Agreement”) dated as of April 26, 2017, by and among DIAMONDROCK HOSPITALITY LIMITED PARTNERSHIP, a limited partnership formed under the laws of the State of Delaware (the “Borrower”), DIAMONDROCK HOSPITALITY COMPANY, a corporation formed under the laws of the State of Maryland (the “Parent”), each of the financial institutions initially a signatory hereto together with their successors and assignees under Section 13.5. (collectively, the “Lenders”), and REGIONS BANK, as Administrative Agent (the “Administrative Agent”), with each of REGIONS CAPITAL MARKETS, KEYBANC CAPITAL MARKETS, PNC CAPITAL MARKETS, LLC and U.S. BANK NATIONAL ASSOCIATION, as Joint Lead Arrangers (collectively, the “Lead Arrangers”), and KEYBANK NATIONAL ASSOCIATION, PNC BANK, NATIONAL ASSOCIATION and U.S. BANK NATIONAL ASSOCIATION, as Co-Syndication Agents (collectively, the “Syndication Agents”).

WHEREAS, the Administrative Agent and the Lenders desire to make available to the Borrower a term loan facility in the initial amount of \$200,000,000 on the terms and conditions contained herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereto agree as follows:

## 1. ARTICLE I. DEFINITIONS

### 2. Section 1.1. Definitions.

In addition to terms defined elsewhere herein, the following terms shall have the following meanings for the purposes of this Agreement:

“**Additional Loans**” has the meaning given that term in Section 2.9.

“**Accession Agreement**” means an Accession Agreement substantially in the form of Annex I to the Guaranty.

“**Accommodation Subsidiary**” has the meaning given that term in Section 4.1.(d).

“**Additional Costs**” has the meaning given that term in Section 5.1.(b).

“**Adjusted EBITDA**” means, for any given period, (a) the EBITDA of the Parent and its Subsidiaries determined on a consolidated basis for such period, minus (b) FF&E Reserves for such period.

“**Adjusted NOI**” means, for any Property and for any period (or if no applicable period is stated, the period of twelve consecutive fiscal months then ended), Net Operating Income for such Property for such period minus the greater of (a) the actual amount of franchise fees paid with respect to such Property during such period and (b) an imputed franchise fee in the amount of four percent (4.0%) of the gross revenues for such Property for such period; provided however, for purposes of this definition, no imputed franchise fee shall be deducted from Net Operating Income with respect to any Property that is not subject to a Franchise Agreement. If a Property has not continuously operated the immediately preceding period of twelve consecutive months, then the Adjusted NOI of such Property shall be calculated by annualizing the historical Net Operating Income of such Property for the most recently ending period for which it has been in continuous operation, determined on a pro forma basis reasonably acceptable to the Administrative Agent. For the avoidance of doubt and only with respect to continuously operated Properties, Adjusted NOI for the period of four consecutive fiscal quarters most recently ended for any

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such Property acquired by the Borrower or any Subsidiary during such period shall be utilized regardless of the date such Property was acquired by the Borrower or such Subsidiary.

“**Adjusted Total Asset Value**” means Total Asset Value determined exclusive of assets that are owned by Excluded Subsidiaries, Foreign Subsidiaries and Unconsolidated Affiliates.

“**Administrative Agent**” means Regions Bank, as contractual representative of the Lenders under this Agreement, or any successor Administrative Agent appointed pursuant to Section 12.8.

“**Administrative Questionnaire**” means the Administrative Questionnaire completed by each Lender and delivered to the Administrative Agent in a form supplied by the Administrative Agent to the Lenders from time to time.

“**Affected Lender**” has the meaning given that term in Section 5.8.

“**Affiliate**” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. In no event shall the Administrative Agent or any Lender be deemed to be an Affiliate of the Borrower.

“**Agreement Date**” means the date as of which this Agreement is dated.

“**Anti-Corruption Laws**” means all Applicable Laws of any jurisdiction concerning or relating to bribery, corruption or money laundering, including without limitation, the Foreign Corrupt Practices Act of 1977, as amended.

“**Anti-Terrorism Laws**” has the meaning given that term in Section 7.1.(z).

“**Applicable Law**” means all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes, executive orders, and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

“**Applicable Margin**” means:

(a) Prior to the Investment Grade Rating Date, the percentage rate set forth below corresponding to the Leverage Ratio in effect at such time as set forth in the Compliance Certificate most recently delivered by the Borrower pursuant to Section 9.3.:

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Level	Leverage Ratio	Applicable Margin for LIBOR Loans	Applicable Margin for Base Rate Loans
1	Less than or equal to 35.0%	1.45%	0.45%
2	Greater than 35.0% but less than or equal to 45.0%	1.60%	0.60%
3	Greater than 45.0% but less than or equal to 50.0%	1.75%	0.75%
4	Greater than 50.0% but less than or equal to 55.0%	1.95%	0.95%
5	Greater than 55.0%	2.20%	1.20%

The Applicable Margin shall be determined by the Administrative Agent from time to time, based on the Leverage Ratio as set forth in the Compliance Certificate most recently delivered by the Borrower pursuant to Section 9.3. Any adjustment to the Applicable Margin shall be effective as of the first day of the calendar month immediately following the month during which the Borrower delivers to the Administrative Agent the applicable Compliance Certificate pursuant to Section 9.3. If the Borrower fails to deliver a Compliance Certificate pursuant to Section 9.3., the Applicable Margin shall equal the percentage corresponding to Level 5 above until the first day of the calendar month immediately following the month that the required Compliance Certificate is delivered. Notwithstanding the foregoing, for the period from the Effective Date through but excluding the date on which the Administrative Agent first determines the Applicable Margin for Loans as set forth above, the Applicable Margin shall be determined based on Level 1. Thereafter, until the Investment Grade Rating Date, the Applicable Margin shall be adjusted from time to time as set forth in this clause (a).

(b) On, and at all times after, the Investment Grade Rating Date, the applicable rate per annum set forth in the table below corresponding to the Level in the first column of the table in which the Parent’s or Borrower’s Credit Rating falls. During any period that the Parent or Borrower has received Credit Ratings from both S&P and Moody’s that are not equivalent, then the Applicable Margins shall be determined based on the higher of such Credit Ratings. During any period that the Parent has received a Credit Rating from only Moody’s or S&P, then the Applicable Margins shall be based upon such Credit Rating. During any period after the Investment Grade Rating Date that the Parent has (A) not received a Credit Rating from any Rating Agency or (B) only received a Credit Rating from a Rating Agency that is neither S&P nor Moody’s, then the Applicable Margin shall be determined based on Level 5 in the table below. Any change in the Parent’s Credit Rating which would cause it to move to a different Level shall be effective as of the first day of the first calendar month immediately following such change.

Level	Credit Rating	Applicable Margin for LIBOR Loans	Applicable Margin for Base Rate Loans
1	≥ A-/A3	0.900%	0.000%
2	BBB+/Baa1	0.950%	0.000%
3	BBB/Baa2	1.100%	0.100%
4	BBB-/Baa3	1.350%	0.350%
5	<BBB-/Baa3/Unrated	1.750%	0.750%

(c) During the Leverage Ratio Surge Period, any Applicable Margin determined as provided above shall be increased by 0.35% unless a Material Acquisition occurred during the Leverage Ratio Surge Period.

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(d) The provisions of this definition shall be subject to Section 2.2.(c).

“**Appraisal**” means, with respect to any Property, an M.A.I. appraisal (reasonably acceptable to the Administrative Agent as to form, substance and appraisal date), prepared by a professional appraiser reasonably acceptable to the Administrative Agent, and determining the “as is” market value of such Property as between a willing buyer and a willing seller.

“**Approved Accounting Firm**” means Deloitte LLP, KPMG LLP, PricewaterhouseCoopers International Limited, Ernst & Young LLP or such other independent certified public accountant of recognized national standing reasonably acceptable to the Administrative Agent.

“**Approved Fund**” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender, or (c) an entity or an Affiliate of any entity that administers or manages a Lender.

“**Approved Manager**” means (i) each property management company listed on Schedule 1.1.(a), (ii) any Affiliate thereof and (ii) any other nationally recognized third-party property management company approved by the Administrative Agent in writing.

“**Assignment and Assumption**” means an Assignment and Assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 13.5.), and accepted by the Administrative Agent, in substantially the form of Exhibit A or any other form approved by the Administrative Agent.

“**Availability Surge Period**” has the meaning given that term in the definition of Maximum Loan Availability.

“**Bail-In Action**” means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

“**Bail-In Legislation**” means, 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 for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“**Bankruptcy Code**” means the Bankruptcy Code of 1978, as amended.

“**Base Rate**” means, at any time, the highest of (a) the Prime Rate, (b) the Federal Funds Rate plus 0.50% and (c) one-month LIBOR plus 1.0%. Each change in the Base Rate pursuant to clause (a) or (b) shall take effect simultaneously with the corresponding change or changes in the Prime Rate or the Federal Funds Rate. Clause (c) shall not be applicable during any period in which LIBOR is unavailable or unascertainable.

“**Base Rate Loan**” means a Loan (or any portion thereof) bearing interest at a rate based on the Base Rate.

“**Benefit Arrangement**” means at any time an employee benefit plan within the meaning of Section 3(3) of ERISA which is not a Plan or a Multiemployer Plan and which is maintained or otherwise contributed to by any member of the ERISA Group.

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“**Borrower**” has the meaning set forth in the introductory paragraph hereof and shall include the Borrower’s successors and permitted assigns.

“**Borrower Information**” has the meaning given that term in Section 2.2.(c).

“**Business Day**” means (a) a day of the week (but not a Saturday, Sunday or holiday) on which the offices of the Administrative Agent in Cleveland, Ohio are open to the public for carrying on substantially all of the Administrative Agent’s business functions, and (b) if such day relates to a LIBOR Loan, any such day that is also a day on which dealings in Dollars are carried on in the London interbank market. Unless specifically referenced in this Agreement as a Business Day, all references to “days” shall be to calendar days.

“**Capitalization Rate**” means (a) 7.25% for Properties developed with hotels categorized as Upscale, Upper Upscale or above Full-Service and located within (i) the central business districts of Boston, Massachusetts, Chicago, Illinois, Borough of Manhattan, New York, Washington, D.C., San Francisco, California, San Diego, California and (ii) Key West, Florida, or (b) 8.00% for all other Properties. Categorization of hotels shall be as determined by Smith Travel Research or as otherwise requested by the Borrower and consented to in writing by the Requisite Lenders.

“**Capitalized Lease Obligation**” means an obligation under a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP. The amount of a Capitalized Lease Obligation is the capitalized amount of such obligation as would be required to be reflected on a balance sheet of the applicable Person prepared in accordance with GAAP as of the applicable date.

“**Cash Equivalents**” means: (a) securities issued, guaranteed or insured by the United States of America or any of its agencies with maturities of not more than one year from the date acquired; (b) certificates of deposit with maturities of not more than one year from the date acquired issued by a United States federal or state chartered commercial bank of recognized standing, or a commercial bank organized under the laws of any other country which is a member of the Organisation for Economic Co-operation and Development, or a political subdivision of any such country, acting through a branch or agency, which bank has capital and unimpaired surplus in excess of \$500,000,000 and which bank or its holding company has a short-term commercial paper rating of at least A-2 or the equivalent by S&P or at least P-2 or the equivalent by Moody’s; (c) reverse repurchase agreements with terms of not more than seven days from the date acquired, for securities of the type described in clause (a) above and entered into only with commercial banks having the qualifications described in clause (b) above; (d) commercial paper issued by any Person incorporated under the laws of the United States of America or any State thereof and rated at least A-2 or the equivalent thereof by S&P or at least P-2 or the equivalent thereof by Moody’s, in each case with maturities of not more than one year from the date acquired; and (e) investments in money market funds registered under the Investment Company Act of 1940, as amended, which have net assets of at least \$500,000,000 and at least 85% of whose assets consist of securities and other obligations of the type described in clauses (a) through (d) above.

“**Closing Date Mortgage**” means a New York Mortgage on the real property known as The Lexington Hotel.

“**Commitment**” means, as to each Lender, such Lender’s obligation to make a Loan on the Effective Date pursuant to Section 2.1. in an amount up to, but not exceeding, the amount set forth for such Lender on Schedule I as such Lender’s “Commitment Amount”.

“**Commodity Exchange Act**” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.) as amended from time to time, and any successor statute.

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“**Compliance Certificate**” has the meaning given that term in Section 9.3.

“**Connection Income Taxes**” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“**Continue**”, “**Continuation**” and “**Continued**” each refers to the continuation of a LIBOR Loan from one Interest Period to another Interest Period pursuant to Section 2.6.

“**Control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Convert”, “Conversion” and “Converted” each refers to the conversion of a Loan of one Type into a Loan of another Type pursuant to Section 2.7.

“Credit Event” means either of the following: (a) the making (or deemed making) of any Loan or (b) the Conversion of a Base Rate Loan into a LIBOR Loan.

“Credit Rating” means the rating assigned by a Rating Agency to the senior unsecured long term Indebtedness of a Person.

“Debtor Relief Laws” means the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar Applicable Laws relating to the relief of debtors in the United States of America or other applicable jurisdictions from time to time in effect.

“Default” means any of the events specified in Section 11.1., whether or not there has been satisfied any requirement for the giving of notice, the lapse of time, or both.

“Defaulting Lender” means, subject to Section 3.9.(d), any Lender that (a) has failed to (i) fund all or any portion of its Loans within 2 Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s good faith determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within 2 Business Days of the date when due, (b) has notified the Borrower or the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s good faith determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within 3 Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors 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

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or (iii) become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States of America or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 3.9.(d)) upon delivery of written notice of such determination to the Borrower and each Lender.

“Derivatives Contract” means a “swap agreement” as defined in Section 101 of the Bankruptcy Code.

“Derivatives Support Document” means (a) any Credit Support Annex comprising part of (and as defined in) any Specified Derivatives Contract, and (b) any document or agreement, pursuant to which cash, deposit accounts, securities accounts or similar financial asset collateral are pledged to or made available for set-off by, a Specified Derivatives Provider, including any banker’s lien or similar right, securing or supporting Specified Derivatives Obligation.

“Derivatives Termination Value” means, in respect of any one or more Derivatives Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Derivatives Contracts, (a) for any date on or after the date such Derivatives Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a) the amount(s) determined as the mark-to-market value(s) for such Derivatives Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Derivatives Contracts (which may include the Administrative Agent or any Lender).

“Development/Redevelopment Property” means (a) a new Property under construction or (b) an existing Property which is undergoing an expansion pursuant to which the total guest rooms for such Property will be increased by 50% or more. Each Development/Redevelopment Property shall continue to be classified as a Development/Redevelopment Property hereunder until the achievement of substantial completion with respect to such Development/Redevelopment Property, following which such Development/Redevelopment Property shall be classified as a Seasoned Property.

“Dollars” or “\$” means the lawful currency of the United States of America.

“Domestic Subsidiary” means any Subsidiary that is incorporated or organized under the laws of any state of the United States or the District of Columbia.

“Dutch Auction” has the meaning given that term in Section 13.5.

“EBITDA” means, with respect to a Person for any period (without duplication): (a) net income (loss) of such Person for such period determined on a consolidated basis (before minority interests), exclusive of the following (but only to the extent included in determination of such net income (loss)): (i) depreciation and amortization expense; (ii) Interest Expense; (iii) income tax expense; (iv) extraordinary or non-recurring gains and losses; (v) closing costs expensed which are directly attributable to the acquisition of Property; (vi) severance costs; and (vii) other non-cash charges including, without limitation, impairment charges (other than non-cash charges that constitute an accrual of a reserve for future cash payments) plus (b) such Person’s Ownership Share of EBITDA of its

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Unconsolidated Affiliates. EBITDA shall be adjusted to remove any impact from (x) non-cash amortization of stock grants to members of the Parent's management, (y) straight line rent leveling adjustments required under GAAP and (z) amortization of intangibles pursuant to FASB ASC 805.

**"EEA Financial Institution"** means (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 clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

**"EEA Member Country"** means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

**"EEA Resolution Authority"** means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

**"Effective Date"** means the later of (a) the Agreement Date or (b) the date on which all of the conditions precedent set forth in Section 6.1. shall have been fulfilled or waived.

**"Eligible Assignee"** means any Person that meets the requirements to be an assignee under Section 13.5.(b)(iii), (v) and (vi) (subject to such consents, if any, as may be required under Section 13.5.(b)(iii)).

**"Eligible Property"** means a Property which satisfies all of the following requirements:

- (a) such Property (i) is either (x) an Upper-Upscale, Luxury or Upscale (as defined by Smith Travel Research) hotel located in a major urban market or (y) a destination resort hotel acceptable to the Administrative Agent in its sole discretion and (ii) other than the Properties listed on Schedule 4.1, is located in a top 50 metropolitan statistical area or other area acceptable to the Administrative Agent in its sole discretion;
- (b) such Property is open for business to the public;
- (c) such Property is (i) branded by a nationally recognized hotel company or an Affiliate of such a company, (ii) operated as an independent hotel located in a central business district or (iii) a destination resort hotel acceptable to the Administrative Agent in its sole discretion;
- (d) such Property is located in one of the 48 contiguous States of the United States of America, the State of Hawaii, or in the District of Columbia;
- (e) such Property is owned in fee simple or leased under a Ground Lease entirely by the Borrower or a Subsidiary;
- (f) neither such Property, nor any interest of the Borrower or any Subsidiary therein, is subject to any Lien (other than Permitted Liens (but not Liens of the types described in clauses (f), (g) and (h) of the definition of Permitted Liens));
- (g) if such Property is owned or leased by a Subsidiary (i) none of the Borrower's direct or indirect ownership interest in such Subsidiary is subject to any Lien (other than Permitted Liens (but not

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Liens of the types described in clauses (f), (g) and (h) of the definition of Permitted Liens)) or to a Negative Pledge; and (ii) the Borrower directly, or indirectly through a Subsidiary, has the right to take the following actions without the need to obtain the consent of any Person: (x) to sell, transfer or otherwise dispose of such Property and (y) to create a Lien on such Property as security for Indebtedness of the Borrower or such Subsidiary, as applicable;

(h) such Property is managed by an Approved Manager pursuant to a Property Management Agreement acceptable to the Administrative Agent; provided however that any Property Management Agreement with an Approved Manager or one of its Affiliates that is substantially in the same form as another Property Management Agreement with such Approved Manager or one of its Affiliates approved previously by the Administrative Agent shall be deemed acceptable to Administrative Agent;

(i) such Property is free of all structural defects, title defects, environmental conditions or other adverse matters except for defects, deficiencies, conditions or other matters individually or collectively which are not material to the profitable operation of such Property;

(j) such Property is covered by property insurance in amounts and upon terms that satisfy criteria set forth in Section 8.5.;

(k) such Property has all material occupancy and operating permits and licenses required by Applicable Law; and

(l) the Administrative Agent has received, in form and substance satisfactory to the Administrative Agent, information and reports regarding such Property as required under Section 4.1.(b).

**"Environmental Claims"** means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, accusations, allegations, notices of noncompliance or violation, investigations (other than internal reports prepared by any Person in the ordinary course of business and not in response to any third party action or request of any kind) or proceedings relating in any way to any actual or alleged violation of or liability under any Environmental Law or relating to any permit issued, or any approval given, under any such Environmental Law, including, without limitation, any and all claims by Governmental Authorities for enforcement, cleanup, removal, response, remedial or other actions or damages, contribution, indemnification cost recovery, compensation or injunctive relief resulting from Hazardous Materials or arising from alleged injury or threat of injury to human health or the environment.

**"Environmental Laws"** means any Applicable Law relating to environmental protection or the manufacture, storage, remediation, disposal or clean-up of Hazardous Materials including, without limitation, the following: Clean Air Act, 42 U.S.C. § 7401 et seq.; Federal Water Pollution Control Act, 33

U.S.C. § 1251 et seq.; Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; National Environmental Policy Act, 42 U.S.C. § 4321 et seq.; regulations of the Environmental Protection Agency, any applicable rule of common law relating primarily to the environment or Hazardous Materials, and any analogous or comparable state or local laws, regulations or ordinances that concern Hazardous Materials or protection of the environment.

“**Equity Interest**” means, with respect to any Person, any share of capital stock of (or other ownership or profit interests in) such Person, any warrant, option or other right for the purchase or other acquisition from such Person of any share of capital stock of (or other ownership or profit interests in) such Person, any security convertible into or exchangeable for any share of capital stock of (or other ownership or profit interests in) such Person or warrant, right or option for the purchase or other acquisition from such Person of such shares (or such other interests), and any other ownership or profit

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interest in such Person (including, without limitation, partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such share, warrant, option, right or other interest is authorized or otherwise existing on any date of determination.

“**Equity Issuance**” means any issuance by a Person of any Equity Interest in such Person and shall in any event include the issuance of any Equity Interest upon the conversion or exchange of any security constituting Indebtedness that is convertible or exchangeable, or is being converted or exchanged, for Equity Interests.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as in effect from time to time.

“**ERISA Event**” means, with respect to the ERISA Group, (a) any “reportable event” as defined in Section 4043 of ERISA with respect to a Plan; (b) the withdrawal of a member of the ERISA Group from a Plan subject to Section 4063 of ERISA during a plan year in which it was a “substantial employer” as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) the incurrence by a member of the ERISA Group of any liability with respect to the withdrawal or partial withdrawal from any Multiemployer Plan; (d) the incurrence by any member of the ERISA Group of any liability under Title IV of ERISA with respect to the termination of any Plan or Multiemployer Plan; (e) the institution of proceedings to terminate a Plan or Multiemployer Plan by the PBGC; (f) the failure by any member of the ERISA Group to make when due required contributions to a Multiemployer Plan or Plan unless such failure is cured within 30 days or the filing pursuant to Section 412(c) of the Internal Revenue Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard; (g) any other event or condition that might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan or Multiemployer Plan or the imposition of liability under Section 4069 or 4212(c) of ERISA; (h) the receipt by any member of the ERISA Group of any notice or the receipt by any Multiemployer Plan from any member of the ERISA Group of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent (within the meaning of Section 4245 of ERISA), in reorganization (within the meaning of Section 4241 of ERISA), or in “critical” status (within the meaning of Section 432 of the Internal Revenue Code or Section 305 of ERISA); (i) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any member of the ERISA Group or the imposition of any Lien in favor of the PBGC under Title IV of ERISA; or (j) a determination that a Plan is, or is reasonably expected to be, in “at risk” status (within the meaning of Section 430 of the Internal Revenue Code or Section 303 of ERISA).

“**ERISA Group**” means the Borrower, the Parent and all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control, which, together with the Borrower or the Parent, are treated as a single employer under Section 414 of the Internal Revenue Code.

“**EU Bail-In Legislation Schedule**” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“**Event of Default**” means any of the events specified in Section 11.1., provided that any requirement for notice or lapse of time or any other condition has been satisfied.

“**Excluded Information**” means any non-public information with respect to the Parent, the Borrower, any other Subsidiary or any of their respective Affiliates or any of their respective securities to

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the extent such information could have a material effect upon, or otherwise be material to, an assigning Lender’s decision to assign Loans or a purchasing Lender’s decision to purchase Loans.

“**Excluded Subsidiary**” means any Subsidiary as to which both of the following apply: (a) such Subsidiary holds title to, or beneficially owns, assets which are or are intended to become collateral for any Secured Indebtedness of such Subsidiary, or is a direct or indirect beneficial owner of a Subsidiary holding title to or beneficially owning such assets (but having no material assets other than such beneficial ownership interests); and (b) which (i) is, or is expected to be, prohibited from Guarantying the Indebtedness of any other Person pursuant to any document, instrument or agreement evidencing such Secured Indebtedness or (ii) is prohibited from Guarantying the Indebtedness of any other Person pursuant a provision of such Subsidiary’s organizational documents which provision was included in such Subsidiary’s organizational documents as a condition to the extension of such Secured Indebtedness.

“**Excluded Swap Obligation**” means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of the liability of such Loan Party for or the Guarantee of such Loan Party of, or the grant by such Loan Party of a Lien to secure, such Swap Obligation (or any liability or guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Loan Party’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the liability for or the Guarantee of such Loan Party or the grant of such Lien becomes effective with respect to such Swap Obligation (such determination being made after giving effect to any applicable keepwell, support or other agreement for the benefit of the applicable Loan Party, including under any applicable provision of the Guaranty). If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or Lien is or becomes illegal for the reasons identified in the immediately preceding sentence of this definition.

**“Excluded Taxes”** means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to an Applicable Law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 5.8.) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 3.10., amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient’s failure to comply with Section 3.10. (g) and (d) any U.S. federal withholding Taxes imposed under FATCA.

**“Existing Term Loan”** means that certain Term Loan Agreement dated as of May 3, 2016, by and among the Borrower, the Parent, the financial institutions from time to time party thereto, KeyBank National Association, as administrative agent, and the other parties thereto.

**“Fair Market Value”** means, (a) with respect to a security listed on a national securities exchange or the NASDAQ National Market, the price of such security as reported on such exchange or market by any widely recognized reporting method customarily relied upon by financial institutions and

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(b) with respect to any other property, the price which could be negotiated in an arm’s-length free market transaction, for cash, between a willing seller and a willing buyer, neither of which is under pressure or compulsion to complete the transaction.

**“FASB ASC”** means the Accounting Standards Codification of the Financial Accounting Standards Board.

**“FATCA”** means Sections 1471 through 1474 of the Internal Revenue Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof.

**“Federal Funds Rate”** means, for any period, a fluctuating interest rate per annum equal for each day during such period to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published for such day (or, if such day is not a Business Day, for the immediately preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the Administrative Agent from three Federal Funds brokers of recognized standing selected by the Administrative Agent.

**“Fee Letters”** means, collectively, (a) that certain fee letter dated as of March 28, 2017, by and among the Borrower, the Parent, Regions Bank and Regions Capital Markets, a division of Regions Bank, and (b) (i) that certain fee letter by and among the Borrower, the Parent, Keybank National Association and KeyBanc Capital Markets, (ii) that certain fee letter by and among the Borrower, the Parent, PNC Bank, National Association and PNC Capital Markets LLC and (iii) that certain fee letter, by and among the Borrower, the Parent and U.S. Bank National Association in each case, dated on or about March 31, 2017.

**“Fees”** means the fees and commissions provided for or referred to in Section 3.5. and any other fees payable by the Borrower hereunder, under any other Loan Document or under the Fee Letters.

**“FF&E Reserves”** means, for any period and with respect to a Property, an amount equal to the greater of (a) 4.0% of total gross revenues for such Property for such period and (b) the aggregate amount of reserves in respect to furniture, fixtures and equipment required under any Property Management Agreement or Franchise Agreement applicable to such Properties for such period. If the term FF&E Reserves is used without reference to a specific Property, then the amount shall be determined on an aggregate basis with respect to all Properties of the Parent and its Subsidiaries and a proportionate share of all Properties of all Unconsolidated Affiliates.

**“Fixed Charges”** means, for any period, the sum of the following (without duplication): (a) Interest Expense of the Parent and its Subsidiaries determined on a consolidated basis for such period, (b) all regularly scheduled principal payments made with respect to Indebtedness of the Parent and its Subsidiaries during such period, other than any balloon, bullet or similar principal payment which repays such Indebtedness in full, (c) all Preferred Dividends paid during such period on Preferred Equity Interests not owned by the Parent or any of its Subsidiaries and (d) payments in respect of Capitalized Lease Obligations. The Parent’s pro rata share of the Fixed Charges of Unconsolidated Affiliates of the Parent shall be included in determinations of Fixed Charges.

**“Foreign Lender”** means (a) if the Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes.

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**“Foreign Subsidiary”** means a Subsidiary that is not a Domestic Subsidiary.

**“Franchise Agreement”** means an agreement permitting the use of the applicable hotel brand name, hotel system trademarks, trade names and any related rights in connection with the ownership or operation of a Property.

**“Fund”** means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

**“GAAP”** means generally accepted accounting principles in the United States of America set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (including Statement of Financial Accounting Standards No. 168, “The FASB Accounting Standards Codification”) or in such other

statements by such other entity as may be approved by a significant segment of the accounting profession in the United States of America, which are applicable to the circumstances as of the date of determination.

**“Governmental Approvals”** means all authorizations, consents, approvals, licenses and exemptions of, registrations and filings with, and reports to, all Governmental Authorities.

**“Governmental Authority”** means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, administrative, public or statutory instrumentality, authority, body, agency, bureau, commission, board, department or other entity (including, without limitation, the Federal Deposit Insurance Corporation, the Comptroller of the Currency or the Federal Reserve Board, any central bank or any comparable authority) exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank), or any arbitrator with authority to bind a party at law.

**“Ground Lease”** means a ground lease containing the following terms and conditions: (a) a remaining term (exclusive of any unexercised extension options) of 50 years or more from the Agreement Date; (b) the right of the lessee to mortgage and encumber its interest in the leased property without the consent of the lessor, or, if consent is required, such consent has been obtained or is required to be given upon the satisfaction of conditions reasonably acceptable to the Administrative Agent; (c) the obligation of the lessor to give the holder of any mortgage Lien on such leased property written notice of any defaults on the part of the lessee and agreement of such lessor that such lease will not be terminated until such holder has had a reasonable opportunity to cure or complete foreclosures, and fails to do so; (d) transferability of the lessee’s interest under such lease, including ability to sublease without lessor consent or, if consent is required, such consent is required to be given upon the satisfaction of conditions reasonably acceptable to the Administrative Agent; and (e) such other rights customarily required by mortgagees making a loan secured by the interest of the holder of the leasehold estate demised pursuant to a ground lease.

**“Guaranteed Obligations”** means, collectively, (a) the Obligations and (b) all existing or future payment and other obligations owing by any Loan Party under any Specified Derivatives Contract (other than any Excluded Swap Obligation).

**“Guarantor”** means any Person that is a party to the Guaranty as a “Guarantor” and, in any event, shall include each Material Subsidiary (other than Excluded Subsidiaries and Foreign Subsidiaries).

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**“Guaranty”, “Guaranteed”, “Guarantying” or to “Guarantee”** as applied to any obligation means and includes: (a) a guaranty (other than by endorsement of negotiable instruments for collection or deposit in the ordinary course of business), directly or indirectly, in any manner, of any part or all of such obligation, or (b) an agreement, direct or indirect, contingent or otherwise, and whether or not constituting a guaranty, the practical effect of which is to assure the payment or performance (or payment of damages in the event of nonperformance) of any part or all of such obligation whether by: (i) the purchase of securities or obligations, (ii) the purchase, sale or lease (as lessee or lessor) of property or the purchase or sale of services primarily for the purpose of enabling the obligor with respect to such obligation to make any payment or performance (or payment of damages in the event of nonperformance) of or on account of any part or all of such obligation, or to assure the owner of such obligation against loss, (iii) the supplying of funds to or in any other manner investing in the obligor with respect to such obligation, (iv) repayment of amounts drawn down by beneficiaries of letters of credit, or (v) the supplying of funds to or investing in a Person on account of all or any part of such Person’s obligation under a Guaranty of any obligation or indemnifying or holding harmless, in any way, such Person against any part or all of such obligation. Obligations in respect of customary performance guaranties and Guaranties constituting Nonrecourse Indebtedness shall not be deemed to give rise to Indebtedness or otherwise constitute a Guaranty except as otherwise provided in the definition of “Nonrecourse Indebtedness”. As the context requires, “Guaranty” shall also mean the Guaranty executed and delivered pursuant to Section 6.1. and substantially in the form of Exhibit B.

**“Hazardous Materials”** means all or any of the following: (a) substances that are defined or listed in, or otherwise classified pursuant to, any applicable Environmental Laws as “hazardous substances”, “hazardous materials”, “hazardous wastes”, “toxic substances” or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, reproductive toxicity, “TCLP” toxicity, or “EP toxicity”; (b) oil, petroleum or petroleum derived substances, natural gas, natural gas liquids or synthetic gas and drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources; (c) any flammable substances or explosives or any radioactive materials; (d) asbestos in any form; (e) toxic mold; and (f) electrical equipment which contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of fifty parts per million.

**“Implied Debt Service”** means (a) a given principal balance of Indebtedness multiplied by (b) the greatest of (i) 10% per annum, (ii) the highest per annum interest rate then applicable to any of the outstanding principal balance of the Loans and (iii) a mortgage debt constant for a loan calculated using a per annum interest rate equal to the yield on a 10 year United States Treasury Note at such time as determined by the Administrative Agent plus 3.50% and amortizing in full in a 25-year period.

**“Indebtedness”** means, with respect to a Person, at the time of computation thereof, all of the following (without duplication): (a) all obligations of such Person in respect of money borrowed (other than trade debt incurred in the ordinary course of business which is not more than 180 days past due); (b) all obligations of such Person, whether or not for money borrowed (other than trade debt incurred in the ordinary course of business which is not more than 180 days past due) (i) represented by notes payable, or drafts accepted, in each case representing extensions of credit, (ii) evidenced by bonds, debentures, notes or similar instruments, or (iii) constituting purchase money indebtedness, conditional sales contracts, title retention debt instruments or other similar instruments, upon which interest charges are customarily paid or that are issued or assumed as full or partial payment for property or services rendered; (c) Capitalized Lease Obligations of such Person; (d) all reimbursement obligations of such Person under any letters of credit or acceptances (whether or not the same have been presented for payment); (e) all Off-Balance Sheet Obligations of such Person; (f) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Mandatorily

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Redeemable Stock issued by such Person or any other Person, valued at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; (g) all obligations of such Person in respect of any (i) purchase obligation, repurchase obligation or takeout commitment, in each case

evidenced by a binding agreement and to the extent such obligation is to acquire Equity Interests of another Person, assets of another Person that constitute the business or a division or operating unit of such Person, real estate, bonds, debentures, notes or similar instruments or (ii) forward equity commitment evidenced by a binding agreement (provided, however that this clause (g) shall exclude any such obligation to the extent the obligation can be satisfied by the issuance of Equity Interests (other than Mandatorily Redeemable Stock)); (h) net obligations under any Derivatives Contract not entered into as a hedge against Indebtedness existing from time to time, in an amount equal to the Derivatives Termination Value thereof; (i) all Indebtedness of other Persons which such Person has Guaranteed or is otherwise recourse to such Person (except for Guaranties constituting Nonrecourse Indebtedness); (j) all Indebtedness of another Person secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property or assets owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness or other payment obligation and (k) such Person's Ownership Share of the Indebtedness of any Unconsolidated Affiliate of such Person. Indebtedness of any Person shall include Indebtedness of any partnership or joint venture in which such Person is a general partner or joint venturer to the extent of such Person's Ownership Share of the ownership of such partnership or joint venture (except if such Indebtedness, or portion thereof, is recourse (other than in respect of exceptions referred to in the definition of Nonrecourse Indebtedness) to such Person, in which case the greater of such Person's Ownership Share of such Indebtedness or the amount of such recourse portion of the Indebtedness, shall be included as Indebtedness of such Person). All Loans shall constitute Indebtedness of the Borrower. Notwithstanding the foregoing, (A) in the case of any Nonrecourse Indebtedness as to which recourse for payment thereof is expressly limited to the property or asset on which a Lien is granted, such Indebtedness shall be valued at the lesser of (i) the stated or determinable amount of the Indebtedness that is so secured or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof subject to confirmation by the Administrative Agent in its reasonable discretion and (ii) the Fair Market Value of such property or asset; and (B) in the case of any Indebtedness of other Persons which such Person has Guaranteed, the amount of such Indebtedness attributable to such Person shall be equal to the lesser of the stated or determinable amount of the Indebtedness such Person Guaranteed or, if the amount of such Indebtedness is not stated or determinable, the maximum reasonably anticipated liability in respect thereof subject to confirmation by the Administrative Agent in its reasonable discretion. The calculation of Indebtedness shall not include any fair value adjustments to the carrying value of liabilities to record such Indebtedness at fair value pursuant to electing the fair value option election under FASB ASC 825-10-25 (formerly known as FAS 159, *The Fair Value Option for Financial Assets and Financial Liabilities*) or other FASB standards allowing entities to elect fair value option for financial liabilities.

**"Indemnified Taxes"** means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Borrower or any other Loan Party under any Loan Document and (b) to the extent not otherwise described in the immediately preceding clause (a), Other Taxes.

**"Intellectual Property"** has the meaning given that term in Section 7.1.(t).

**"Interest Expense"** means, with respect to a Person and for any period, and without duplication (a) all paid, accrued or capitalized interest expense (including, without limitation, capitalized interest expense (other than capitalized interest funded from a construction loan interest reserve account held by another lender and not included in the calculation of cash for balance sheet reporting purposes) and interest expense attributable to Capitalized Lease Obligations) of such Person and in any event shall include all letter of credit fees and all interest expense with respect to any Indebtedness in respect of

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which such Person is wholly or partially liable whether pursuant to any repayment, interest carry, performance guarantee or otherwise, plus (b) to the extent not already included in the foregoing clause (a), such Person's Ownership Share of all paid, accrued or capitalized interest expense for such period of Unconsolidated Affiliates of such Person. The term "Interest Expense" shall exclude all costs and expenses of defeasing any Indebtedness encumbering any Property following the acquisition thereof.

**"Interest Period"** means with respect to each LIBOR Loan, each period commencing on the date such LIBOR Loan is made, or in the case of the Continuation of a LIBOR Loan the last day of the preceding Interest Period for such Loan, and ending on the numerically corresponding day in the first, third or sixth calendar month thereafter, as the Borrower may select in a Notice of Borrowing, Notice of Continuation or Notice of Conversion, as the case may be, except that each Interest Period that commences on the last Business Day of a calendar month (or on any day for which there is no numerically corresponding day in the appropriate subsequent calendar month) shall end on the last Business Day of the appropriate subsequent calendar month. Notwithstanding the foregoing: (i) if any Interest Period would otherwise end after the Termination Date, such Interest Period shall end on the Termination Date; and (ii) each Interest Period that would otherwise end on a day which is not a Business Day shall end on the immediately following Business Day (or, if such immediately following Business Day falls in the next calendar month, on the immediately preceding Business Day).

**"Internal Revenue Code"** means the Internal Revenue Code of 1986, as amended.

**"Investment"** means, with respect to any Person, any acquisition or investment (whether or not of a controlling interest) by such Person, by means of any of the following: (a) the purchase or other acquisition of any Equity Interest in another Person, (b) a loan, advance or extension of credit to, capital contribution to, Guaranty of Indebtedness of, or purchase or other acquisition of any Indebtedness of, another Person, including any partnership or joint venture interest in such other Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute the business or a division or operating unit of another Person. Any binding commitment to make an Investment in any other Person, as well as any option of another Person to require an Investment in such Person, shall constitute an Investment. Except as expressly provided otherwise, for purposes of determining compliance with any covenant contained in a Loan Document, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

**"Investment Grade Rating"** means a Credit Rating of BBB- (or equivalent) or higher from S&P and Baa3 (or equivalent) or higher from Moody's.

**"Investment Grade Rating Date"** means the date specified by the Borrower in a written notice to the Administrative Agent after the Parent or the Borrower obtains an Investment Grade Rating from either Moody's or S&P.

**"Lender"** means each financial institution from time to time party hereto as a "Lender", together with its respective successors and permitted assigns; provided, however, that the term "Lender" except as otherwise expressly provided herein, shall exclude any Lender (or its Affiliates) in its capacity as a Specified Derivatives Provider.

**"Lending Office"** means, for each Lender and for each Type of Loan, the office of such Lender specified in such Lender's Administrative Questionnaire or in the applicable Assignment and Assumption, or such other office of such Lender as such Lender may notify the Administrative Agent in writing from time to time.

“**Level**” means each numerical level set forth below the column entitled “Level” in the definition of “Applicable Margin”.

“**Leverage Ratio**” means the ratio, expressed as a percentage, of (i) Net Indebtedness to (ii) Total Asset Value.

“**Leverage Ratio Surge Period**” has the meaning given to that term in Section 10.1.(a).

“**LIBOR**” means with respect to each Interest Period for a LIBOR Loan, the rate per annum equal to the offered rate appearing on Reuters Screen LIBOR01 Page (or on the appropriate page of any successor to or substitute for such service, or, if such rate is not available, on the appropriate page of any generally recognized financial information service, as selected by the Administrative Agent from time to time) that displays an average ICE Benchmark Administration (or any successor thereto) Interest Settlement Rate at approximately 11:00 a.m. (London time) two Business Days prior to the commencement of such Interest Period, for deposits in Dollars with a maturity comparable to such Interest Period; provided, however, that if the rate referred to in clause (i) above is not available at any such time for any reason, then the rate referred to in clause (i) shall instead be the interest rate per annum, as determined by the Administrative Agent, to be the average of the rates per annum at which deposits in Dollars in an amount equal to the amount of such LIBOR Loan are offered to major banks in the London interbank market at approximately 11:00 a.m. (London time), two Business Days prior to the commencement of such Interest Period, for contracts that would be entered into at the commencement of such Interest Period for the same duration as such Interest Period. If LIBOR determined as provided above would be less than zero, LIBOR shall be deemed to be zero.

“**LIBOR Loan**” means a Loan (or any portion thereof) (other than a Base Rate Loan) bearing interest at a rate based on LIBOR.

“**Lien**” as applied to the property of any Person means: (a) any security interest, encumbrance, mortgage, deed to secure debt, deed of trust, assignment of leases and rents, pledge, lien, charge or lease constituting a Capitalized Lease Obligation, conditional sale or other title retention agreement, or other security title or encumbrance of any kind in respect of any property of such Person, or upon the income, rents or profits therefrom; (b) any arrangement, express or implied, under which any property of such Person is transferred, sequestered or otherwise identified for the purpose of subjecting the same to the payment of Indebtedness or performance of any other obligation in priority to the payment of the general, unsecured creditors of such Person; (c) the filing of any financing statement under the Uniform Commercial Code or its equivalent in any jurisdiction, other than any precautionary filing not otherwise constituting or giving rise to a Lien, including a financing statement filed (i) in respect of a lease not constituting a Capitalized Lease Obligation pursuant to Section 9-505 (or a successor provision) of the Uniform Commercial Code or its equivalent as in effect in an applicable jurisdiction or (ii) in connection with a sale or other disposition of accounts or other assets not prohibited by this Agreement in a transaction not otherwise constituting or giving rise to a Lien; and (d) any agreement by such Person to grant, give or otherwise convey any of the foregoing.

“**Loan**” means a loan made by a Lender to the Borrower pursuant to Section 2.1. or any loan made pursuant to Section 2.9.

“**Loan Document**” means this Agreement, each Note, the Guaranty, and each other document or instrument now or hereafter executed and delivered by a Loan Party in connection with, pursuant to or relating to this Agreement (excluding the Fee Letters).

“**Loan Party**” means the Borrower, the Parent and each other Guarantor. Schedule 1.1.(b) sets forth the Loan Parties in addition to the Borrower and the Parent as of the Agreement Date.

“**Mandatorily Redeemable Stock**” means, with respect to any Person, any Equity Interest of such Person which by the terms of such Equity Interest (or by the terms of any security into which it is convertible or for which it is exchangeable or exercisable), upon the happening of any event or otherwise (a) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise (other than an Equity Interest to the extent redeemable in exchange for common stock or other equivalent common Equity Interests), (b) is convertible into or exchangeable or exercisable for Indebtedness or Mandatorily Redeemable Stock, or (c) is redeemable at the option of the holder thereof, in whole or in part (other than an Equity Interest which is redeemable solely in exchange for common stock or other equivalent common Equity Interests), in each case on or prior to the date on which all Loans are scheduled to be due and payable in full.

“**Material Acquisition**” means any acquisition (whether by direct purchase, merger or otherwise and whether in one or more related transactions) by the Parent, the Borrower or any Subsidiary in which the purchase price of the assets acquired exceeds an amount equal to 10% of Total Asset Value as of the last day of the most recently ended fiscal quarter prior to the consummation of such acquisition of the Parent for which financial statements are publicly available.

“**Material Adverse Effect**” means a materially adverse effect on (a) the business, assets, liabilities, financial condition or results of operations of the Parent and its Subsidiaries, or the Borrower and its Subsidiaries, in each case, taken as a whole, (b) the ability of the Borrower or any other Loan Party to perform its obligations under any Loan Document to which it is a party, (c) the validity or enforceability of any of the material provisions of the Loan Documents, or (d) the material rights and remedies of the Lenders and the Administrative Agent under any of the Loan Documents.

“**Material Contract**” means any contract or other arrangement (other than Loan Documents), whether written or oral, to which the Parent, the Borrower, or any other Subsidiary is a party as to which the breach, nonperformance, cancellation or failure to renew by any party thereto could reasonably be expected to have a Material Adverse Effect.

“**Material Subsidiary**” means any Subsidiary (a) (x) that owns in fee simple, or leases pursuant to a ground lease, an Unencumbered Property or (y) to which more than 5% of Total Asset Value is attributable on an individual basis or (b) owns any Equity Interest in any Subsidiary in the foregoing clause (a).

“**Maximum Loan Availability**” means, at any time, the lesser of (a) 60% of the Unencumbered Property Value; provided, however, that the Borrower shall have the option, exercisable one time, upon written notice from the Borrower to the Administrative Agent that the Borrower is exercising such option, to elect that such percentage may exceed 60% for a period not to exceed two (2) full fiscal quarters, such period to commence on the date set forth in such notice

(such period, the “Availability Surge Period”), so long as (i) the Borrower has delivered a written notice to the Administrative Agent that the Borrower is exercising its option for the Availability Surge Period, (ii) such percentage does not exceed 65% at any time during the Availability Surge Period and (iii) the Borrower completed a Material Acquisition which resulted in such ratio (after giving effect to such Material Acquisition) exceeding 60% at any time during the fiscal quarter in which such Material Acquisition took place, or (b) the aggregate principal balance of Indebtedness (excluding Nonrecourse Indebtedness and Indebtedness to the extent owing among the Parent and/or any of its Subsidiaries but including Secured Recourse Indebtedness and the aggregate principal amount of all Loans) of the Parent and the Ownership share of all such Indebtedness of its Subsidiaries that would cause the ratio of (A) Adjusted NOI of the Unencumbered Properties at such time to (B) Implied Debt Service for such period determined with respect to such principal balance of

Indebtedness to equal 1.20 to 1.00. The Borrower shall have the option to exercise both a Leverage Ratio Surge Period and an Availability Surge Period in the same notice.

“**Moody’s**” means Moody’s Investors Service, Inc. and its successors.

“**Mortgage**” means a mortgage, deed of trust, deed to secure debt or similar security instrument made by a Person owning an interest in real property granting a Lien on such interest in real property as security for the payment of Indebtedness of such Person or another Person.

“**Mortgage Receivable**” means a promissory note secured by a Mortgage of which the Parent, the Borrower or another Subsidiary is the holder and retains the rights of collection of all payments thereunder.

“**Multiemployer Plan**” means at any time a multiemployer plan within the meaning of Section 4001(a)(3) of ERISA to which any member of the ERISA Group is then making or accruing an obligation to make contributions or has within the preceding six plan years made contributions, including for these purposes any Person which ceased to be a member of the ERISA Group during such six-year period.

“**Negative Pledge**” means, with respect to a given asset, any provision of a document, instrument or agreement (other than any Loan Document or Specified Derivatives Contract) which prohibits or purports to prohibit the creation or assumption of any Lien on such asset as security for Indebtedness of the Person owning such asset or any other Person; provided, however, that an agreement that conditions a Person’s ability to encumber its assets upon the maintenance of one or more specified ratios that limit such Person’s ability to encumber its assets but that do not generally prohibit the encumbrance of its assets, or the encumbrance of specific assets, shall not constitute a Negative Pledge.

“**Net Indebtedness**” means (a) Total Indebtedness minus (b) the amount, if any, by which the aggregate amount of the Parent’s and its Subsidiaries’ unrestricted and Lien-free cash and Cash Equivalents exceeds \$15,000,000.

“**Net Operating Income**” or “**NOI**” means, for any Property and for a given period, the sum of the following (without duplication and determined on a consistent basis with prior periods): (a) gross revenues received in the ordinary course from such Property minus (b) all expenses paid (excluding interest but including an appropriate accrual for property taxes and insurance) related to the ownership, operation or maintenance of such Property, including but not limited to property taxes, assessments and the like, insurance, utilities, payroll costs, maintenance, repair and landscaping expenses, marketing expenses, and general and administrative expenses (including an appropriate allocation for legal, accounting, advertising, marketing and other expenses incurred in connection with such Property, but specifically excluding general overhead expenses of the Borrower or any Subsidiary and any property management fees) minus (c) the FF&E Reserves for such Property as of the end of such period minus (d) the greater of (i) the actual property management fee paid during such period and (ii) an imputed management fee in the amount of three percent (3.0%) of the gross revenues for such Property for such period.

“**Net Tangible Proceeds**” means with respect to any Equity Issuance by a Person, the aggregate amount of all cash and the Fair Market Value of all other property (other than (a) securities of such Person being converted or exchanged in connection with such Equity Issuance and (b) assets separately classified as intangible assets under GAAP) received by such Person in respect of such Equity Issuance net of investment banking fees, legal fees, accountants’ fees, underwriting discounts and commissions and other customary fees and expenses actually incurred by such Person in connection with such Equity Issuance.

“**New Property**” means each Property on which a hotel is located acquired by the Parent, the Borrower, any Subsidiary or Unconsolidated Affiliate from the date of acquisition until the Seasoned Date in respect thereof; provided, however, that, upon the Seasoned Date for any New Property, such New Property shall be converted to a Seasoned Property and shall cease to be a New Property.

“**New York Mortgage**” has the meaning given that term in Section 13.20(a).

“**Non-Defaulting Lender**” means a Lender that is not a Defaulting Lender.

“**Nonrecourse Indebtedness**” means, with respect to a Person, (a) Indebtedness for borrowed money in respect of which recourse for payment (except for customary exceptions for fraud, misapplication of funds, environmental indemnities, voluntary bankruptcy, collusive involuntary bankruptcy and other similar exceptions to nonrecourse liability) is contractually limited to specific assets of such Person encumbered by a Lien securing such Indebtedness, (b) obligations in respect of guaranties of customary exceptions for fraud, misapplication of funds, environmental indemnities, voluntary bankruptcy, collusive involuntary bankruptcy and other similar exceptions to nonrecourse liability, provided that, once any such obligation shall cease to be contingent, then such obligation shall cease to be Nonrecourse Indebtedness, or (c) if such Person is a Single Asset Entity, any Indebtedness for borrowed money of such Person.

“**Note**” means a Term Note.

“**Notice of Borrowing**” means a notice substantially in the form of Exhibit D (or such other form reasonably acceptable to the Administrative Agent and containing the information required in such Exhibit) to be delivered to the Administrative Agent pursuant to Section 2.1.(b) evidencing the Borrower’s request for a borrowing of Loans.

“**Notice of Continuation**” means a notice substantially in the form of Exhibit E (or such other form reasonably acceptable to the Administrative Agent and containing the information required in such Exhibit) to be delivered to the Administrative Agent pursuant to Section 2.6. evidencing the Borrower’s request for the Continuation of a LIBOR Loan.

“**Notice of Conversion**” means a notice substantially in the form of Exhibit F (or such other form reasonably acceptable to the Administrative Agent and containing the information required in such Exhibit) to be delivered to the Administrative Agent pursuant to Section 2.7. evidencing the Borrower’s request for the Conversion of a Loan from one Type to another Type.

“**Obligations**” means, individually and collectively: (a) the aggregate principal balance of, and all accrued and unpaid interest on, all Loans; and (b) all other indebtedness, liabilities, obligations, covenants and duties of the Borrower and the other Loan Parties owing to the Administrative Agent or any Lender of every kind, nature and description, under or in respect of this Agreement or any of the other Loan Documents or the Fee Letters, including, without limitation, the Fees and indemnification obligations, whether direct or indirect, absolute or contingent, due or not due, contractual or tortious, liquidated or unliquidated, and whether or not evidenced by any promissory note. The term “Obligations” does not include any Specified Derivatives Obligations.

“**OFAC**” means the U.S. Department of the Treasury’s Office of Foreign Assets Control.

“**Off-Balance Sheet Obligations**” means liabilities and obligations of the Parent, any Subsidiary or any other Person in respect of “off-balance sheet arrangements” (as defined in Item 303(a)(4)(ii) of Regulation S-K promulgated under the Securities Act) which the Parent would be required to disclose in

the “Management’s Discussion and Analysis of Financial Condition and Results of Operations” section of the Parent’s report on Form 10-Q or Form 10-K (or their equivalents) which the Parent is required to file with the Securities and Exchange Commission (or any Governmental Authority substituted therefor).

“**Operating Property Value**” means, at any date of determination, (a) for each New Property that Borrower elects (until the Seasoned Date), the purchase price paid for such Property determined in accordance with GAAP; or (b) for each (x) Seasoned Property and (y) New Property that Borrower irrevocably elects, (A) the Adjusted NOI of such Property for the period of four consecutive fiscal quarters most recently ending divided by (B) the applicable Capitalization Rate.

“**Other Connection Taxes**” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“**Other Taxes**” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 5.8.).

“**Ownership Share**” means, with respect to any Subsidiary of a Person (other than a Wholly Owned Subsidiary) or any Unconsolidated Affiliate of a Person, the greater of (a) such Person’s relative nominal direct and indirect ownership interest (expressed as a percentage) in such Subsidiary or Unconsolidated Affiliate or (b) such Person’s relative direct and indirect economic interest (calculated as a percentage) in such Subsidiary or Unconsolidated Affiliate determined in accordance with the applicable provisions of the declaration of trust, articles or certificate of incorporation, articles of organization, partnership agreement, joint venture agreement or other applicable organizational document of such Subsidiary or Unconsolidated Affiliate.

“**Parent**” has the meaning given such term in the introductory paragraph hereof.

“**Participant**” has the meaning given that term in Section 13.5.(d).

“**Participant Register**” has the meaning given that term in Section 13.5.(d).

“**Patriot Act**” means The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)).

“**PBGC**” means the Pension Benefit Guaranty Corporation and any successor agency.

“**Permitted Liens**” means, as to any Person: (a) Liens securing taxes, assessments and other charges or levies imposed by any Governmental Authority (excluding any Lien imposed pursuant to any of the provisions of ERISA or pursuant to any Environmental Laws) or the claims of materialmen, mechanics, carriers, warehousemen or landlords for labor, materials, supplies or rentals incurred in the ordinary course of business, which either (x) are not at the time required to be paid or discharged under Section 8.6. or (y) relate to claims not in excess of \$500,000 in the aggregate at any one time; (b) Liens consisting of deposits or pledges made, in the ordinary course of business, in connection with, or to

secure payment of, obligations under workers’ compensation, unemployment insurance or similar Applicable Laws; (c) Liens consisting of encumbrances in the nature of zoning restrictions, easements, and rights or restrictions of record on the use of real property, which do not materially detract from the value of such property or impair the intended use thereof in the business of such Person; (d) the rights of tenants under leases or subleases or licenses not interfering with the ordinary conduct of business of such Person; (e) Liens in favor of the Administrative Agent for the benefit of the Lenders; (f) Liens in favor of the Borrower or a Guarantor securing obligations owing by a Subsidiary to the Borrower or a Guarantor; (g) Liens (i) in existence as of the Agreement Date and set forth in Part II of Schedule 7.1.(f) and (ii) in respect of any New York Mortgage or any mortgage encumbering property located in New York State securing Indebtedness of the Loan Parties pursuant to provisions in loan documentation governing such Indebtedness which provisions are substantially

similar to Section 13.20. of this Agreement; (h) Liens arising out of judgments or awards in respect of the Parent or any of its Subsidiaries not constituting an Event of Default under Section 11.1.(i); (i) any interest or title of a lessor under any lease of equipment (not constituting a fixture) entered into by the Borrower or any Subsidiary in the ordinary course of its business and covering only the assets so leased; (j) Liens arising in the ordinary course of business by virtue of any contractual, statutory or common law provision relating to banker's liens, rights of set-off or similar rights and remedies covering deposit or securities accounts (including funds or other assets credited thereto) and (k) Liens securing the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business and not securing any Indebtedness.

**"Person"** means any natural person, corporation, limited partnership, general partnership, joint stock company, limited liability company, limited liability partnership, joint venture, association, company, trust, bank, trust company, land trust, business trust or other organization, whether or not a legal entity, or any other nongovernmental entity, or any Governmental Authority.

**"Plan"** means at any time an employee pension benefit plan (other than a Multiemployer Plan) which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Internal Revenue Code and either (a) is maintained, or contributed to, by any member of the ERISA Group for employees of any member of the ERISA Group or (b) has at any time within the preceding six years been maintained, or contributed to, by any Person which was at such time a member of the ERISA Group for employees of any Person which was at such time a member of the ERISA Group.

**"Post-Default Rate"** means, in respect of any principal of any Loan, the rate otherwise applicable plus an additional two percent (2.0%) per annum and with respect to any other Obligation, a rate per annum equal to the Base Rate as in effect from time to time plus the Applicable Margin for Loans that are Base Rate Loans plus two percent (2.0%).

**"Preferred Dividends"** means, for any period and without duplication, all Restricted Payments paid during such period on Preferred Equity Interests issued by the Parent or a Subsidiary. Preferred Dividends shall not include dividends or distributions (a) paid or payable solely in Equity Interests (other than Mandatorily Redeemable Stock) payable to holders of such class of Equity Interests, (b) paid or payable to the Parent or a Subsidiary, or (c) constituting or resulting in the redemption of Preferred Equity Interests, other than scheduled redemptions not constituting balloon, bullet or similar redemptions in full.

**"Preferred Equity Interests"** means, with respect to any Person, Equity Interests in such Person which are entitled to preference or priority over any other Equity Interest in such Person in respect of the payment of dividends or distribution of assets upon liquidation or both.

**"Prime Rate"** means, at any time, the rate of interest per annum publicly announced from time to time by the Lender then acting as the Administrative Agent as its prime rate. Each change in the Prime

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Rate shall be effective as of the opening of business on the day such change in such prime rate occurs. The parties hereto acknowledge that the rate announced publicly by the Lender acting as Administrative Agent as its prime rate is an index or base rate and shall not necessarily be its lowest or best rate charged to its customers or other banks.

**"Principal Office"** means the office of the Administrative Agent located at 1180 West Peachtree Street NW, Suite 1400, Atlanta, GA 30309, or any other subsequent office that the Administrative Agent shall have specified as the Principal Office by written notice to the Borrower and the Lenders.

**"Pro Rata Share"** means, as to each Lender, the ratio, expressed as a percentage, of (a) the unpaid principal amount of such Lender's Loans to (b) the aggregate unpaid principal amount of all Loans; provided, however, if at the time of determination all Loans have been paid in full, the "Pro Rata Share" of a Lender shall be the Pro Rata Share of such Lender in effect immediately prior to such payment in full.

**"Property"** means any parcel of real property owned or leased (in whole or in part) or operated by the Parent, the Borrower, any other Subsidiary or any Unconsolidated Affiliate of the Parent and which is located in a state of the United States of America or the District of Columbia.

**"Property Management Agreement"** means, collectively, all agreements entered into by a Loan Party pursuant to which such Loan Party engages a Person to advise it with respect to the management of an Unencumbered Property or to provide management services with respect to the same.

**"Qualified ECP Guarantor"** means, in respect of any Swap Obligation, each Loan Party that has total assets exceeding \$10,000,000 at the time the relevant Guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other person as constitutes an "eligible contract participant" under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an "eligible contract participant" at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

**"Qualified Plan"** means a Benefit Arrangement or Plan that is intended to be tax-qualified under Section 401(a) of the Internal Revenue Code.

**"Qualified REIT Subsidiary"** shall have the meaning given to such term in the Internal Revenue Code.

**"Rating Agencies"** means S&P and Moody's.

**"Recipient"** means (a) the Administrative Agent and (b) any Lender, as applicable.

**"Register"** has the meaning given that term in Section 13.5.(c).

**"Regulatory Change"** means, with respect to any Lender, any change effective after the Agreement Date in Applicable Law (including without limitation, Regulation D of the Board of Governors of the Federal Reserve System) or the adoption or making after such date of any interpretation, directive or request applying to a class of banks, including such Lender, of or under any Applicable Law (whether or not having the force of law and whether or not failure to comply therewith would be unlawful) by any Governmental Authority or monetary authority charged with the interpretation or administration thereof or compliance by any Lender with any request or directive regarding capital adequacy. Notwithstanding anything herein to the contrary, (a) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in

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connection therewith and (b) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Regulatory Change”, regardless of the date enacted, adopted or issued.

“**REIT**” means a Person qualifying for treatment as a “real estate investment trust” under the Internal Revenue Code.

“**Related Parties**” means, with respect to any Person, such Person’s Affiliates and the partners, shareholders, directors, officers, employees, agents, counsel, other advisors and representatives of such Person and of such Person’s Affiliates.

“**Requisite Lenders**” means, as of any date, (a) Lenders having more than 51.0% of the aggregate amount of the Commitments, or (b) if the Commitments have been terminated or reduced to zero, Lenders holding more than 51.0% of the principal amount of the aggregate outstanding Loans; provided that (i) in determining such percentage at any given time, all then existing Defaulting Lenders will be disregarded and excluded and (ii) at all times when two or more Lenders (excluding Defaulting Lenders) are party to this Agreement, the term “Requisite Lenders” shall in no event mean less than two Lenders.

“**Responsible Officer**” means with respect to the Parent, the Borrower or any Subsidiary, the chief executive officer, the chief financial officer, chief operating officer or general counsel of the Parent, the Borrower or such Subsidiary.

“**Restricted Payment**” means: (a) any dividend or other distribution, direct or indirect, on account of any Equity Interest of the Parent, the Borrower or any Subsidiary now or hereafter outstanding, except a dividend payable solely in Equity Interests; (b) any redemption, conversion, exchange, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any Equity Interest of the Parent, the Borrower or any Subsidiary now or hereafter outstanding; and (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire any Equity Interests of the Parent, the Borrower or any Subsidiary now or hereafter outstanding.

“**Revolving Facility**” means that certain Fourth Amended and Restated Credit Agreement dated as of May 3, 2016, by and among the Borrower, the Parent, the financial institutions from time to time party thereto, Wells Fargo Bank, National Association, as administrative agent, and the other parties thereto.

“**Sanctioned Country**” means, at any time, a country or territory which is, or whose government is, the subject or target of any Sanctions.

“**Sanctioned Person**” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by any Governmental Authority of the United States of America, including without limitation, OFAC or the U.S. Department of State, or by the United Nations Security Council, the European Union or any other Governmental Authority, (b) any Person located, operating, organized or resident in a Sanctioned Country, (c) an agency of the government of a Sanctioned Country or (d) any Person Controlled by any Person or agency described in any of the preceding clauses (a) through (c).

“**Sanctions**” means any sanctions or trade embargoes imposed, administered or enforced by any Governmental Authority of the United States of America, including without limitation, OFAC or the U.S.

Department of State, or by the United Nations Security Council, the European Union or any other Governmental Authority.

“**Seasoned Date**” means the first day on which an acquired Property on which a hotel is located has been owned for five (5) full fiscal quarters following the date of acquisition by the Parent, the Borrower, a Subsidiary or an Unconsolidated Affiliate.

“**Seasoned Property**” means Property on which a hotel is located that is not a New Property.

“**SEC**” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“**Secured Indebtedness**” means, with respect to any Person, (a) all Indebtedness of such Person that is secured in any manner by any Lien on any Property plus (b) such Person’s pro rata share of the Secured Indebtedness of any of such Person’s Unconsolidated Affiliates; provided that neither any New York Mortgage nor any mortgage encumbering property located in New York State securing Indebtedness of the Loan Parties pursuant to provisions in loan documentation governing such Indebtedness which provisions are substantially similar to Section 13.20 of this Agreement shall constitute Secured Indebtedness hereunder.

“**Secured Recourse Indebtedness**” means all Indebtedness (including Guaranties of Secured Indebtedness) that is Secured Indebtedness and is not Nonrecourse Indebtedness.

“**Securities Act**” means the Securities Act of 1933, as amended from time to time, together with all rules and regulations issued thereunder.

“**Significant Subsidiary**” means any Subsidiary to which more than \$30,000,000 of Total Asset Value is attributable.

“**Single Asset Entity**” means a Person (other than an individual) that (a) only owns a single Property; (b) is engaged only in the business of owning, developing and/or leasing such Property; and (c) receives substantially all of its gross revenues from such Property. In addition, if the assets of a Person consist solely of (i) Equity Interests in one or more Single Asset Entities that directly or indirectly own such single Property and (ii) cash and other assets of nominal value incidental to such Person’s ownership of the other Single Asset Entity, such Person shall also be deemed to be a Single Asset Entity for purposes of this Agreement.

“**Solvent**” means, when used with respect to any Person, that (a) the fair value and the fair salable value of its assets (excluding any Indebtedness due from any Affiliate of such Person) are each in excess of the fair valuation of its total liabilities (including all contingent liabilities computed at the amount which, in light of all the facts and circumstances existing at such time, represents the amount that could reasonably be expected to become an actual and

matured liability); (b) such Person is able to pay its debts or other obligations in the ordinary course as they mature; and (c) such Person has capital not unreasonably small to carry on its business and all business in which it proposes to be engaged.

“**Specified Derivatives Contract**” means any Derivatives Contract, together with any Derivatives Support Document relating thereto, that is made or entered into at any time, or in effect at any time now or hereafter, whether as a result of an assignment or transfer or otherwise, between the Parent, the Borrower or any Subsidiary of the Parent and an Specified Derivatives Provider.

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“**Specified Derivatives Obligations**” means all indebtedness, liabilities, obligations, covenants and duties of the Parent, the Borrower or any Subsidiaries under or in respect of any Specified Derivatives Contract, whether direct or indirect, absolute or contingent, due or not due, liquidated or unliquidated, and whether or not evidenced by any written confirmation.

“**Specified Derivatives Provider**” means any Lender, or any Affiliate of a Lender that is a party to a Derivatives Contract at the time the Derivatives Contract is entered into.

“**S&P**” means Standard & Poor’s Rating Services, a Standard & Poor’s Financial Services LLC business and its successors.

“**Subsidiary**” means, for any Person, any corporation, partnership, limited liability company or other entity of which at least a majority of the Equity Interests having by the terms thereof ordinary voting power to elect a majority of the board of directors or other individuals performing similar functions of such corporation, partnership, limited liability company or other entity (without regard to the occurrence of any contingency) is at the time directly or indirectly owned or controlled by such Person or one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person, and shall include all Persons the accounts of which are consolidated with those of such Person pursuant to GAAP.

“**Swap Obligation**” means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

“**Tangible Net Worth**” means, as of any given time: (a) the unallocated gross book value (exclusive of depreciation and amortization) of all real estate assets of the Parent and its Subsidiaries that constitute Properties at such time; plus (b) the book value of other assets (excluding any real estate assets but including Investments in Unconsolidated Affiliates) of the Parent and its Subsidiaries; less (c) all amounts appearing on the assets side of a consolidated balance sheet of the Parent for assets separately classified as intangible assets under GAAP (except for allocations of property purchase prices pursuant to FASB ASC 805); less (d) all Total Indebtedness of the Parent and its Subsidiaries (excluding such Person’s Ownership Share of Indebtedness of any Unconsolidated Affiliate to the extent included in Total Indebtedness) determined on a consolidated basis; less (e) all other liabilities of the Parent and its Subsidiaries determined on a consolidated basis (except liabilities resulting from allocations of property purchase prices pursuant to FASB ASC 805).

“**Taxable REIT Subsidiary**” means any corporation (other than a REIT) in which the Parent directly or indirectly owns stock and the Parent and such corporation have jointly elected that such corporation be treated as a taxable REIT subsidiary of the Parent under and pursuant to Section 856 of the Internal Revenue Code.

“**Taxes**” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“**Term Note**” means a promissory note of the Borrower substantially in the form of Exhibit C, payable to the order of a Lender in a principal amount equal to the amount of such Lender’s Commitment.

“**Termination Date**” means April 25, 2022.

“**Titled Agents**” has the meaning given that term in Section 12.9.

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“**Total Asset Value**” means the sum of all of the following of the Parent, the Borrower and their respective Subsidiaries (without duplication) on a consolidated basis determined in accordance with GAAP applied on a consistent basis: (a) the Operating Property Value of all Properties of the Parent, the Borrower and their Subsidiaries on which a hotel is located, plus (b) the book value of Unimproved Land, Mortgage Receivables and other promissory notes, plus (c) the Borrower’s Ownership Share of the preceding items for its Unconsolidated Affiliates, plus (d) the contractual purchase price of any real property subject to a purchase obligation, repurchase obligation or forward commitment which at such time could be specifically enforced by the seller of such real property, but only to the extent such obligations are included in the Indebtedness of the Parent, the Borrower and their respective Subsidiaries on a consolidated basis, plus (e) in the case of any real property subject to a purchase obligation, repurchase obligation or forward commitment which at such time could not be specifically enforced by the seller of such real property, the aggregate amount of due diligence deposits, earnest money payments and other similar payments made under the applicable contract which, at such time, would be subject to forfeiture upon termination of the contract, but only to the extent such amounts are included in the Indebtedness of the Parent, the Borrower and their respective Subsidiaries on a consolidated basis minus (f) to the extent otherwise included in Total Asset Value any deferred financing costs. The percentage of Total Asset Value attributable to a given Subsidiary shall be equal to the ratio expressed as a percentage of (x) an amount equal to Total Asset Value calculated solely with respect to assets owned directly by such Subsidiary to (y) Total Asset Value. For purposes of determining Total Asset Value, Adjusted NOI from Properties disposed of by the Parent, the Borrower or any Subsidiary during the immediately preceding period of four consecutive fiscal quarters of the Borrower shall be excluded.

“**Total Indebtedness**” means all Indebtedness of the Parent, the Borrower and all other Subsidiaries of the Parent determined on a consolidated basis, minus, to the extent otherwise included in such Indebtedness, deferred financing costs.

“**Type**” with respect to any Loan, refers to whether such Loan or portion thereof is a LIBOR Loan or a Base Rate Loan.

“**UCC**” means the Uniform Commercial Code as in effect in any applicable jurisdiction.

**“Unconsolidated Affiliate”** means, with respect to any Person, any other Person in whom such Person holds an Investment, which Investment is accounted for in the financial statements of such Person on an equity basis of accounting and whose financial results would not be consolidated under GAAP with the financial results of such Person on the consolidated financial statements of such Person.

**“Unencumbered Property”** means an Eligible Property which is to be included in calculations of the Unencumbered Property Value. A Property shall cease to be an Unencumbered Property if at any time such Property shall cease to be an Eligible Property unless otherwise agreed by the Requisite Lenders.

**“Unencumbered Property Value”** means, at any time of determination, the aggregate Operating Property Values of the Unencumbered Properties at such time. For purposes of this definition, the Adjusted NOI for any Unencumbered Property shall be reduced by an amount equal to the greater of (x) the amount by which the Adjusted NOI of such Unencumbered Property would exceed 30.0% of the aggregate Adjusted NOI of all Unencumbered Properties and (y) the amount by which the Adjusted NOI of Unencumbered Properties located in the same metropolitan statistical area as such Property would exceed 40.0% of the aggregate Adjusted NOI of all Unencumbered Properties. In addition, to the extent that Unencumbered Property Value attributable to Properties leased under Ground Leases (excluding the Boston Westin Waterfront Hotel in Boston, Massachusetts) would exceed 33.0% of Unencumbered

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Property Value, such excess shall be excluded. For purposes of determining Unencumbered Property Value, Adjusted NOI from Properties disposed of by the Borrower or any Subsidiary during the immediately preceding period of four consecutive fiscal quarters of the Borrower shall be excluded.

**“Unimproved Land”** means land on which no development (other than improvements that are not material and are temporary in nature) has occurred and for which no development is scheduled in the following 12 months. Unimproved Land shall not include any undeveloped parcels of a Property that has been developed unless and until the Borrower intends to develop such parcel.

**“Unsecured Indebtedness”** means with respect to a Person as of any given date, (a) the aggregate principal amount of (a) all Indebtedness of such Person outstanding at such date that is not Secured Indebtedness plus (b) all Nonrecourse Indebtedness which such Person has Guaranteed but only to the extent of such Guaranty (excluding obligations in respect of Guaranties of customary exceptions to nonrecourse liability).

**“U.S. Person”** means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Internal Revenue Code.

**“U.S. Tax Compliance Certificate”** has the meaning assigned to such term in Section 3.10.(g)(ii)(B)(III).

**“Wholly Owned Subsidiary”** means any Subsidiary of a Person in respect of which all of the Equity Interests (other than, in the case of a corporation, directors’ qualifying shares) are at the time directly or indirectly owned or controlled by such Person or one or more other Subsidiaries of such Person or by such Person and one or more other Subsidiaries of such Person.

**“Withdrawal Liability”** means any liability as a result of a complete or partial withdrawal from a Multiemployer Plan as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

**“Withholding Agent”** means (a) the Borrower, (b) any other Loan Party and (c) the Administrative Agent, as applicable.

**“Write-Down and Conversion Powers”** means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time 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.

## 2. Section 1.2. General; References to Eastern Time.

Unless otherwise indicated, all accounting terms, ratios and measurements shall be interpreted or determined in accordance with GAAP; provided that, if at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Requisite Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the appropriate Lenders pursuant to Section 13.6.); provided further that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. References in this Agreement to “Sections”, “Articles”, “Exhibits” and “Schedules” are to sections, articles, exhibits and

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schedules herein and hereto unless otherwise indicated. References in this Agreement to any document, instrument or agreement (a) shall include all exhibits, schedules and other attachments thereto, (b) shall include all documents, instruments or agreements issued or executed in replacement thereof, to the extent permitted hereby and (c) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, supplemented, restated or otherwise modified from time to time to the extent not prohibited hereby and in effect at any given time. Wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, the feminine and the neuter. Except as expressly provided otherwise in any Loan Document, (i) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified, extended, restated, replaced or supplemented from time to time and (ii) any reference to any Person shall be construed to include such Person’s permitted successors and permitted assigns. Unless explicitly set forth to the contrary, a reference to “Subsidiary” means a Subsidiary of the Parent or a Subsidiary of such Subsidiary and a reference to an “Affiliate” means a reference to an Affiliate of the Parent. Titles and captions of Articles, Sections, subsections and clauses in this Agreement are for convenience only, and neither limit nor amplify the provisions of this Agreement. Unless otherwise indicated, all references to time are references to Eastern time. Notwithstanding the first sentence of this Section 1.2., (i) the calculation of liabilities shall not include any fair value adjustments to the carrying value of liabilities to record such liabilities at fair

value pursuant to electing the fair value option election under FASB ASC 825-10-25 (formerly known as FAS 159, The Fair Value Option for Financial Assets and Financial Liabilities) or other FASB standards allowing entities to elect fair value option for financial liabilities and (ii) for purposes of this Agreement, any obligations of a Person under a lease (whether existing on the Effective Date or entered into thereafter) that is not (or would not be) required to be classified or accounted for as a Capitalized Lease Obligation on a balance sheet of such Person prepared in accordance with GAAP as in effect on the Effective Date shall not be treated as a Capitalized Lease Obligation pursuant to the Loan Documents solely as a result of changes in the application of, or the adoption of changes in, GAAP after the Effective Date.

## 2. Section 1.3. Financial Attributes of Non-Wholly Owned Subsidiaries.

When determining compliance by the Borrower or the Parent with any financial covenant contained in any of the Loan Documents, only the Ownership Share of the Borrower or the Parent, as applicable, of the financial attributes of a Subsidiary that is not a Wholly Owned Subsidiary shall be included.

## 3. ARTICLE II. CREDIT FACILITY

### 4. Section 2.1. Loans.

(a) Making of Loans. Subject to the terms and conditions set forth in this Agreement, on the Effective Date each Lender severally and not jointly agrees to make Loans to the Borrower in the aggregate principal amount up to, but not exceeding, the amount of such Lender's Commitment. Upon funding of a Term Loan, the Term Loan Commitment of such Lender shall terminate.

(b) Requests for Loans. Not later than 12:00 p.m. Eastern time at least (i) one Business Day prior to the Effective Date (or such shorter period as the Administrative Agent shall agree) with respect to a borrowing of Loans that are to be Base Rate Loans and (ii) 3 Business Days prior to the Effective Date (or such shorter period as the Administrative Agent shall agree) with respect to a borrowing of Loans that are to be LIBOR Loans, the Borrower shall give the Administrative Agent the Notice of Borrowing

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requesting that the Lenders make the Loans on such date and specifying the aggregate principal amount of Loans to be borrowed, the Type of the Loans, and if such Loans are to be LIBOR Loans, the initial Interest Period for the Loans. Such notice shall be irrevocable once given and binding on the Borrower. Upon receipt of such notice the Administrative Agent shall promptly notify each Lender.

(c) Funding of Loans. Each Lender shall deposit an amount equal to the Loan to be made by such Lender to the Borrower with the Administrative Agent at the Principal Office, in immediately available funds not later than 12:00 p.m. Eastern time on the anticipated date of borrowing. Subject to fulfillment of all applicable conditions set forth herein, the Administrative Agent shall make available to the Borrower in the account specified in writing by the Borrower to the Administrative Agent, not later than 3:00 p.m. Eastern time on the Effective Date, the proceeds of such amounts received by the Administrative Agent. The Borrower may not reborrow any portion of the Loans once repaid.

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### 6. Section 2.2. Rates and Payment of Interest on Loans.

(a) Rates. The Borrower promises to pay to the Administrative Agent for the account of each Lender interest on the unpaid principal amount of each Loan made by such Lender for the period from and including the date of the making of such Loan to but excluding the date such Loan shall be paid in full, at the following per annum rates:

(i) during such periods as such Loan is a Base Rate Loan, at the Base Rate (as in effect from time to time), plus the Applicable Margin for Base Rate Loans; and

(ii) during such periods as such Loan is a LIBOR Loan, at LIBOR for such Loan for the Interest Period therefor, plus the Applicable Margin for LIBOR Loans.

Notwithstanding the foregoing, while an Event of Default exists under Section 11.1.(a), 11.1.(b), 11.1.(f), or 11.1.(g), or at the direction of the Requisite Lenders upon the existence of any other Event of Default, the Borrower shall pay to the Administrative Agent for the account of each Lender, interest at the Post-Default Rate on the outstanding principal amount of any Loan made by such Lender and on any other amount payable by the Borrower hereunder or under the Notes held by such Lender to or for the account of such Lender (including without limitation, accrued but unpaid interest to the extent permitted under Applicable Law).

(b) Payment of Interest. All accrued and unpaid interest on the outstanding principal amount of each Loan shall be payable (i) monthly in arrears on the first day of each month, commencing with the first full calendar month occurring after the Effective Date and (ii) on any date on which the principal balance of such Loan is due and payable in full (whether at maturity, due to acceleration or otherwise). Interest payable at the Post-Default Rate shall be payable from time to time on demand. All determinations by the Administrative Agent of an interest rate hereunder shall be conclusive and binding on the Lenders and the Borrower for all purposes, absent manifest error.

(c) Borrower Information Used to Determine Applicable Interest Rates. The parties understand that the applicable interest rate for the Obligations and certain fees set forth herein may be determined and/or adjusted from time to time based upon certain financial ratios and/or other information to be provided or certified to the Lenders by the Parent or the Borrower (the "Borrower Information"). If it is subsequently determined that any such Borrower Information was incorrect (for whatever reason, including without limitation because of a subsequent restatement of earnings by the Parent or the Borrower) at the time it was delivered to the Administrative Agent, and if the applicable interest rate or fees calculated for any period were lower than they should have been had the correct information been timely provided, then, such interest rate and such fees for such period shall be automatically recalculated

using correct Borrower Information. The Administrative Agent shall promptly notify the Borrower in writing of any additional interest and fees due because of such recalculation, and the Borrower shall pay such additional interest or fees due to the Administrative Agent, for the account of each Lender, within 5 Business Days of receipt of such written notice. Any recalculation of interest or fees required by this provision shall survive the termination of this Agreement, and this provision shall not in any way limit any of the Administrative Agent's or any Lender's other rights under this Agreement.

## **2. Section 2.3. Number of Interest Periods.**

There may be no more than 5 different Interest Periods for LIBOR Loans outstanding at the same time.

## **3. Section 2.4. Repayment of Loans.**

The Borrower shall repay the entire outstanding principal amount of, and all accrued but unpaid interest on, the Loans on the Termination Date.

## **4. Section 2.5. Prepayments.**

(a) Optional. Subject to Section 5.4., the Borrower may prepay any Loan at any time without premium or penalty. The Borrower shall give the Administrative Agent at least 2 Business Days prior written notice of the prepayment of any Loan. Each voluntary partial prepayment of Loans shall be in an aggregate minimum amount of \$1,000,000 and integral multiples of \$100,000 in excess thereof.

(b) Mandatory. If at any time (A) the aggregate outstanding principal amount of Indebtedness (excluding Nonrecourse Indebtedness and Indebtedness to the extent owing among the Parent and/or any of its Subsidiaries but including Secured Recourse Indebtedness and the aggregate principal amount of all Loans) of the Parent and the Ownership Share of all such Indebtedness of its Subsidiaries exceeds the Maximum Loan Availability or (B) Borrower is not in compliance with Section 10.1.(e)(y), then in each case with respect to the foregoing clauses (A) and (B), the Borrower shall within 5 Business Days of a Responsible Officer of the Parent or the Borrower obtaining knowledge of the occurrence of any such excess or non-compliance either (x) repay the Unsecured Indebtedness of the Parent, the Borrower and/or the other Subsidiaries in an amount that would cure such excess or non-compliance or (y) deliver to the Administrative Agent for prompt distribution to each Lender notice of the Borrower's intent to cure such excess or non-compliance by providing all initial documentation required to add one or more Properties as Unencumbered Properties in accordance with the final paragraph of Section 4.1. (b) within 10 Business Days of such Responsible Officer obtaining knowledge of such excess or non-compliance and cause such Properties to be added as Unencumbered Properties as soon as reasonably practicable thereafter. If such excess is not eliminated or such non-compliance is not remedied in accordance with this subsection (b)(ii), then the entire outstanding principal balance of all Loans, together with all accrued interest thereon, shall be immediately due and payable in full.

## **2. Section 2.6. Continuation.**

So long as no Default or Event of Default exists, the Borrower may on any Business Day, with respect to any LIBOR Loan, elect to maintain such LIBOR Loan or any portion thereof as a LIBOR Loan by selecting a new Interest Period for such LIBOR Loan. Each Continuation of a LIBOR Loan shall be in an aggregate minimum amount of \$1,000,000 and integral multiples of \$100,000 in excess of that amount, and each new Interest Period selected under this Section shall commence on the last day of the immediately preceding Interest Period. Each selection of a new Interest Period shall be made by the Borrower giving to the Administrative Agent a Notice of Continuation not later than 12:00 p.m. Eastern

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time on the third Business Day prior to the date of any such Continuation. Such notice by the Borrower of a Continuation shall be by telecopy, electronic mail or other similar form of communication in the form of a Notice of Continuation, specifying (a) the proposed date of such Continuation, (b) the LIBOR Loans and portions thereof subject to such Continuation and (c) the duration of the selected Interest Period, all of which shall be specified in such manner as is necessary to comply with all limitations on Loans outstanding hereunder. Each Notice of Continuation shall be irrevocable by and binding on the Borrower once given. Promptly after receipt of a Notice of Continuation, the Administrative Agent shall notify each Lender of the proposed Continuation. If the Borrower shall fail to select in a timely manner a new Interest Period for any LIBOR Loan in accordance with this Section, such Loan will automatically, on the last day of the current Interest Period therefor, continue as a LIBOR Loan with an Interest Period of one month; provided, however that if a Default or Event of Default exists, such Loan will automatically, on the last day of the current Interest Period therefor, Convert into a Base Rate Loan notwithstanding the first sentence of Section 2.7. or the Borrower's failure to comply with any of the terms of such Section.

## **2. Section 2.7. Conversion.**

The Borrower may on any Business Day, upon the Borrower's giving of a Notice of Conversion to the Administrative Agent by telecopy, electronic mail or other similar form of communication, Convert all or a portion of a Loan of one Type into a Loan of another Type; provided, however, a Base Rate Loan may not be Converted into a LIBOR Loan if a Default or Event of Default exists. Each Conversion of Base Rate Loans into LIBOR Loans shall be in an aggregate minimum amount of \$1,000,000 and integral multiples of \$100,000 in excess of that amount. Each such Notice of Conversion shall be given not later than 12:00 p.m. Eastern time 3 Business Days prior to the date of any proposed Conversion. Promptly after receipt of a Notice of Conversion, the Administrative Agent shall notify each Lender of the proposed Conversion. Subject to the restrictions specified above, each Notice of Conversion shall be by telecopy, electronic mail or other similar form of communication in the form of a Notice of Conversion specifying (a) the requested date of such Conversion, (b) the Type of Loan to be Converted, (c) the portion of such Type of Loan to be Converted, (d) the Type of Loan such Loan is to be Converted into and (e) if such Conversion is into a LIBOR Loan, the requested duration of the Interest Period of such Loan. Each Notice of Conversion shall be irrevocable by and binding on the Borrower once given.

## **3. Section 2.8. Notes.**

(a) Notes. Except in the case of a Lender that has notified the Administrative Agent in writing that it elects not to receive a Note, the Loans made by each Lender shall, in addition to this Agreement, also be evidenced by a Note, payable to the order of such Lender in a principal amount equal to the amount of its Commitment as originally in effect and otherwise duly completed.

(b) Records. The date, amount, interest rate, Type and duration of Interest Periods (if applicable) of each Loan made by each Lender to the Borrower, and each payment made on account of the principal thereof, shall be evidenced by one or more accounts or records maintained by such Lender or and

by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

(c) Lost, Stolen, Destroyed or Mutilated Notes. Upon receipt by the Borrower of (i) written notice from a Lender that a Note of such Lender has been lost, stolen, destroyed or mutilated, and

(ii)(A) in the case of loss, theft or destruction, an unsecured agreement of indemnity from such Lender in form reasonably satisfactory to the Borrower, or (B) in the case of mutilation, upon surrender and cancellation of such Note, the Borrower shall at its own expense execute and deliver to such Lender a new Note dated the date of such lost, stolen, destroyed or mutilated Note.

#### **4. Section 2.9. Additional Loans.**

The Borrower shall have the right to request the making of additional Loans ("Additional Loans") by providing written notice to the Administrative Agent, which notice shall be irrevocable once given; provided, however, that after giving effect to the making of Additional Loans the aggregate outstanding principal amount of the Loans shall not exceed \$300,000,000. Each borrowing of Additional Loans must be an aggregate minimum amount of \$10,000,000 and integral multiples of \$5,000,000 in excess thereof. The Administrative Agent, in consultation with and with the consent of the Borrower, shall manage all aspects of the syndication of the making of any such Additional Loans, including decisions as to the selection of the existing Lenders and/or other banks, financial institutions and other institutional lenders to be approached with respect to such making of Additional Loans and the allocations of the making of such Additional Loans among such existing Lenders and/or other banks, financial institutions and other institutional lenders. No Lender shall be obligated in any way whatsoever under this Section to increase the principal amount of its Loans or provide a new Loan, and any new Lender becoming a party to this Agreement in connection with any such making of Additional Loans must be an Eligible Assignee. Effecting the making of Additional Loans under this Section is subject to the following conditions precedent: (x) no Default or Event of Default shall be in existence on the effective date of such increase, (y) the representations and warranties made or deemed made by the Borrower or any other Loan Party in any Loan Document to which such Loan Party is a party shall be true and accurate in all material respects on the effective date of such increase except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and accurate on and as of such earlier date) and except for changes in factual circumstances not prohibited hereunder, and (z) the Administrative Agent shall have received each of the following, in form and substance satisfactory to the Administrative Agent: (i) if not previously delivered to the Administrative Agent, copies certified by the Secretary or Assistant Secretary of (A) all corporate, partnership or other necessary action taken by the Parent and the Borrower to authorize such increase and (B) all corporate, partnership, member or other necessary action taken by each Guarantor authorizing the guaranty of such increase; (ii) an opinion of counsel to the Parent, the Borrower and the Guarantors, and addressed to the Administrative Agent and the Lenders covering such matters as reasonably requested by the Administrative Agent, and (iii) new Notes executed by the Borrower, payable to any new Lenders and replacement Notes executed by the Borrower, payable to any existing Lenders increasing the principal amount of their Loans, in the aggregate principal amount of such Lender's Loans at the time of the effectiveness of the making of such Additional Loans. In connection with the making of Additional Loans pursuant to this Section 2.9. any Lender becoming a party hereto shall execute such documents and agreements as the Administrative Agent may reasonably request.

## **2. ARTICLE III. PAYMENTS, FEES AND OTHER GENERAL PROVISIONS**

### **3. Section 3.1. Payments.**

(a) Payments by Borrower. Except to the extent otherwise provided herein, all payments of principal, interest, Fees and other amounts to be made by the Borrower under this Agreement, the Notes or any other Loan Document shall be made in Dollars, in immediately available funds, without setoff, deduction or counterclaim (excluding Taxes required to be withheld pursuant to Section 3.10.), to the Administrative Agent at the Principal Office, not later than 11:00 a.m. Eastern time on the date on which such payment shall become due (each such payment made after such time on such due date to be deemed

to have been made on the next succeeding Business Day). Subject to Section 11.4., the Borrower shall, at the time of making each payment under this Agreement or any other Loan Document, specify to the Administrative Agent the amounts payable by the Borrower hereunder to which such payment is to be applied. Each payment received by the Administrative Agent for the account of a Lender under this Agreement or any Note shall be paid to such Lender by wire transfer of immediately available funds in accordance with the wiring instructions provided by such Lender to the Administrative Agent from time to time, for the account of such Lender at the applicable Lending Office of such Lender. In the event the Administrative Agent fails to pay such amounts to such Lender, (i) by 5:00 p.m. Eastern time on the Business Day such funds are received by the Administrative Agent, if such amounts are received by 11:00 a.m. Eastern time on such date or (ii) by 5:00 p.m. Eastern time on the Business Day following the date such funds are received by the Administrative Agent, if such amounts are received after 11:00 a.m. Eastern time on any Business Day, the Administrative Agent shall pay interest on such amount until paid at a rate per annum equal to the Federal Funds Rate from time to time in effect. If the due date of any payment under this Agreement or any other Loan Document would otherwise fall on a day which is not a Business Day such date shall be extended to the next succeeding Business Day and interest shall continue to accrue at the rate, if any, applicable to such payment for the period of such extension.

(b) Presumptions Regarding Payments by Borrower. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may (but shall not be obligated to), in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent on demand that amount so distributed to such Lender, with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

### **2. Section 3.2. Pro Rata Treatment.**

Except to the extent otherwise provided herein: (a) the making of the Loans by the Lenders under Section 2.1.(a) shall be made by the Lenders pro rata according to the amounts of their respective Commitments; (b) each payment or prepayment of principal of Loans shall be made for the account of the Lenders pro rata in accordance with the respective unpaid principal amounts of the Loans held by them; (c) each payment of interest on Loans shall be made for the account of the Lenders, pro rata in accordance with the amounts of interest on such Loans then due and payable to the respective Lenders; and (d) the Conversion and Continuation of Loans of a particular Type (other than Conversions provided for by Section 5.5.) shall be made pro rata among the Lenders, according to the amounts of their respective Loans and the then current Interest Period for each Lender's portion of each such Loan of such Type shall be coterminous.

## **2. Section 3.3. Sharing of Payments, Etc.**

If a Lender shall obtain payment of any principal of, or interest on, any of its Loans under this Agreement or shall obtain payment on any other Obligation owing by the Borrower or any other Loan Party through the exercise of any right of set-off, banker's lien, counterclaim or similar right or otherwise or through voluntary prepayments directly to a Lender or other payments made by the Borrower or any other Loan Party to a Lender (other than a payment in respect of Specified Derivatives Obligations) not in accordance with the terms of this Agreement and such payment should be distributed to the Lenders in accordance with Section 3.2. or Section 11.4., as applicable, such Lender shall promptly purchase from

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the other Lenders participations in (or, if and to the extent specified by such Lender, direct interests in) the Loans made by the other Lenders or other Obligations owed to such other Lenders in such amounts, and make such other adjustments from time to time as shall be equitable, to the end that all the Lenders shall share the benefit of such payment (net of any reasonable expenses which may actually be incurred by such Lender in obtaining or preserving such benefit) in accordance with the requirements of Section 3.2. or Section 11.4., as applicable. To such end, all the Lenders shall make appropriate adjustments among themselves (by the resale of participations sold or otherwise) if such payment is rescinded or must otherwise be restored. The Borrower agrees that any Lender so purchasing a participation (or direct interest) in the Loans or other Obligations owed to such other Lenders may exercise all rights of set-off, banker's lien, counterclaim or similar rights with respect to such participation as fully as if such Lender were a direct holder of Loans in the amount of such participation. Nothing contained herein shall require any Lender to exercise any such right or shall affect the right of any Lender to exercise and retain the benefits of exercising, any such right with respect to any other indebtedness or obligation of the Borrower.

## **2. Section 3.4. Several Obligations.**

No Lender shall be responsible for the failure of any other Lender to make a Loan or to perform any other obligation to be made or performed by such other Lender hereunder, and the failure of any Lender to make a Loan or to perform any other obligation to be made or performed by it hereunder shall not relieve the obligation of any other Lender to make any Loan or to perform any other obligation to be made or performed by such other Lender.

## **3. Section 3.5. Fees.**

(a) Closing Fee. On the Effective Date, the Borrower agrees to pay to the Administrative Agent, for its own account or the account of the Lenders, as applicable, all loan fees as have been agreed to in writing by the Borrower and the Administrative Agent.

(b) Administrative and Other Fees. The Borrower agrees to pay the administrative fees, arrangement fees and other fees of the Administrative Agent and the Lead Arrangers as provided in the Fee Letters and as may be otherwise agreed to in writing from time to time by the Borrower and the Administrative Agent.

## **4. Section 3.6. Computations.**

Unless otherwise expressly set forth herein, any accrued interest on any Loan, any Fees or any other Obligations due hereunder shall be computed on the basis of a year of 360 days and the actual number of days elapsed.

## **5. Section 3.7. Usury.**

In no event shall the amount of interest due or payable on the Loans or other Obligations exceed the maximum rate of interest allowed by Applicable Law and, if any such payment is paid by the Borrower or any other Loan Party or received by any Lender, then such excess sum shall be credited as a payment of principal, unless the Borrower shall notify the respective Lender in writing that the Borrower elects to have such excess sum returned to it forthwith. It is the express intent of the parties hereto that the Borrower not pay and the Lenders not receive, directly or indirectly, in any manner whatsoever, interest in excess of that which may be lawfully paid by the Borrower under Applicable Law. The parties hereto hereby agree and stipulate that the only charge imposed upon the Borrower for the use of money in connection with this Agreement is and shall be the interest specifically described in Section 2.2.(a) (i) and

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(ii). Notwithstanding the foregoing, the parties hereto further agree and stipulate that all agency fees, syndication fees, facility fees, closing fees, underwriting fees, default charges, late charges, funding or "breakage" charges, increased cost charges, attorneys' fees and reimbursement for costs and expenses paid by the Administrative Agent or any Lender to third parties or for damages incurred by the Administrative Agent or any Lender, in each case in connection with the transactions contemplated by this Agreement and the other Loan Documents are charges made to compensate the Administrative Agent or any such Lender for underwriting or administrative services and costs or losses performed or incurred, and to be performed or incurred, by the Administrative Agent and the Lenders in connection with this Agreement and shall under no circumstances be deemed to be charges for the use of money. All charges other than charges for the use of money shall be fully earned and nonrefundable when due.

## **2. Section 3.8. Statements of Account.**

The Administrative Agent will account to the Borrower quarterly with a statement of Loans, accrued interest and Fees, charges and payments made pursuant to this Agreement and the other Loan Documents, and such account rendered by the Administrative Agent shall be deemed conclusive upon the Borrower absent manifest error. The failure of the Administrative Agent to deliver such a statement of accounts shall not relieve or discharge the Borrower from any of its obligations hereunder.

### 3. Section 3.9. Defaulting Lenders.

Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by Applicable Law:

(a) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Requisite Lenders and in Section 13.5.

(b) Defaulting Lender Waterfall. Any payment of principal, interest, Fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article XI. or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 13.3. shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; third, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; fourth, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and fifth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans, in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made at a time when the conditions set forth in Article VI. were satisfied or waived, such payment shall be applied solely to pay the Loans of all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of such Defaulting Lender until such time as all Loans are held by the Lenders pro rata as if there had been no Defaulting Lenders. Any payments, prepayments or other amounts paid or payable to a

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Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(d) Defaulting Lender Cure. If the Borrower and the Administrative Agent agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans to be held pro rata by the Lenders as if there had been no Defaulting Lenders, whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to Fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

### 2. Section 3.10. Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of the Borrower or any other Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the Borrower or other applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Payment of Other Taxes by the Borrower. The Borrower and the other Loan Parties shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) Indemnification by the Borrower. The Borrower and the other Loan Parties shall jointly and severally indemnify each Recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower or another Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower and the other Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 13.5. relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect

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thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this subsection. The provisions of this subsection shall continue to inure to the benefit of an Administrative Agent following its resignation or removal as Administrative Agent.

(e) Evidence of Payments. As soon as practicable after any payment of Taxes by the Borrower or any other Loan Party to a Governmental Authority pursuant to this Section, the Borrower or such other Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(f) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in the immediately following clauses (ii)(A), (ii)(B) and (ii)(D)) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Person:

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), an electronic copy (or an original if requested by the Borrower or the Administrative Agent) of an executed IRS Form W-9 (or any successor form) certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

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(I) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, an electronic copy (or an original if requested by the Borrower or the Administrative Agent) of an executed IRS Form W-8BEN, or W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(II) an electronic copy (or an original if requested by the Borrower or the Administrative Agent) of an executed IRS Form W-8ECI;

(III) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Internal Revenue Code, (x) a certificate substantially in the form of Exhibit G-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Internal Revenue Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Internal Revenue Code (a "U.S. Tax Compliance Certificate") and (y) an electronic copy (or an original if requested by the Borrower or the Administrative Agent) of IRS Form W-8BEN or W-8BEN-E, as applicable; or

(IV) to the extent a Foreign Lender is not the beneficial owner, an electronic copy (or an original if requested by the Borrower or the Administrative Agent) of an executed IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-2 or Exhibit G-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit G-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), an electronic copy (or an original if requested by the Borrower or the Administrative Agent) of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

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(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Internal Revenue Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by Applicable Law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(g) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section (including by the payment of additional amounts pursuant to this Section), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this subsection (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this subsection the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Survival. Each party's obligations under this Section shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

## 2. ARTICLE IV. UNENCUMBERED PROPERTIES

### 3. Section 4.1. Eligibility of Properties.

(a) Initial Unencumbered Properties. On the Effective Date the Properties identified on Schedule 4.1. shall be Unencumbered Properties.

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(b) Additional Unencumbered Properties. If after the Effective Date, the Borrower desires that any additional Property become an Unencumbered Property and therefore included in calculations of the Unencumbered Property Value, the Borrower shall so notify the Administrative Agent in writing (as referred to in this subsection, a "Notice of Additional Unencumbered Property"). Except as otherwise provided in the immediately following subsection (c), no Property will become an Unencumbered Property unless it is an Eligible Property, and unless and until the Borrower delivers to the Administrative Agent the following, in form and substance satisfactory to the Administrative Agent (unless waived by the Requisite Lenders):

(i) a description of such Property, such description to include the age, location and size of such Property;

(ii) an operating statement with respect to such Property for each of the two prior fiscal years and for the current fiscal year through the fiscal quarter most recently ending and for the current fiscal quarter, which shall be audited (to the extent available) or certified by a representative of the Borrower to the best of such representative's knowledge as being true and correct in all material respects; provided, that with respect to any period such Property was not owned by a Loan Party, such information shall only be required to be delivered to the extent reasonably available to the Borrower;

(iii) a pro forma operating statement or an operating budget for such Property with respect to the current and immediately following fiscal years;

(iv) a budget for capital expenditures for the immediately following 12-month period showing funding sources acceptable to the Administrative Agent; and

(v) a Compliance Certificate showing pro forma compliance with the covenants set forth in Section 10.1., in each case, after giving effect to the addition of such Property in the calculations of the Unencumbered Property Values; and

(vi) such other information the Administrative Agent may reasonably request in order to evaluate the Property including, without limitation, the following:

(1) a copy of the ALTA Owner's Policy of Title Insurance ("Owner's Policy") of the Borrower or a Subsidiary, as applicable, covering such Property showing the identity of the fee titleholder thereto and all matters of record as of the date of such policy;

(2) solely with respect to a property located in an earthquake zone, an engineering report or structural inspection report for such Property that is (w) prepared by an engineering firm reasonably acceptable to the Administrative Agent, (x) if requested by the Administrative Agent, addressed to the Administrative Agent, (y) not more than 12 months old and (z) otherwise in form and substance acceptable to the Administrative Agent;

(3) (x) a “Phase I” environmental assessment of such Property, which report has been (A) prepared by an environmental engineering firm reasonably acceptable to the Administrative Agent, (B) if requested by the Administrative Agent, addressed to the Administrative Agent and (C) is otherwise in form and substance acceptable to the Administrative Agent and (y) any other environmental assessments or other reports relating to such Property, including any “Phase II” environmental assessment prepared

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or recommended by such environmental engineering firm to be prepared for such Property;

(4) copies of all Property Management Agreements relating to such Property; and

(5) evidence that the insurance required by Section 8.5. is in effect and, to the extent applicable, covers such Property.

A Notice of Additional Unencumbered Property executed and delivered by the Borrower to the Administrative Agent shall constitute a certification by the Borrower to the Administrative Agent and the Lenders that such Property satisfies all of the requirements contained in the definition of “Eligible Property” unless such notice states otherwise (in which case the provisions of the immediately following subsection (c) shall apply). Within 5 Business Days of the Administrative Agent’s receipt of a Notice of Additional Unencumbered Property and the other reports and documents set forth in the immediately preceding subsections (b)(i) through (vi), the Administrative Agent will send such notice, reports and documents to each of the Lenders. Within 10 Business Days of the Administrative Agent’s receipt of a Notice of Additional Unencumbered Property and other reports and documents set forth in subsections (b) (i) through (vi), the Administrative Agent shall notify the Borrower and the Lenders if the Administrative Agent has confirmed that such Property satisfies all of the requirements contained in the definition of “Eligible Property”.

Notwithstanding the foregoing, if a Notice of Additional Unencumbered Property is delivered in connection with the submission of a Property as a result of Section 2.5.(b)(ii) and within 10 Business Days of the providing of such notice the Borrower has delivered all reports and documents required under the immediately preceding subsections (b)(i), (ii), (iii), (iv), (v) and (vi)(1) through (4), the Administrative Agent shall notify the Borrower and the Lenders if the Administrative Agent has confirmed that such Property satisfies all of the requirements contained in the definition of “Eligible Property”.

(c) Nonconforming Properties. If a Property which the Borrower wants to have included in calculation of the Unencumbered Property Value does not satisfy the requirements of an Eligible Property, then the Administrative Agent, upon written request of the Borrower shall request that the Requisite Lenders determine whether such Property shall be included as an Unencumbered Property. In connection therewith, the Borrower shall deliver the information required by the immediately preceding subsection (b) to the Administrative Agent, who shall promptly deliver the same to each of the Lenders. If such a request is made, within 15 Business Days after the date on which a Lender has received such request and all of the items referred to in the immediately preceding subsection (b), each such Lender shall notify the Administrative Agent in writing whether or not such Lender accepts such Property as an Unencumbered Property. If a Lender fails to give such notice within such time period, such Lender shall be deemed to have approved such Property as an Unencumbered Property. A Property shall become an Unencumbered Property under this subsection (c) only upon the approval and/or deemed approval of the Requisite Lenders.

(d) Documents with Respect to Subsidiary. If a Property owned by a Subsidiary that is not a Guarantor is to become an Unencumbered Property, the Borrower shall deliver to the Administrative Agent an Accession Agreement executed by such Subsidiary together with the items that would have been delivered with respect to such Subsidiary under Sections 6.1.(a)(iv) through (viii) and (xiv) as if such Subsidiary had been a Guarantor on the Effective Date. If the improvements on such a Property or the furniture, fixtures and equipment utilized in the operation of such Property are owned or leased by a Subsidiary (the “Accommodation Subsidiary”) other than the Subsidiary that owns or leases such Property, then the Borrower shall also deliver to the Administrative Agent an Accession Agreement

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executed by such Accommodation Subsidiary. Until such time as the Administrative Agent shall have received the items referred to in the immediately preceding two sentences with respect to such Subsidiary and any applicable Accommodation Subsidiary, the applicable Property shall not be considered to be an Unencumbered Property.

## **2. Section 4.2. Reclassification of Properties.**

From time to time the Borrower may request, upon not less than 10 Business Days prior written notice to the Administrative Agent, that an Unencumbered Property be no longer classified as an Unencumbered Property and therefore not included in the calculations of the Unencumbered Property Value, which reclassification (a “Reclassification”) shall be effected by the Administrative Agent if all the following conditions are satisfied as of the date of such Reclassification:

(a) no Default or Event of Default exists or will exist immediately after giving effect to such Reclassification and any prepayments of the Loans to be made in connection therewith, and the reduction in the Unencumbered Property Value by reason of the release of such Property as of the date of such Reclassification (any such request from the Borrower shall include a representation regarding no Default or Event of Default to the effect set forth in the preceding sentence); and

(b) the Borrower shall have delivered a Compliance Certificate showing pro forma compliance with the covenants set forth in Section 10.1., in each case, after giving effect to such Reclassification.

Upon the Borrower’s request and at the Borrower’s sole cost and expense, the Administrative Agent agrees to execute and deliver such instruments, documents, certificates and other agreements as the Borrower may reasonably request to confirm such Reclassification.

## **2. ARTICLE V. YIELD PROTECTION, ETC.**

### **3. Section 5.1. Additional Costs; Capital Adequacy.**

(a) Capital Adequacy. If any Lender determines that any Regulatory Change affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital or liquidity ratios or requirements, has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitment of such Lender or the Loans made by such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Regulatory Change (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(b) Additional Costs. In addition to, and not in limitation of the immediately preceding subsection (a), the Borrower shall promptly pay to the Administrative Agent for the account of a Lender from time to time such amounts as such Lender may determine to be necessary to compensate such Lender for any costs incurred by such Lender that it reasonably determines are attributable to its making or maintaining of any LIBOR Loans or its obligation to make any LIBOR Loans hereunder, any reduction in any amount receivable by such Lender under this Agreement or any of the other Loan Documents in respect of any of such LIBOR Loans or such obligation or the maintenance by such Lender of capital in respect of its LIBOR Loans or its Commitment (such increases in costs and reductions in amounts receivable being herein called "Additional Costs"), resulting from any Regulatory Change that:

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(i) changes the basis of taxation of any amounts payable to such Lender under this Agreement or any of the other Loan Documents in respect of any of such LIBOR Loans or its Commitment (other than Indemnified Taxes, Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and Connection Income Taxes); or (ii) imposes or modifies any reserve, special deposit, compulsory loan, insurance charge or similar requirements (other than Regulation D of the Board of Governors of the Federal Reserve System or other similar reserve requirement applicable to any other category of liabilities or category of extensions of credit or other assets by reference to which the interest rate on LIBOR Loans is determined to the extent utilized when determining LIBOR for such Loans) relating to any extensions of credit or other assets of, or any deposits with or other liabilities of, or other credit extended by, or any other acquisition of funds by such Lender (or its parent corporation), or any commitment of such Lender (including, without limitation, the Commitment of such Lender hereunder) or (iii) imposes on any Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or the Loans made by such Lender.

(c) Lender's Suspension of LIBOR Loans. Without limiting the effect of the provisions of the immediately preceding subsection (a) and (b), if by reason of any Regulatory Change, any Lender either (i) incurs Additional Costs based on or measured by the excess above a specified level of the amount of a category of deposits or other liabilities of such Lender that includes deposits by reference to which the interest rate on LIBOR Loans is determined as provided in this Agreement or a category of extensions of credit or other assets of such Lender that includes LIBOR Loans or (ii) becomes subject to restrictions on the amount of such a category of liabilities or assets that it may hold, then, if such Lender so elects by notice to the Borrower (with a copy to the Administrative Agent), the obligation of such Lender to make or Continue, or to Convert Base Rate Loans into, LIBOR Loans shall be suspended until such Regulatory Change ceases to be in effect (in which case the provisions of Section 5.5. shall apply).

(d) Notification and Determination of Additional Costs. Each of the Administrative Agent, each Lender, and each Participant, as the case may be, agrees to notify the Borrower of any event occurring after the Agreement Date entitling the Administrative Agent, such Lender or such Participant to compensation under any of the preceding subsections of this Section as promptly as practicable; provided, however, that the failure of the Administrative Agent, any Lender or any Participant to give such notice shall not release the Borrower from any of its obligations hereunder (and in the case of a Lender, to the Administrative Agent); provided further that no Lender shall be entitled to claim any additional cost, reduction in amounts, loss, tax or other additional amount under this Article V if such Lender fails to provide such notice to the Borrower within 180 days of the date such Lender becomes aware of the occurrence of the event giving rise to the additional cost, reduction in amounts, loss, tax or other additional amount. The Administrative Agent, each Lender and each Participant, as the case may be, agrees to furnish to the Borrower (and in the case of a Lender or a Participant to the Administrative Agent as well) a certificate setting forth in reasonable detail the basis and amount of each request for compensation under this Section. Determinations by the Administrative Agent, such Lender, or such Participant, as the case may be, of the effect of any Regulatory Change shall be conclusive and binding for all purposes, provided that such determination is made on a reasonable basis and in good faith.

## 2. Section 5.2. Suspension of LIBOR Loans.

Anything herein to the contrary notwithstanding, if, on or prior to the determination of LIBOR for any Interest Period:

(a) the Administrative Agent shall determine (which determination shall be conclusive) that reasonable and adequate means do not exist for the ascertaining LIBOR for such Interest Period;

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(b) the Administrative Agent reasonably determines (which determination shall be conclusive) that quotations of interest rates for the relevant deposits referred to in the definition of LIBOR are not being provided in the relevant amounts or for the relevant maturities for purposes of determining rates of interest for LIBOR Loans as provided herein; or

(c) the Administrative Agent reasonably determines (which determination shall be conclusive) that the relevant rates of interest referred to in the definition of LIBOR upon the basis of which the rate of interest for LIBOR Loans for such Interest Period is to be determined are not likely to adequately cover the cost to any Lender of making or maintaining LIBOR Loans for such Interest Period;

then the Administrative Agent shall give the Borrower and each Lender prompt notice thereof and, so long as such condition remains in effect, the Lenders shall be under no obligation to, and shall not, make additional LIBOR Loans (without limiting the obligation to make Base Rate Loans), Continue LIBOR Loans or Convert Loans into LIBOR Loans and the Borrower shall, on the last day of each current Interest Period for each outstanding LIBOR Loan, either prepay such Loan or Convert such Loan into a Base Rate Loan.

## 3. Section 5.3. Illegality.

Notwithstanding any other provision of this Agreement, if any Lender shall reasonably determine (which determination shall be conclusive and binding) that it has become unlawful for such Lender to honor its obligation to make or maintain LIBOR Loans hereunder, then such Lender shall promptly notify the Borrower thereof (with a copy of such notice to the Administrative Agent) and such Lender's obligation to make or Continue, or to Convert Loans of any other Type into, LIBOR Loans shall be suspended, in each case, until such time as such Lender may again make and maintain LIBOR Loans (in which case the provisions of Section 5.5. shall be applicable (without limiting the obligation to make Base Rate Loans)).

## **2. Section 5.4. Compensation.**

The Borrower shall pay to the Administrative Agent for the account of each Lender, upon the request of the Administrative Agent, such amount or amounts as the Administrative Agent shall determine in its reasonable discretion shall be sufficient to compensate such Lender for any loss, cost or expense (excluding lost profits) attributable to:

- (a) any payment or prepayment (whether mandatory or optional) of a LIBOR Loan, or Conversion of a LIBOR Loan, made by such Lender for any reason (including, without limitation, acceleration) on a date other than the last day of the Interest Period for such Loan; or
- (b) any failure by the Borrower for any reason (including, without limitation, the failure of any of the applicable conditions precedent specified in Article VI. to be satisfied) to borrow a LIBOR Loan from such Lender on the date for such borrowing, or to Convert a Base Rate Loan into a LIBOR Loan or Continue a LIBOR Loan on the requested date of such Conversion or Continuation.

Not in limitation of the foregoing, such compensation shall include, without limitation, in the case of a LIBOR Loan, an amount equal to the then present value of (A) the amount of interest that would have accrued on such LIBOR Loan for the remainder of the Interest Period at the rate applicable to such LIBOR Loan, less (B) the amount of interest that would accrue on the same LIBOR Loan for the same period if LIBOR were set on the date on which such LIBOR Loan was repaid, prepaid or Converted or the

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date on which the Borrower failed to borrow, Convert or Continue such LIBOR Loan calculating present value by using as a discount rate LIBOR quoted on such date. Upon the Borrower's request, the Administrative Agent shall provide the Borrower with a statement setting forth in reasonable detail the basis for requesting such compensation and the method for determining the amount thereof. Any such statement shall be conclusive provided that such determination is made on a reasonable basis and in good faith.

## **3. Section 5.5. Treatment of Affected Loans.**

If the obligation of any Lender to make LIBOR Loans or to Continue, or to Convert Base Rate Loans into, LIBOR Loans shall be suspended pursuant to Section 5.1.(c), Section 5.2. or Section 5.3. then such Lender's LIBOR Loans shall be automatically Converted into Base Rate Loans on the last day(s) of the then current Interest Period(s) for LIBOR Loans (or, in the case of a Conversion required by Section 5.1.(c), Section 5.2., or Section 5.3. on such earlier date as such Lender or the Administrative Agent, as applicable, may specify to the Borrower (with a copy to the Administrative Agent, as applicable) and, unless and until such Lender or the Administrative Agent, as applicable, gives notice as provided below that the circumstances specified in Section 5.1., Section 5.2. or Section 5.3. that gave rise to such Conversion no longer exist:

- (i) to the extent that such Lender's LIBOR Loans have been so Converted, all payments and prepayments of principal that would otherwise be applied to such Lender's LIBOR Loans shall be applied instead to its Base Rate Loans; and
- (ii) all Loans that would otherwise be made or Continued by such Lender as LIBOR Loans shall be made or Continued instead as Base Rate Loans, and all Base Rate Loans of such Lender that would otherwise be Converted into LIBOR Loans shall remain as Base Rate Loans.

If such Lender or the Administrative Agent, as applicable, gives notice to the Borrower (with a copy to the Administrative Agent, as applicable) that the circumstances specified in Section 5.1.(c), 5.2 or 5.3. that gave rise to the Conversion of such Lender's LIBOR Loans pursuant to this Section no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when LIBOR Loans made by other Lenders are outstanding, then such Lender's Base Rate Loans shall be automatically Converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding LIBOR Loans, to the extent necessary so that, after giving effect thereto, all Loans held by the Lenders holding LIBOR Loans and by such Lender are held pro rata (as to principal amounts, Types and Interest Periods) in accordance with the respective unpaid principal amount of the Loans held by each Lender.

## **2. Section 5.6. Change of Lending Office.**

Each Lender agrees that it will use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to designate an alternate Lending Office with respect to any of its Loans affected by the matters or circumstances described in Sections 3.10., 5.1. or 5.3. to reduce the liability of the Borrower or avoid the results provided thereunder, so long as such designation is not disadvantageous to such Lender as determined by such Lender in its sole discretion, except that such Lender shall have no obligation to designate a Lending Office located in the United States of America.

## **2. Section 5.7. Assumptions Concerning Funding of LIBOR Loans.**

Calculation of all amounts payable to a Lender under this Article shall be made as though such Lender had actually funded LIBOR Loans through the purchase of deposits in the relevant market bearing interest at the rate applicable to such LIBOR Loans in an amount equal to the amount of the LIBOR

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Loans and having a maturity comparable to the relevant Interest Period; provided, however, that each Lender may fund each of its LIBOR Loans in any manner it sees fit and the foregoing assumption shall be used only for calculation of amounts payable under this Article.

## **3. Section 5.8. Affected Lenders.**

If (a) a Lender requests compensation pursuant to Section 3.10. or 5.1., and the Requisite Lenders are not also doing the same, or (b) the obligation of any Lender to make LIBOR Loans or to Continue, or to Convert Base Rate Loans into, LIBOR Loans shall be suspended pursuant to Section 5.1.(b) or 5.3. but the obligation of the Requisite Lenders shall not have been suspended under such Sections, (c) a Lender does not vote in favor of any amendment, modification or waiver to this Agreement which, pursuant to Section 13.6.(b), requires the vote of such Lender, and the Requisite Lenders shall have voted in favor of such amendment, modification or waiver, or (d) a Lender is a Defaulting Lender, then, so long as there does not then exist any Default or Event of Default, the Borrower may demand that such Lender (the "Affected Lender"), and upon such demand the Affected Lender shall promptly, assign its Commitment or Loans, as applicable, to an Eligible Assignee subject to and in accordance with the provisions of Section 13.5.(d) for a purchase price equal to (x) the aggregate principal balance of all Loans then owing to the Affected Lender plus (y) any accrued but unpaid interest thereon and accrued but unpaid fees owing to the Affected Lender, or any other amount as may be mutually agreed upon by such Affected Lender and Eligible Assignee. Each of the Administrative Agent and the Affected Lender shall reasonably cooperate in effectuating the replacement of such Affected Lender under this Section, but at no time shall the Administrative Agent, such Affected Lender, any other Lender nor any Titled Agent be obligated in any way whatsoever to initiate any such replacement or to assist in finding an Eligible Assignee. The exercise by the Borrower of its rights under this Section shall be at the Borrower's sole cost and expense and at no cost or expense to the Administrative Agent, the Affected Lender or any of the other Lenders. The terms of this Section shall not in any way limit the Borrower's obligation to pay to any Affected Lender compensation owing to such Affected Lender pursuant to this Agreement (including, without limitation, pursuant to Sections 3.10., 5.1. or 5.4.) with respect to the periods up to the date of replacement.

## 2. ARTICLE VI. CONDITIONS PRECEDENT

### 3. Section 6.1. Initial Conditions Precedent.

The obligation of the Lenders to make the Loans is subject to the satisfaction of the following conditions precedent:

- (a) The Administrative Agent shall have received each of the following, in form and substance satisfactory to the Administrative Agent:
  - (i) counterparts of this Agreement executed by each of the parties hereto;
  - (ii) Notes executed by the Borrower, payable to each Lender (other than any Lender that has requested that it not receive a Note) and complying with the terms of Section 2.8.(a);
  - (iii) the Guaranty executed by each of the Parent and each Material Subsidiary (other than an Excluded Subsidiary or a Foreign Subsidiary) existing as of the Effective Date;
  - (iv) the certificate or articles of incorporation or formation, articles of organization, certificate of limited partnership, declaration of trust or other comparable organizational instrument (if any) of each Loan Party certified (x) as of a recent date by the Secretary of State of the state of formation of such Loan Party and (y) by the Secretary or Assistant Secretary (or other individual performing similar functions) of such Loan Party as being a true, correct and complete copy thereof as of the Agreement Date;
  - (v) a certificate of good standing (or certificate of similar meaning) with respect to each Loan Party issued as of a recent date by the Secretary of State of the state of formation of each such Loan Party and certificates of qualification to transact business or other comparable certificates issued as of a recent date by each Secretary of State (and any state department of taxation, as applicable) of each state in which such Loan Party is required to be so qualified and where failure to be so qualified could reasonably be expected to have a Material Adverse Effect;
  - (vi) a certificate of incumbency signed by the Secretary or Assistant Secretary (or other individual performing similar functions) of each Loan Party with respect to each of the officers of such Loan Party authorized to execute and deliver the Loan Documents to which such Loan Party is a party, and in the case of the Borrower, authorized to execute and deliver on behalf of the Borrower the Notice of Borrowing, Notices of Conversion and Notices of Continuation;
  - (vii) copies certified by the Secretary or Assistant Secretary (or other individual performing similar functions) of each Loan Party of (A) the by-laws of such Loan Party, if a corporation, the operating agreement, if a limited liability company, the partnership agreement, if a limited or general partnership, or other comparable document in the case of any other form of legal entity and (B) all corporate, partnership, member or other necessary action taken by such Loan Party to authorize the execution, delivery and performance of the Loan Documents to which it is a party;
  - (viii) an opinion of counsel to the Loan Parties (other than any Accommodation Subsidiary that is not a Material Subsidiary), addressed to the Administrative Agent and the Lenders and covering such customary matters as may be required by the Administrative Agent;
  - (ix) evidence that the Fees then due and payable under Section 3.5., together with all other fees, expenses and reimbursement amounts due and payable to the Administrative Agent and any of the Lenders, including without limitation, the fees and expenses of counsel to the Administrative Agent, have been paid;
  - (x) a Compliance Certificate calculated as of the Effective Date (giving pro forma effect to the financing evidenced by this Agreement and the use of the proceeds of the Loans to be funded on the Agreement Date);
  - (xi) with respect to each Property identified on Schedule 4.1., each of the items referred to in Section 4.1.(b)(i), (ii), (iv) and (vi) required to be delivered in connection with any Unencumbered Property and a pro forma operating budget for such Property with respect to the current fiscal year;
  - (xii) insurance certificates, or other evidence, providing that the insurance coverage required under Section 8.5. (including, without limitation, both property and liability insurance) is in full force and effect;
  - (xiii) each of the items required pursuant to Section 13.20.(b) with respect to the Closing Date Mortgage and evidence that the real property subject to the Closing Date Mortgage is not in a special flood hazard area;

(xiv) certified copies of enforceable amendments to the Revolving Facility and the Existing Term Loan effected on the Effective Date; and

(xv) such other documents, agreements and instruments as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably request.

(b) There shall not have occurred or become known to the Administrative Agent or any of the Lenders any event, condition, situation or status since the date of the information contained in the financial and business projections, budgets, pro forma data and forecasts concerning the Parent, the Borrower and its Subsidiaries delivered to the Administrative Agent and the Lenders prior to the Agreement Date that has had or could reasonably be expected to result in a Material Adverse Effect;

(c) No litigation, action, suit, investigation or other arbitral, administrative or judicial proceeding shall be pending or threatened in writing which could reasonably be expected to (i) result in a Material Adverse Effect or (ii) restrain or enjoin, impose materially burdensome conditions on, or otherwise materially and adversely affect, the ability of the Borrower or any other Loan Party to fulfill its obligations under the Loan Documents to which it is a party;

(d) The Parent, the Borrower and its Subsidiaries shall have received all approvals, consents and waivers, and shall have made or given all necessary filings and notices as shall be required to consummate the transactions contemplated hereby without the occurrence of any default under, conflict with or violation of (i) any Applicable Law or (ii) any agreement, document or instrument to which any Loan Party is a party or by which any of them or their respective properties is bound, except for such approvals, consents, waivers, filings and notices the receipt, making or giving of which would not reasonably be likely to (A) have a Material Adverse Effect, or (B) restrain or enjoin or impose materially burdensome conditions on, or otherwise materially and adversely affect the ability of the Borrower or any other Loan Party to fulfill its obligations under the Loan Documents to which it is a party; and

(e) The Borrower and each other Loan Party shall have provided all information requested by the Administrative Agent and each Lender in order to comply with applicable "know your customer" and anti-money laundering rules and regulations, including without limitation, the Patriot Act.

The provisions of clauses (iv) through (viii) of the immediately preceding subsection (a) shall not apply to Accommodation Subsidiaries that are not also Material Subsidiaries.

## 2. Section 6.2. Conditions Precedent to All Loans.

The obligations of the Lenders to make any Loans are subject to the further conditions precedent that: (a) no Default or Event of Default shall exist as of the date of the making of such Loan or would exist immediately after giving effect thereto; (b) the representations and warranties made or deemed made by the Parent, the Borrower and each other Loan Party in the Loan Documents to which any of them is a party, shall be true and correct in all material respects on and as of the date of the making of such Loan with the same force and effect as if made on and as of such date except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date) and except for changes in factual circumstances not prohibited under the Loan Documents; and (c) in the case of the borrowing of Loans, the Administrative Agent shall have received a timely Notice of Borrowing. Each Credit Event shall constitute a certification by the Borrower to the effect set forth clauses (a) and (b) in the preceding sentence (both as of the date of the giving of notice relating to such Credit Event and, unless the Borrower otherwise notifies the Administrative Agent prior to the date of such Credit Event, as of the date of the occurrence of such Credit Event). In addition, the Borrower

shall be deemed to have represented to the Administrative Agent and the Lenders at the time any Loan is made that all conditions to the making of such Loan contained in this Section have been satisfied.

## 3. ARTICLE VII. REPRESENTATIONS AND WARRANTIES

### 4. Section 7.1. Representations and Warranties.

In order to induce the Administrative Agent and each Lender to enter into this Agreement and to make Loans, the Parent and the Borrower represent and warrant to the Administrative Agent and each Lender as follows:

(a) Organization; Power; Qualification. Each of the Parent, the Borrower, the other Loan Parties and the other Subsidiaries is a corporation, partnership or other legal entity, duly organized or formed, validly existing and in good standing under the jurisdiction of its incorporation or formation, has the power and authority to own or lease its respective properties and to carry on its respective business as now being and hereafter proposed to be conducted and is duly qualified and is in good standing as a foreign corporation, partnership or other legal entity, and authorized to do business, in each jurisdiction in which the character of its properties or the nature of its business requires such qualification or authorization and where the failure to be so qualified or authorized could reasonably be expected to have, in each instance, a Material Adverse Effect.

(b) Ownership Structure. As of the Agreement Date, Part I of Schedule 7.1.(b) is a complete and correct list of all Subsidiaries of the Parent setting forth for each such Subsidiary, (i) the jurisdiction of organization of such Subsidiary, (ii) each Person holding any Equity Interests in such Subsidiary, (iii) the nature of the Equity Interests held by each such Person, (iv) the percentage of ownership of such Subsidiary represented by such Equity Interests and (v) whether such Subsidiary is a Material Subsidiary, a Significant Subsidiary, an Excluded Subsidiary, an Accommodation Subsidiary or none of the foregoing. Except as disclosed in such Schedule, as of the Agreement Date (A) each of the Parent and its Subsidiaries owns, free and clear of all Liens (other than Permitted Liens), and has the unencumbered right to vote, all outstanding Equity Interests in each Person shown to be held by it on such Schedule 7.1. (b), (B) all of the issued and outstanding capital stock of each such Person organized as a corporation is validly issued, fully paid and nonassessable and (C) there are no outstanding subscriptions, options, warrants, commitments, preemptive rights or agreements of any kind (including, without limitation, any

stockholders' or voting trust agreements) for the issuance, sale, registration or voting of, or outstanding securities convertible into, any additional shares of capital stock of any class, or partnership or other ownership interests of any type in, any such Person. As of the Agreement Date, Part II of Schedule 7.1. (b) correctly sets forth all Unconsolidated Affiliates of the Parent, including the correct legal name of such Person, the type of legal entity which each such Person is, and all Equity Interests in such Person held directly or indirectly by the Parent.

(c) Authorization of Loan Documents and Borrowings. The Borrower has the right and power, and has taken all necessary action to authorize it, to borrow and obtain other extensions of credit hereunder. The Borrower and each other Loan Party has the right and power, and has taken all necessary action to authorize it, to execute, deliver and perform each of the Loan Documents and the Fee Letters to which it is a party in accordance with their respective terms and to consummate the transactions contemplated hereby and thereby. The Loan Documents and the Fee Letters to which any Loan Party is a party have been duly executed and delivered by the duly authorized officers, agents and/or signatories of such Person and each is a legal, valid and binding obligation of such Person enforceable against such Person in accordance with its respective terms, except as the same may be limited by bankruptcy, insolvency, and other similar laws affecting the rights of creditors generally and the availability of

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equitable remedies for the enforcement of certain obligations (other than the payment of principal) contained herein or therein and as may be limited by equitable principles generally.

(d) Compliance of Loan Documents with Laws, Etc. The execution, delivery and performance of this Agreement, the Notes, the other Loan Documents to which any Loan Party is a party and of the Fee Letters in accordance with their respective terms and the borrowings and other extensions of credit hereunder do not and will not, by the passage of time, the giving of notice, or both: (i) require any Governmental Approval or violate any Applicable Law (including all Environmental Laws) relating to the Borrower or any other Loan Party; (ii) conflict with, result in a breach of or constitute a default under the organizational documents of any Loan Party, or any indenture, agreement or other instrument to which the Borrower or any other Loan Party is a party or by which it or any of its respective properties may be bound; or (iii) result in or require the creation or imposition of any Lien upon or with respect to any property now owned or hereafter acquired by any Loan Party.

(e) Compliance with Law; Governmental Approvals. Each of the Borrower, the other Loan Parties and the other Subsidiaries is in compliance with each Governmental Approval applicable to it and in compliance with all other Applicable Laws (including, without limitation, Environmental Laws) relating to it except for noncompliances which, and Governmental Approvals the failure to possess which, could not, in the aggregate, reasonably be expected to cause a Default or Event of Default or have a Material Adverse Effect.

(f) Title to Properties; Liens. As of the Agreement Date, Part I of Schedule 7.1.(f) is a complete and correct listing of all real estate assets of the Parent, the Borrower, each other Loan Party and each other Subsidiary, setting forth, for each such Property, the average occupancy status of such Property for the period of twelve consecutive calendar fiscal months ending December 31, 2016. Each of the Parent, the Borrower, each other Loan Party and each other Subsidiary has good, marketable and legal title to, or a valid leasehold interest in, its respective assets (other than Permitted Liens and Liens on assets of an Excluded Subsidiary securing the Indebtedness which causes such Subsidiary to be an Excluded Subsidiary). As of the Agreement Date, there are no Liens against any assets of the Parent, the Borrower or any other Subsidiary except for Permitted Liens and Liens on assets of an Excluded Subsidiary securing the Indebtedness which causes such Subsidiary to be an Excluded Subsidiary.

(g) Existing Indebtedness; Total Indebtedness. Schedule 7.1.(g) is, as of the Agreement Date, a complete and correct listing of all Indebtedness (including all Guarantees) of each of the Parent, the Borrower, the other Loan Parties and the other Subsidiaries, and if such Indebtedness is secured by any Lien, a description of all of the property subject to such Lien.

(h) Material Contracts. Excluding Material Contracts evidencing Indebtedness listed on Schedule 7.1.(g), if any, Schedule 7.1.(h) is, as of the Agreement Date, a true, correct and complete listing of all Material Contracts. No event or condition which with the giving of notice, the lapse of time, or both, would permit any party to any such Material Contract to terminate such Material Contract exists.

(i) Litigation. Except as set forth on Schedule 7.1.(i), there are no actions, suits, investigations or proceedings pending (nor, to the knowledge of any Responsible Officer of the Parent or the Borrower, are there any actions, suits or proceedings threatened) against or in any other way relating adversely to or affecting the Parent, the Borrower, any other Loan Party, any other Subsidiary or any of their respective property in any court or before any arbitrator of any kind or before or by any other Governmental Authority which, (i) could reasonably be expected to have a Material Adverse Effect or (ii) in any manner draws into question the validity or enforceability of any Loan Documents or the Fee Letters.

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(j) Taxes. Subject to applicable extensions, all federal, state and other material tax returns of the Parent, the Borrower, each other Loan Party and each other Subsidiary required by Applicable Law to be filed have been duly filed, and all federal, state and other material taxes, assessments and other governmental charges or levies upon, the Parent, the Borrower, each other Loan Party, each other Subsidiary and their respective properties, income, profits and assets which are due and payable have been paid, except any such nonpayment which is at the time permitted under Section 8.6. As of the Agreement Date, none of the United States income tax returns of the Parent, the Borrower any other Loan Party or any other Subsidiary is under audit. All charges, accruals and reserves on the books of the Parent, the Borrower, the other Loan Parties and the other Subsidiaries in respect of any taxes or other governmental charges are in accordance with GAAP.

(k) Financial Statements. The audited consolidated balance sheet of the Parent and its consolidated Subsidiaries for the fiscal year ended December 31, 2016, and the related audited consolidated statements of operations, cash flows and shareholders' equity for the fiscal year ended on such date, with the opinion thereon of KPMG LLP, are complete and correct in all material respects and present fairly, in all material respects and in accordance with GAAP consistently applied throughout the periods involved, the consolidated financial position of the Parent and its consolidated Subsidiaries as at their respective dates and the results of operations and the cash flow for such periods (subject, as to interim statements, to the absence of footnotes and changes resulting from normal year-end audit adjustments). Neither the Parent nor any of its Subsidiaries has on the Agreement Date any material contingent liabilities, liabilities, liabilities for taxes, unusual or long-term commitments or unrealized or forward anticipated losses from any unfavorable commitments that would be required to be set forth in its financial statements or notes thereto, except as referred to or reflected or provided for in said financial statements.

(l) No Material Adverse Change. Since December 31, 2016, there has been no material adverse change in the business, assets, liabilities, financial condition or results of operations of the Parent and its Subsidiaries or the Borrower and its Subsidiaries, in each case, taken as a whole. Each of the Borrower and the Parent are Solvent, and the other Loan Parties taken as a whole are Solvent.

(m) ERISA.

(i) Each Benefit Arrangement and Plan is in compliance with the applicable provisions of ERISA, the Internal Revenue Code and other Applicable Laws in all material respects. Except with respect to Multiemployer Plans, each Qualified Plan (A) has received a favorable determination from the Internal Revenue Service applicable to the Qualified Plan's current remedial amendment cycle (as defined in Revenue Procedure 2007-44 or "2007-44" for short), (B) has timely filed for a favorable determination letter from the Internal Revenue Service during its staggered remedial amendment cycle (as defined in 2007-44) and such application is currently being processed by the Internal Revenue Service, (C) had filed for a determination letter prior to its "GUST remedial amendment period" (as defined in 2007-44) and received such determination letter and the staggered remedial amendment cycle first following the GUST remedial amendment period for such Qualified Plan has not yet expired, or (D) is maintained under a prototype or volume submitter plan and is entitled to rely upon a favorable opinion or advisory letter issued by the Internal Revenue Service with respect to such prototype or volume submitter plan. To the best knowledge of the Parent and the Borrower, nothing has occurred which could reasonably be expected to result in the loss of their reliance on the Qualified Plan's or Plan's favorable determination letter, opinion or advisory letter.

(ii) With respect to any Benefit Arrangement that is a retiree welfare benefit arrangement, all amounts have been accrued on the applicable ERISA Group's financial

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statements in accordance with FASB ASC 715. The "benefit obligation" of all Plans does not exceed the "fair market value of plan assets" for such Plans by more than \$10,000,000 all as determined by and with such terms defined in accordance with FASB ASC 715.

(iii) Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect: (i) no ERISA Event has occurred or is expected to occur; (ii) there are no pending, or to the best knowledge of the Parent and the Borrower, threatened, claims, actions or lawsuits or other action by any Governmental Authority, plan participant or beneficiary with respect to a Benefit Arrangement; (iii) there are no violations of the fiduciary responsibility rules with respect to any Benefit Arrangement or Plan; (iv) no member of the ERISA Group has engaged in a non-exempt "prohibited transaction," as defined in Section 406 of ERISA and Section 4975 of the Internal Revenue Code, in connection with any Benefit Arrangement or Plan, that would subject the Parent or Borrower to a tax on prohibited transactions imposed by Section 502(i) of ERISA or Section 4975 of the Internal Revenue Code and (v) no assessment or tax has arisen under Section 4980H of the Internal Revenue Code.

(n) Not Plan Assets; No Prohibited Transactions. None of the assets of the Parent, the Borrower, any other Loan Party or any other Subsidiary constitutes "plan assets" within the meaning of ERISA, the Internal Revenue Code and the respective regulations promulgated thereunder. Assuming that no Lender funds any amount payable by it hereunder with "plan assets," as that term is defined in 29 C.F.R. 2510.3-101, the execution, delivery and performance of this Agreement and the other Loan Documents, and the borrowing and repayment of amounts hereunder, do not and will not constitute "prohibited transactions" under ERISA or the Internal Revenue Code.

(o) Absence of Defaults. None of the Loan Parties or any of the other Subsidiaries is in default under its certificate or articles of incorporation or formation, bylaws, partnership agreement or other similar organizational documents, and no event has occurred, which has not been remedied, cured or waived, which, in any such case: (i) constitutes a Default or an Event of Default; or (ii) constitutes, or which with the passage of time, the giving of notice, or both, would constitute, a default or event of default by the Parent, the Borrower, any other Loan Party or any other Subsidiary under any agreement (other than this Agreement) or judgment, decree or order to which any such Person is a party or by which any such Person or any of its respective properties may be bound where such default or event of default could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(p) Environmental Laws. In the ordinary course of business each of the Parent, the Borrower, each other Loan Party and each other Subsidiary reviews the compliance with Environmental Laws of its respective business, operations and properties. Each of the Parent, the Borrower, each other Loan Party and the other Subsidiary: (i) is in compliance with all Environmental Laws applicable to its business, operations and the Properties, (ii) has obtained all Governmental Approvals which are required under Environmental Laws, and each such Governmental Approval is in full force and effect, and (iii) is in compliance with all terms and conditions of such Governmental Approvals, where with respect to each of the immediately preceding clauses (i) through (iii) the failure to obtain or to comply with could reasonably be expected to have a Material Adverse Effect. Except for any of the following matters that could not reasonably be expected to have a Material Adverse Effect, no Loan Party has any knowledge of, or has received notice of, any past, present, or pending releases, events, conditions, circumstances, activities, practices, incidents, facts, occurrences, actions, or plans that, with respect to any Loan Party or any other Subsidiary, their respective businesses, operations or with respect to the Properties, may: (i) cause or contribute to an actual or alleged violation of or noncompliance with Environmental Laws, (ii) cause or contribute to any other potential common-law or legal claim or other liability, or (iii) cause any of the Properties to become subject to any restrictions on ownership, occupancy, use or transferability under any Environmental Law or require the filing or recording of any notice, approval or disclosure

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document under any Environmental Law and, with respect to the immediately preceding clauses (i) through (iii) is based on or related to the on-site or off-site manufacture, generation, processing, distribution, use, treatment, storage, disposal, transport, removal, clean up or handling, or the emission, discharge, release or threatened release of any wastes or Hazardous Material, or any other requirement under Environmental Law. There is no civil, criminal, or administrative action, suit, demand, claim, hearing, notice, or demand letter, mandate, order, lien, request, investigation, or proceeding pending or, to the Parent's or Borrower's knowledge after due inquiry, threatened, against the Parent, the Borrower, any other Loan Party or any other Subsidiary relating in any way to Environmental Laws which, reasonably could be expected to have a Material Adverse Effect. None of the Properties of the Parent, the Borrower, any other Loan Party or any other Subsidiary is listed on or proposed for listing on the National Priority List promulgated pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and its implementing regulations, or any state or local priority list promulgated pursuant to any analogous state or local law. To Parent's or Borrower's knowledge, no Hazardous Materials generated at or transported from any such Properties is or has

been transported to, or disposed of at, any location that is listed or proposed for listing on the National Priority List or any analogous state or local priority list, or any other location that is or has been the subject of a clean-up, removal or remedial action pursuant to any Environmental Law, except to the extent that such transportation or disposal could not reasonably be expected to result in a Material Adverse Effect.

(q) Investment Company. None of the Parent, the Borrower, any other Loan Party or any other Subsidiary is (i) an “investment company” or a company “controlled” by an “investment company” within the meaning of the Investment Company Act of 1940, as amended, or (ii) subject to any other Applicable Law which purports to regulate or restrict its ability to borrow money or obtain other extensions of credit or to consummate the transactions contemplated by this Agreement or to perform its obligations under any Loan Document to which it is a party.

(r) Margin Stock. None of the Parent, the Borrower, any other Loan Party or any other Subsidiary is engaged principally, or as one of its important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying “margin stock” within the meaning of Regulation U of the Board of Governors of the Federal Reserve System.

(s) Affiliate Transactions. Except as permitted by Section 10.11., none of the Parent, the Borrower, any other Loan Party or any other Subsidiary is a party to or bound by any agreement or arrangement with any Affiliate.

(t) Intellectual Property. Each of the Loan Parties and each other Subsidiary owns or has the right to use, under valid license agreements or otherwise, all material patents, licenses, franchises, trademarks, trademark rights, service marks, service mark rights, trade names, trade name rights, trade secrets and copyrights (collectively, “Intellectual Property”) necessary to the conduct of its businesses as now conducted and as contemplated by the Loan Documents, without, to the knowledge of the Loan Parties and except as disclosed in writing to the Administrative Agent prior to the Effective Date, conflict in any material respect with any patent, license, franchise, trademark, trademark right, service mark, service mark right, trade secret, trade name, copyright, or other proprietary right of any other Person. The Parent, the Borrower and each other Subsidiary have taken all such steps as they deem reasonably necessary to protect their respective rights under and with respect to such Intellectual Property.

(u) Business. As of the Agreement Date, the Parent, the Borrower, the other Loan Parties and the other Subsidiaries are engaged in the business of developing, construction, acquiring, owning and operating hotel properties, together with other business activities incidental thereto.

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(v) Broker’s Fees. No broker’s or finder’s fee, commission or similar compensation will be payable with respect to the transactions contemplated hereby. No other similar fees or commissions will be payable by any Loan Party for any other services rendered to the Parent, the Borrower, any other Loan Party or any other Subsidiary ancillary to the transactions contemplated hereby.

(w) Accuracy and Completeness of Information. All written information, reports and data (other than financial projections and other forward looking statements) furnished to the Administrative Agent or any Lender by, on behalf of, or at the direction of, the Parent, the Borrower, any other Loan Party or any other Subsidiary were, at the time the same were so furnished, and when taken as a whole, complete and correct in all material respects, to the extent necessary to give the recipient a true and accurate knowledge of the subject matter, or, in the case of financial statements, present fairly in all material respects, in accordance with GAAP consistently applied throughout the periods involved in each case, the financial position of the Persons involved as at the date thereof and the results of operations for such periods (subject, as to interim statements, to changes resulting from normal year end audit adjustments and absence of full footnote disclosure). All financial projections and other forward looking statements prepared by or on behalf of the Parent, the Borrower, any other Loan Party or any other Subsidiary that have been or may hereafter be made available to the Administrative Agent or any Lender were or will be prepared in good faith based on assumptions believed by the Borrower to be reasonable at the time such projections or statements are made or delivered but with it being understood that such projections and statement are not a guarantee of future performance. As of the Effective Date, no fact is known to any Loan Party which has had, or may reasonably be expected in the future to have (so far as any Loan Party can reasonably foresee), a Material Adverse Effect which has not been set forth in the financial statements referred to in Section 7.1.(k) or in such information, reports or data or otherwise disclosed in writing to the Administrative Agent and the Lenders.

(x) REIT Status. The Parent has elected to be treated as a REIT under the Internal Revenue Code, the Parent is qualified as a REIT and each of its Subsidiaries that is a corporation is a Qualified REIT Subsidiary or Taxable REIT Subsidiary, except where a Subsidiary’s failure to so qualify could not reasonably be expected to have an adverse effect on the Parent’s qualification as a REIT.

(y) Unencumbered Properties. Each of the Properties included in calculations of the Unencumbered Property Value satisfies all of the requirements contained in the definition of “Eligible Property” (except to the extent such requirements were waived by the Requisite Lenders pursuant to Section 4.1.(c) at the time such Property was approved as an Unencumbered Property).

(z) Anti-Corruption Laws and Sanctions; Anti-Terrorism Laws. None of the Borrower, any Subsidiary or, to the knowledge of the Borrower, any of their respective directors, officers, employees and agents (i) is an “enemy” or an “ally of the enemy” within the meaning of Section 2 of the Trading with the Enemy Act of the United States, 50 U.S.C. App. §§ 1 et seq., as amended (the “Trading with the Enemy Act”) or (ii) is in violation of (A) the Trading with the Enemy Act, (B) any of the foreign assets control regulations of the United States Treasury Department or any enabling legislation or executive order relating thereto, including without limitation, Executive Order No. 13224, effective as of September 24, 2001 relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit or Support Terrorism (66 Fed. Reg. 49079 (2001)) or (C) the Patriot Act (collectively, the “Anti-Terrorism Laws”). The Borrower has implemented and maintains in effect policies and procedures reasonably designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents (in their capacities as such) with Anti-Corruption Laws, Anti-Terrorism Laws and applicable Sanctions, and the Borrower, its Subsidiaries and, to the knowledge of the Borrower, their respective directors, officers, employees and agents are in compliance with Anti-Corruption Laws, Anti-Terrorism Laws and applicable Sanctions in all material respects. None of the Borrower or any Subsidiary is, or derives any of its assets or operating income from

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investments in or transactions with, a Sanctioned Person and, to the knowledge of the Borrower, none of the respective directors, officers, employees or agents of the Borrower or any of its Subsidiaries is a Sanctioned Person.

## **2. Section 7.2. Survival of Representations and Warranties, Etc.**

All statements contained in any certificate, financial statement or other instrument delivered by or on behalf of any Loan Party or any other Subsidiary to the Administrative Agent or any Lender pursuant to or in connection with this Agreement or any of the other Loan Documents (including, but not limited to, any such statement made in or in connection with any amendment thereto or any statement contained in any certificate, financial statement or other instrument delivered by or on behalf of any Loan Party prior to the Agreement Date and delivered to the Administrative Agent or any Lender in connection with the underwriting or closing the transactions contemplated hereby) shall constitute representations and warranties made by the Parent and the Borrower to the Administrative Agent and the Lenders under this Agreement. All representations and warranties made under this Agreement and the other Loan Documents shall be deemed to be made at and as of the Agreement Date, the Effective Date and at and as of the date of the occurrence of each Credit Event, except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date) and except for changes in factual circumstances not prohibited under the Loan Documents. All such representations and warranties shall survive the effectiveness of this Agreement, the execution and delivery of the Loan Documents and the making of the Loans.

## **3. ARTICLE VIII. AFFIRMATIVE COVENANTS**

For so long as this Agreement is in effect, unless the appropriate Lenders shall otherwise consent in the manner provided for in Section 13.6., the Parent and the Borrower shall comply with the following covenants:

### **4. Section 8.1. Preservation of Existence and Similar Matters.**

Except as otherwise permitted under Section 10.7., the Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, preserve and maintain its respective existence, rights, franchises, licenses and privileges in the jurisdiction of its incorporation or formation and qualify and remain qualified and authorized to do business in each jurisdiction in which the character of its properties or the nature of its business requires such qualification and authorization and where the failure to be so authorized and qualified could reasonably be expected to have a Material Adverse Effect; provided, however, that nothing in this Section 8.1. will prohibit the Parent or any other Loan Party or any of their Subsidiaries from engaging in any transactions permitted under this Agreement, including Section 10.7., and neither the Parent nor any other Loan Party or any of their Subsidiaries shall be required to preserve any such right, franchise or existence if the board of directors of the Parent or the Borrower shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Parent, the Borrower and their Subsidiaries taken as a whole and that the loss thereof is not adverse in any material respect to the Lenders.

### **2. Section 8.2. Compliance with Applicable Law and Material Contracts.**

The Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, comply with (a) all Applicable Laws, including the obtaining of all Governmental Approvals, the failure with which to comply could reasonably be expected to have a Material Adverse Effect, and (b) all terms and conditions of all Material Contracts to which it is a party, the failure with

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which to comply could give any other party thereto the right to terminate such Material Contract. The Borrower will maintain in effect and enforce policies and procedures reasonably designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws, Anti-Terrorism Laws and applicable Sanctions.

### **3. Section 8.3. Maintenance of Property.**

In addition to the requirements of any of the other Loan Documents, the Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, (a) protect and preserve all of its respective material properties, including, but not limited to, all Intellectual Property (to the extent reasonably necessary in connection with operations), and maintain in good repair, working order and condition all tangible properties, ordinary wear and tear and insured casualty losses excepted, and (b) make or cause to be made all repairs, renewals, replacements and additions to such properties necessary or appropriate in the Borrower's good faith and reasonable judgment, so that the business carried on in connection therewith may be properly and advantageously conducted at all times.

### **4. Section 8.4. Conduct of Business.**

The Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary taken as a whole to, carry on the business as described in Section 7.1.(u) and not enter into any line of business not otherwise engaged in by such Person as of the Agreement Date.

### **2. Section 8.5. Insurance.**

In addition to the requirements of any of the other Loan Documents, the Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, maintain insurance (on a replacement cost basis) with financially sound and reputable insurance companies against such risks (including, without limitation, acts of terrorism) and in such amounts as is customarily maintained by prudent Persons engaged in similar businesses and in similar locations or as may be required by Applicable Law. At the time financial statements are furnished pursuant to Section 9.2. and from time to time upon the request of the Administrative Agent, the Borrower shall deliver to the Administrative Agent a detailed list, together with copies of all policies of the insurance then in effect, stating the names of the insurance companies, the amounts and rates of the insurance, the dates of the expiration thereof and the properties and risks covered thereby.

### **2. Section 8.6. Payment of Taxes and Claims.**

The Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, pay and discharge before delinquent (a) all taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or upon any properties belonging to it, and (b) all lawful claims of materialmen, mechanics, carriers, warehousemen and landlords for labor, materials, supplies and rentals which, if unpaid, might become a Lien on any properties of such Person (other than any such claim that constitutes a Permitted Lien under clause (a)(y) of the definition of "Permitted Liens"); provided, however, that this Section shall not require the payment or discharge of any such tax, assessment, charge, levy or claim (i) which is being contested

### **3. Section 8.7. Inspections.**

The Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, permit the representatives or agents of any Lender or the Administrative Agent, from time to time after reasonable prior notice and in a manner that does not unreasonably disrupt the normal business operations of the Parent, the Borrower or such Subsidiary, in each case so long as no Event of Default shall be in existence, as often as may be reasonably requested, but only during normal business hours, as the case may be, to: (a) visit and inspect all properties of the Parent, the Borrower or such Subsidiary to the extent any such right to visit or inspect is within the control of such Person; provided that such visit and inspection shall not include the extraction of soil or other sample testing related to Environmental Law or Hazardous Materials, unless a Default or Event of Default exists; (b) inspect and make extracts from their respective books and records, including but not limited to management letters prepared by independent accountants; and (c) discuss with its officers and employees, and its independent accountants, its business, properties, condition (financial or otherwise), results of operations and performance. If requested by the Administrative Agent, the Parent and the Borrower shall execute an authorization letter addressed to their accountants authorizing the Administrative Agent or any Lender to discuss the financial affairs of the Parent, the Borrower, any other Loan Party or any other Subsidiary with their accountants. The Parent may designate a representative to accompany any Lender or Administrative Agent in connection with such visits, inspections and discussion unless a Default or Event of Default exists. The Borrower shall be obligated to reimburse the Administrative Agent and the Lenders for their reasonable costs and expenses incurred in connection with the exercise of their rights under this Section only if such exercise occurs while an Event of Default exists.

### **4. Section 8.8. Use of Proceeds.**

The Borrower will use the proceeds of the Loans only for general corporate purposes of the Borrower and its Subsidiaries and to repay certain Secured Indebtedness of the Borrower and/or Guarantors. The Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary to, use any part of such proceeds to purchase or carry, or to reduce or retire or refinance any credit incurred to purchase or carry, any margin stock (within the meaning of Regulation U or Regulation X of the Board of Governors of the Federal Reserve System) or to extend credit to others for the purpose of purchasing or carrying any such margin stock. No proceeds of any Loan will be used directly or, to the knowledge of the Borrower, indirectly in any manner which would violate Anti-Corruption Laws, Anti-Terrorism Laws or applicable Sanctions.

### **5. Section 8.9. Environmental Matters.**

The Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, comply with all Environmental Laws the failure with which to comply could reasonably be expected to have a Material Adverse Effect. If the Parent, the Borrower, or any other Subsidiary shall (a) receive notice that any violation of any Environmental Law may have been committed or is about to be committed by such Person, (b) receive notice that any administrative or judicial complaint or order has been filed or is about to be filed against the Parent, the Borrower or any other Subsidiary alleging violations of any Environmental Law or requiring any such Person to take any action in connection with the release of Hazardous Materials or (c) receive any notice from a Governmental Authority or private party alleging that any such Person may be liable or responsible for costs associated with a response to or cleanup of a release of Hazardous Materials or any damages caused thereby, and the matters referred to in such notices, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, the Borrower shall provide the Administrative Agent with a copy of such notice promptly, and in any event within 10 Business Days, after the receipt thereof. The Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, promptly take all actions necessary to prevent

the imposition of any material Liens on any of their respective properties arising out of or related to any Environmental Laws (other than a Lien (i) which is being contested in good faith by appropriate proceedings which operate to suspend the enforcement thereof and for which adequate reserves have been established on the books of the Parent, the Borrower or such Subsidiary, as applicable, in accordance with GAAP, (ii) which has been bonded-off in a manner reasonably acceptable to the Administrative Agent, (iii) consisting of restrictions on the use of real property, which restrictions do not materially detract from the value of such property or impair the intended use thereof in the business of the Parent, the Borrower and its other Subsidiaries or (iv) which could not reasonably be expected to have a Material Adverse Effect). Nothing in this Section shall impose any obligation or liability whatsoever on the Administrative Agent or any Lender.

### **6. Section 8.10. Books and Records.**

The Parent and the Borrower shall, and shall cause each Subsidiary to, maintain books and records pertaining to its respective business operations in such detail, form and scope as is consistent with good business practice and in accordance with GAAP.

### **7. Section 8.11. Further Assurances.**

The Parent and the Borrower shall, at their cost and expense and upon request of the Administrative Agent, execute and deliver or cause to be executed and delivered, to the Administrative Agent such further instruments, documents and certificates consistent with the existing terms and conditions of the Loan Documents, and do and cause to be done such further acts that may be reasonably necessary or advisable in the reasonable opinion of the Administrative Agent to carry out more effectively the provisions and purposes of this Agreement and the other Loan Documents.

### **8. Section 8.12. REIT Status.**

The Parent shall at all times maintain its status as a REIT and election to be treated as a REIT under the Internal Revenue Code.

### **9. Section 8.13. Exchange Listing.**

The Parent shall maintain at least one class of common Equity Interest of the Parent having trading privileges on the New York Stock Exchange or the American Stock Exchange or which is subject to price quotations on the over-the-counter market as reported by the National Association of Securities Dealers Automated Quotation System.

#### **10. Section 8.14. Additional Guarantors.**

(a) Within 30 days of any Person (other than an Excluded Subsidiary or a Foreign Subsidiary) becoming a Material Subsidiary after the Effective Date, the Borrower shall deliver to the Administrative Agent each of the following items, each in form and substance satisfactory to the Administrative Agent: (i) an Accession Agreement executed by such Material Subsidiary and (ii) the items with respect to such Material Subsidiary that would have been delivered under Sections 6.1.(a)(iv) through (viii) if such Material Subsidiary had been one on the Effective Date; provided, however, promptly (and in any event within 30 days) upon any Excluded Subsidiary that is a Material Subsidiary ceasing to be subject to the restriction which prevented it from delivering an Accession Agreement pursuant to this Section, such Subsidiary shall comply with the provisions of this Section.

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(b) The Borrower may, at its option, cause any Subsidiary that is not already a Guarantor to become a Guarantor by executing and delivering to the Administrative Agent the items required to be delivered under Section 4.1.(d) with respect to a Subsidiary that owns or leases an Unencumbered Property.

#### **2. Section 8.15. Release of Guarantors.**

The Borrower may request in writing that the Administrative Agent release, and upon receipt of such request the Administrative Agent shall release (subject to the terms of the Guaranty), a Guarantor from the Guaranty so long as: (i) such Guarantor meets, or will meet simultaneously with its release from the Guaranty, all of the provisions of the definition of the term "Excluded Subsidiary" or has ceased to be, or simultaneously with its release from the Guaranty will cease to be, a Material Subsidiary or a Subsidiary, or in the case of a Material Subsidiary that does not own or lease an Unencumbered Property, such release will not result in a violation of Section 10.1.(e) or 10.1.(f); (ii) such Guarantor is not otherwise required to be a party to the Guaranty under Section 8.14.(a); (iii) no Default or Event of Default shall then be in existence or would occur as a result of such release, including without limitation, a Default or Event of Default resulting from a violation of any of the covenants contained in Section 10.1.; (iv) the representations and warranties made or deemed made by the Borrower and each other Loan Party in the Loan Documents to which any of them is a party, shall be true and correct on and as of the date of such release with the same force and effect as if made on and as of such date except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and accurate on and as of such earlier date) and except for changes in factual circumstances not prohibited under the Loan Documents; and (v) the Administrative Agent shall have received such written request at least 10 Business Days (or such shorter period as may be acceptable to the Administrative Agent) prior to the requested date of release. Delivery by the Borrower to the Administrative Agent of any such request shall constitute a representation by the Borrower that the matters set forth in the preceding sentence (both as of the date of the giving of such request and as of the date of the effectiveness of such request) are true and correct with respect to such request. If such Guarantor owns an Unencumbered Property, then the release of such Guarantor shall also be subject to and in accordance with Section 4.2. The Administrative Agent agrees to furnish to the Borrower, at the Borrower's request and at the Borrower's sole cost and expense, any release, termination, or other agreement or document evidencing the foregoing release as may be reasonably requested by the Borrower.

### **2. ARTICLE IX. INFORMATION**

For so long as this Agreement is in effect, unless the appropriate Lenders shall otherwise consent in the manner set forth in Section 13.6., the Borrower shall furnish to the Administrative Agent for distribution to each of the Lenders:

#### **3. Section 9.1. Quarterly Financial Statements.**

As soon as available and in any event within 5 days after the same is required to be filed with the Securities and Exchange Commission (but in no event later than 45 days after the end of each of the first, second and third fiscal quarters of the Parent), the unaudited consolidated balance sheet of the Parent and its Subsidiaries as at the end of such period and the related unaudited consolidated statements of income and cash flows of the Parent and its Subsidiaries for such period, setting forth in each case in comparative form the figures as of the end of and for the corresponding periods of the previous fiscal year, all of which shall be certified by the chief financial officer or chief accounting officer of the Parent, in his or her opinion, to present fairly, in accordance with GAAP and in all material respects, the consolidated financial position of the Parent and its Subsidiaries as at the date thereof and the results of operations for

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such period (subject to normal year-end audit adjustments); provided, however, the Parent shall not be required to deliver an item required under this Section if such item is contained in a Form 10-Q filed by the Parent with the Securities and Exchange Commission (or any Governmental Authority substituted therefore) and is publicly available to the Administrative Agent and the Lenders.

#### **4. Section 9.2. Year-End Statements.**

As soon as available and in any event within 5 days after the same is required to be filed with the Securities and Exchange Commission (but in no event later than 120 days after the end of each fiscal year of the Parent), the audited consolidated balance sheet of the Parent and its Subsidiaries as at the end of such fiscal year and the related audited consolidated statements of income, shareholders' equity and cash flows of the Parent and its Subsidiaries for such fiscal year, setting forth in comparative form the figures as at the end of and for the previous fiscal year, all of which shall be (a) certified by the chief financial officer or chief accounting officer of the Parent, in his or her opinion, to present fairly, in accordance with GAAP and in all material respects, the consolidated financial position of the Parent, the Borrower and its other Subsidiaries as at the date thereof and the results of operations for such period and (b) accompanied by the report thereon of an Approved Accounting Firm, whose certificate shall be unqualified and in scope and substance reasonably satisfactory to the Administrative Agent and who shall have authorized the Borrower to deliver such financial statements and certification thereof to the Administrative Agent and the Lenders pursuant to this Agreement; provided, however, the Parent shall not be required to deliver an item required under this Section if such item is contained in a Form 10-K filed by the Parent with the Securities and Exchange Commission (or any Governmental Authority substituted therefore) and is publicly available to the Administrative Agent and the Lenders.

## 5. Section 9.3. Compliance Certificate.

At the time financial statements are furnished pursuant to Sections 9.1. and 9.2., and if the Requisite Lenders reasonably believe that an Event of Default specified in any of Sections 11.1.(a), 11.1.(b), 11.1.(c)(1) resulting from noncompliance with Section 10.1., and 11.1.(f) or a Default specified in Section 11.1.(g) may occur, then within 10 days of the Administrative Agent's request with respect to any other fiscal period, a certificate substantially in the form of Exhibit H (a "Compliance Certificate") executed by the chief financial officer or chief accounting officer of the Parent, among other things, (a) setting forth in reasonable detail as of the end of such quarterly accounting period, fiscal year, or other fiscal period, as the case may be, the calculations required to establish whether the Borrower was in compliance with the covenants contained in Sections 10.1., 10.2. and 10.4.; and (b) stating that, to the best of his or her knowledge, information and belief after due inquiry, no Default, Event of Default or breach of any covenant under this Agreement exists, or, if such is not the case, specifying such Default or Event of Default and its nature, when it occurred, whether it is continuing and the steps being taken by the Borrower with respect to such event, condition or failure. Together with the delivery of each Compliance Certificate, the Borrower shall deliver (A) a list of all Persons that have become a Material Subsidiary or a Significant Subsidiary since the date of the Compliance Certificate most recently delivered by the Borrower hereunder and (B) a report of newly acquired Properties, including their Net Operating Income for the period of four consecutive fiscal quarters most recently ending, purchase price, and principal amount of the mortgage debt as of the date of such Compliance Certificate, if any, since the date of the Compliance Certificate most recently delivered by the Borrower hereunder.

## 2. Section 9.4. Other Information.

(a) Management Reports. Promptly upon receipt thereof, copies of all reports, if any, submitted to the Parent or its Board of Directors by its independent public accountants, including without limitation, any management report;

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(b) Securities Filings. Within 5 Business Days of the filing thereof, copies of all registration statements (excluding the exhibits thereto (unless reasonably requested by the Administrative Agent) and any registration statements on Form S-8 or its equivalent), reports on Forms 10-K, 10-Q and 8-K (or their equivalents) and all other periodic reports which the Parent, the Borrower, any other Loan Party or any other Subsidiary shall file with the Securities and Exchange Commission (or any Governmental Authority substituted therefor) or any national securities exchange. The materials described in this subsection shall be deemed to have been delivered to each Lender if same are contained in a filing by the Parent with the SEC and is publicly available to the Administrative Agent and the Lenders, or if same are otherwise available on Parent's website without charge;

(c) Shareholder Information. Promptly upon the mailing thereof to the shareholders of the Parent generally, copies of all financial statements, reports and proxy statements so mailed and promptly upon the issuance thereof copies of all press releases issued by the Parent, the Borrower, other Loan Party or any other Subsidiary. The materials described in this subsection shall be deemed to have been delivered to each Lender if same are contained in a filing by the Parent with the Securities and Exchange Commission (or any Governmental Authority substituted therefor) and is publicly available to the Administrative Agent and the Lenders, or if same are otherwise available on Parent's website;

(d) Partnership Information. To the extent not delivered in connection with clause (c) above, promptly upon the mailing thereof to the partners of the Borrower generally, copies of all financial statements, reports and proxy statements so mailed;

(e) Development/Redevelopment Property Updates. At the time financial statements are furnished pursuant to Sections 9.1. and 9.2., a schedule of all Development/Redevelopment Properties of the Parent, the Borrower and each other Subsidiary which are under development as of the fiscal quarter most recently ended, setting forth for each such Property its percentage of completion, the estimated completion date, the total amount of development funded and the status of such development against the development budget;

(f) Litigation. To the extent the Parent, the Borrower, any other Loan Party or any other Subsidiary is aware of the same, prompt notice of the commencement of any proceeding or investigation by or before any Governmental Authority and any action or proceeding in any court or other tribunal or before any arbitrator against or in any other way relating adversely to, or adversely affecting, such Person or any of its respective properties, assets or businesses which could reasonably be expected to have a Material Adverse Effect, and prompt notice of the receipt of notice that any United States income tax returns of the Parent, the Borrower, any other Loan Party or any other Subsidiary are being audited;

(g) Change of Management or Financial Condition. Prompt notice of any change in the senior management of the Parent or the Borrower and any change in the business, assets, liabilities, financial condition or results of operations of the Parent, the Borrower, any other Loan Party or any other Subsidiary which has had, or could reasonably be expected to have, a Material Adverse Effect;

(h) Default. Notice of the occurrence of any of the following promptly upon a Responsible Officer of the Parent obtaining knowledge thereof: (i) any Default or Event of Default or (ii) any event which with the passage of time, the giving of notice, or otherwise, would permit any party to a Material Contract to terminate such Material Contract;

(i) Judgments. Prompt notice of any order, judgment or decree in excess of \$7,500,000 having been entered against the Parent, the Borrower, any other Loan Party or any other Subsidiary or any of their respective properties or assets;

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(j) Notice of Violation of Law. Prompt notice if the Parent, the Borrower or any other Subsidiary shall receive any notification from any Governmental Authority alleging a violation of any Applicable Law or any inquiry which, in either case, could reasonably be expected to have a Material Adverse Effect;

(k) Material Contracts. Promptly upon entering into any Material Contract after the Agreement Date (other than a Material Contract evidencing Indebtedness), a copy to the Administrative Agent of such Material Contract unless such Material Contract is otherwise publicly available to the Administrative Agent in a Form 10-K, 10-Q and/or 8-K (or their equivalents) or any other periodic report which the Parent, the Borrower, or any other Subsidiary files with the Securities and Exchange Commission; provided, that the Borrower shall not be required to deliver to the Administrative Agent a

copy of any Material Contract that contains a confidentiality provision prohibiting such disclosure; provided further that the Borrower shall use its commercially reasonable efforts to obtain the other party's consent to disclose such Material Contract to the Administrative Agent and the Lenders;

(l) ERISA. If any ERISA Event shall occur that individually, or together with any other ERISA Event that has occurred, could reasonably be expected to result in liability to any member of the ERISA Group aggregating in excess of \$10,000,000, a certificate of the chief executive officer or chief financial officer of the Parent setting forth details as to such occurrence and the action, if any, which the Parent or applicable member of the ERISA Group is required or proposes to take;

(m) Material/Significant Subsidiary. Prompt notice of any Person becoming a Material Subsidiary or a Significant Subsidiary;

(n) Material Asset Sales. Prompt notice of the sale, transfer or other disposition of any assets having an undepreciated book value of at least \$45,000,000 of the Parent, the Borrower, any Subsidiary or any other Loan Party to any Person other than the Parent, the Borrower, any Subsidiary or any other Loan Party;

(o) Ownership Share of Subsidiaries and Unconsolidated Affiliates. Promptly upon the request of the Administrative Agent, evidence of the Parent's calculation of the Ownership Share with respect to a Subsidiary or an Unconsolidated Affiliate, such evidence to be in form and detail satisfactory to the Administrative Agent;

(p) Projections and Budgets. Within ninety (90) days after the end of each calendar year ending prior to the Termination Date, (x) projected sources and uses of cash statements, balance sheets, income statements, and EBITDA, of the Parent, the Borrower and the other Subsidiaries on a consolidated and annual basis for the next succeeding fiscal year, all itemized in reasonable detail and (y) operating statements for the prior year, a property budget for the then current year and planned capital expenditure budget on both an individual and consolidated basis for each Property of the Parent, the Borrower and each of the other Subsidiaries. The foregoing shall be accompanied by pro forma calculations, together with detailed assumptions, required to establish whether or not the Borrower, and when appropriate its consolidated Subsidiaries, will be in compliance with the covenants contained in Section 10.1. at the end of each fiscal quarter of the next succeeding fiscal year; and

(q) Other Information. From time to time and promptly upon each request, such data, certificates, reports, statements, opinions of counsel, documents or further information regarding any Property or the business, assets, liabilities, financial condition, results of operations or business prospects of the Parent, the Borrower, any other Loan Party or any other Subsidiary as the Administrative Agent or

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any Lender may reasonably request (subject to limitations imposed under confidentiality requirements and agreements to which the Parent, Borrower or a Subsidiary is subject).

## **2. Section 9.5. Electronic Delivery of Certain Information.**

(a) Documents required to be delivered pursuant to the Loan Documents shall be delivered by electronic communication and delivery, including, the Internet, e-mail or intranet websites to which the Administrative Agent and each Lender have access (including a commercial, third-party website or a website sponsored or hosted by the Administrative Agent or the Borrower) provided that the foregoing shall not apply to (i) notices to any Lender pursuant to Article II. and (ii) any Lender that has notified the Administrative Agent and the Borrower that it cannot or does not want to receive electronic communications. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic delivery pursuant to procedures approved by it for all or particular notices or communications. Documents or notices delivered electronically shall be deemed to have been delivered twenty-four (24) hours after the date and time on which the Administrative Agent or the Borrower posts such documents or the documents become available on a commercial website and the Administrative Agent or Borrower notifies each Lender of said posting and provides a link thereto provided if such notice or other communication is not sent or posted during the normal business hours of the recipient, said posting date and time shall be deemed to have commenced as of 12:00 p.m. Eastern time on the opening of business on the next business day for the recipient. The Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents delivered electronically, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request for delivery. Each Lender shall be solely responsible for requesting delivery to it of paper copies and maintaining its paper or electronic documents.

(b) Documents required to be delivered pursuant to Article II. may be delivered electronically to a website provided for such purpose by the Administrative Agent pursuant to the procedures provided to the Borrower by the Administrative Agent.

## **2. Section 9.6. Public/Private Information.**

The Borrower shall cooperate with the Administrative Agent in connection with the publication of certain materials and/or information provided by or on behalf of the Borrower. Documents required to be delivered pursuant to the Loan Documents shall be delivered by or on behalf of the Borrower to the Administrative Agent and the Lenders (collectively, "Information Materials") pursuant to this Article and the Borrower shall designate Information Materials (a) that are either available to the public or not material with respect to the Borrower and its Subsidiaries or any of their respective securities for purposes of United States federal and state securities laws, as "Public Information" and (b) that are not Public Information as "Private Information".

## **3. Section 9.7. USA Patriot Act Notice; Compliance.**

The Patriot Act and federal regulations issued with respect thereto require all financial institutions to obtain, verify and record certain information that identifies individuals or business entities which open an "account" with such financial institution. Consequently, a Lender (for itself and/or as agent for all Lenders hereunder) may from time-to-time request, and the Borrower shall, and shall cause the other Loan Parties, to provide promptly upon any such request to such Lender, such Loan Party's name, address, tax identification number and/or such other identification information as shall be necessary for such Lender to comply with federal law. An "account" for this purpose may include, without limitation, a deposit account, cash management service, a transaction or asset account, a credit account, a loan or other extension of credit, and/or other financial services product.

#### 4. ARTICLE X. NEGATIVE COVENANTS

For so long as this Agreement is in effect, unless the appropriate Lenders shall otherwise consent in the manner set forth in Section 13.6., the Parent and the Borrower shall comply with the following covenants in accordance with their respective terms:

##### 5. Section 10.1. Financial Covenants.

(a) Maximum Leverage Ratio. The Parent and the Borrower shall not permit the Leverage Ratio to exceed 60.0% at any time; provided, however, that the Borrower shall have the option, exercisable one time, upon written notice from the Borrower to the Administrative Agent that the Borrower is exercising such option, to elect that the Leverage Ratio may exceed 60.0% for a period not to exceed two (2) full fiscal quarters, such period to commence on the date set forth in such notice (such period, the "Leverage Ratio Surge Period"), so long as (i) the Borrower has delivered a written notice to the Administrative Agent that the Borrower is exercising its option under this subsection (a) and (ii) the Leverage Ratio does not exceed 65.0% at any time during the Leverage Ratio Surge Period. The Borrower shall have the option to exercise both a Leverage Ratio Surge Period and an Availability Surge Period in the same notice.

(b) Minimum Fixed Charge Coverage Ratio. The Parent and the Borrower shall not at any time permit the ratio of (i) Adjusted EBITDA of the Parent and its Subsidiaries for the period of twelve consecutive fiscal months most recently ending to (ii) Fixed Charges for such period, to be less than 1.50 to 1.00.

(c) Minimum Tangible Net Worth. The Parent and the Borrower shall not permit Tangible Net Worth at any time to be less than (i) \$1,913,305,500 plus (ii) 75% of the Net Tangible Proceeds of all Equity Issuances effected by the Parent and its Subsidiaries after December 31, 2015 (other than Equity Issuances to the Parent, the Borrower or any Subsidiary).

(d) Secured Indebtedness. The Parent and the Borrower shall not permit the aggregate amount of Secured Indebtedness of the Parent and its Subsidiaries determined on a consolidated basis to exceed 45% of Total Asset Value at any time.

(e) Minimum Number and Value of Unencumbered Properties. (x) The number of Unencumbered Properties shall not be less than 8 at any time and (y) the aggregate Unencumbered Property Value of the Unencumbered Properties shall not be less than \$750,000,000 at any time.

(f) Adjusted Total Asset Value. The Parent and the Borrower shall not permit the amount of Adjusted Total Asset Value attributable to assets directly owned by the Borrower and the Guarantors to be less than 90.0% of Adjusted Total Asset Value at any time.

##### 6. Section 10.2. Restricted Payments.

Subject to the following sentence, if an Event of Default exists, the Parent shall not, and shall not permit any of its Subsidiaries to, declare or make any Restricted Payments except that, subject to the following sentence, (x) the Borrower may declare and make cash distributions to the Parent and other holders of partnership interests in the Borrower, and the Parent may declare and make cash distributions to its shareholders, each, in an aggregate amount not to exceed the minimum amount necessary for the Parent to remain in compliance with Section 8.12. and (y) Subsidiaries may pay Restricted Payments to the Parent, the Borrower or any other Subsidiary. If an Event of Default specified in Section 11.1.(a),

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Section 11.1.(f) or Section 11.1.(g) shall exist, or if as a result of the occurrence of any other Event of Default any of the Obligations have been accelerated pursuant to Section 11.2.(a), the Parent and the Borrower shall not, and shall not permit any Subsidiary to, make any Restricted Payments to any Person except that Subsidiaries may pay Restricted Payments to the Parent, the Borrower or any other Subsidiary.

##### 2. Section 10.3. Indebtedness.

The Parent and the Borrower shall not, and shall not permit any Subsidiary to, incur, assume, or otherwise become obligated in respect of any Indebtedness after the Agreement Date if immediately prior to the assumption, incurring or becoming obligated in respect thereof, or immediately thereafter and after giving effect thereto, a Default or Event of Default is or would be in existence, including without limitation, an Event of Default resulting from a violation of any of the covenants contained in Section 10.1.

##### 2. Section 10.4. Certain Permitted Investments.

The Parent and the Borrower shall not, and shall not permit any Loan Party or other Subsidiary to, make any Investment in or otherwise own the following items which would cause the aggregate value of such holdings of the Parent, the Borrower and such other Subsidiaries to exceed the applicable limits set forth below:

(a) Investments in Unconsolidated Affiliates and other Persons that are not Subsidiaries, such that the aggregate value of such Investments (determined in a manner consistent with the definition of Total Asset Value or, if not contemplated under the definition of Total Asset Value, as determined in accordance with GAAP) exceeds 10.0% of Total Asset Value at any time;

(b) Development/Redevelopment Properties, such that the aggregate current book value of all such Development/Redevelopment Properties exceeds 15.0% of Total Asset Value at any time;

(c) Unimproved Land such that the aggregate book value of all such Unimproved Land exceeds 5.0% of Total Asset Value at any time; and

(d) Mortgage Receivables, such that the aggregate book value of such Mortgage Receivables exceeds 15.0% of Total Asset Value.

In addition to the foregoing limitations, the aggregate value of all of the items subject to the limitations in the preceding clauses (a) through (d) shall not exceed 35.0% of Total Asset Value at any time.

### 3. Section 10.5. Investments Generally.

The Parent and the Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary to, directly or indirectly, acquire, make or purchase any Investment, or permit any Investment of such Person to be outstanding on and after the Agreement Date, other than the following:

- (a) Investments in Subsidiaries in existence on the Agreement Date and disclosed on Part I of Schedule 7.1.(b);

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(b) Investments to acquire Equity Interests of a Subsidiary or any other Person who after giving effect to such acquisition would be a Subsidiary, so long as in each case immediately prior to such Investment, and after giving effect thereto, no Default or Event of Default is or would be in existence;

- (c) Investments permitted under Section 10.4.;

- (d) Investments in Cash Equivalents;

(e) intercompany Indebtedness among (i) the Parent and the Borrower and (ii) the Borrower and its Wholly Owned Subsidiaries provided that such Indebtedness is permitted by the terms of Section 10.3.;

(f) Guarantees incurred by the Borrower or any Guarantor in respect of Unsecured Indebtedness of the Borrower, the Parent or any other Guarantor that is otherwise permitted by Section 10.3.;

(g) loans and advances to employees for moving, entertainment, travel and other similar expenses in the ordinary course of business consistent with past practices; and

(h) any other Investment as long as immediately prior to making such Investment, and immediately thereafter and after giving effect thereto, no Default or Event of Default is or would be in existence.

### 2. Section 10.6. Negative Pledge.

(a) The Parent and the Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary to, create, assume, or incur any Lien (other than Permitted Liens and Liens on assets of an Excluded Subsidiary securing the Indebtedness which causes such Subsidiary to be an Excluded Subsidiary) upon any of its properties, assets, income or profits of any character whether now owned or hereafter acquired if immediately prior to the creation, assumption or incurring of such Lien, or immediately thereafter, a Default or Event of Default is or would be in existence.

(b) The Parent and the Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary (other than an Excluded Subsidiary) to, enter into, assume or otherwise be bound by any Negative Pledge except for a Negative Pledge contained in any agreement (i)(x) evidencing Indebtedness which the Parent, the Borrower, such other Loan Party or such Subsidiary may create, incur, assume, or permit or suffer to exist under Section 10.3., (y) which Indebtedness is secured by a Lien permitted to exist, and (z) which prohibits the creation of any other Lien on only the property securing such Indebtedness as of the date such agreement was entered into; (ii) consisting of customary provisions in leases and other contracts restricting the assignment thereof; (iii) relating to the sale of a Subsidiary or assets pending such sale, provided that in any such case the Negative Pledge applies only to the Subsidiary or the assets that are the subject of such sale; or (iv) that evidences Unsecured Indebtedness which contains restrictions on encumbering assets that are substantially similar to, or less restrictive than, those restrictions contained in the Loan Documents.

(c) The Parent and the Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary (other than an Excluded Subsidiary) to, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary (other than an Excluded Subsidiary) to: (i) pay dividends or make any other distribution on any of such Subsidiary's capital stock or other equity interests owned by the Borrower or any Subsidiary; (ii) pay any Indebtedness owed to the Parent, the Borrower or any other Subsidiary; (iii) make loans or advances to

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the Parent, the Borrower or any other Subsidiary; or (iv) transfer any of its property or assets to the Parent, the Borrower or any other Subsidiary, except for any such encumbrances or restrictions, (A) contained in agreements relating to the sale of a Subsidiary or assets pending such sale, or relating to Indebtedness secured by a Lien on assets that the Borrower or such Subsidiary may create, incur, assume, or permit or suffer to exist under Sections 10.3. and 10.6.(a), provided that in any such case the encumbrances and restrictions apply only to the Subsidiary or the assets that are the subject of such sale or Lien, as the case may be, (B) set forth in the organizational documents or other agreements binding on or applicable to any Excluded Subsidiary or any Subsidiary that is not a Wholly Owned Subsidiary (but only to the extent such encumbrance or restriction covers any Equity Interest in such Subsidiary or the property or assets of such Subsidiary), (C) contained in an agreement that governs an Investment in an Unconsolidated Affiliate (but only to the extent such encumbrance or restriction covers any Equity Interest in such Unconsolidated Affiliate) or (D) in any other agreement (1) evidencing Unsecured Indebtedness that the Borrower, any other Loan Party or any other Subsidiary may create, incur, assume or permit or suffer to exist under this Agreement and (2) containing encumbrances and restrictions imposed in connection with such Unsecured Indebtedness that are either substantially similar to, or less restrictive than, such encumbrances and restrictions set forth in the Loan Documents.

### 2. Section 10.7. Merger, Consolidation, Sales of Assets and Other Arrangements.

The Parent and the Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary to: (i) enter into any transaction of merger or consolidation; (ii) liquidate, windup or dissolve itself (or suffer any liquidation or dissolution); or (iii) convey, sell, lease, sublease, transfer or otherwise dispose of, in one transaction or a series of transactions, all or any substantial part of its business or assets, or the capital stock of or other Equity Interests in any of its Subsidiaries, whether now owned or hereafter acquired; provided, however, that:

(a) any of the actions described in the immediately preceding clauses (i) through (iii) may be taken with respect to any Subsidiary so long as (x) immediately prior to the taking of such action, and immediately thereafter and after giving effect thereto, no Default or Event of Default is or would be in existence, (y) if such action includes the sale of all Equity Interests in a Subsidiary that is a Guarantor owned directly or indirectly by the Parent, such Subsidiary can and will be released from the Guaranty in accordance with Section 8.15 and (z) if such action includes the disposition of an Unencumbered Property (regardless of whether such disposition takes the form of a direct sale of such Unencumbered Property, the sale of the Equity Interests of the Subsidiary that owns such Unencumbered Property or a merger of such Subsidiary), such Unencumbered Property can and will be reclassified in accordance with Section 4.2.;

(b) the Parent, the Borrower, the other Loan Parties and the other Subsidiaries may lease and sublease their respective assets, as lessor or sublessor (as the case may be), in the ordinary course of their business;

(c) a Person may merge with a Loan Party so long as (i) the survivor of such merger is such Loan Party or becomes a Loan Party at the time of such merger (provided, that the foregoing shall not be construed to allow the Parent or the Borrower to merge and not be the surviving party to such merger without the prior written consent of the Administrative Agent and each Lender in accordance with Section 13.5.(a)), (ii) immediately prior to such merger, and immediately thereafter and after giving effect thereto, (x) no Default or Event of Default is or would be in existence, including, without limitation, a Default or Event of Default resulting from a breach of Section 10.1. and (y) the representations and warranties made or deemed made by the Borrower and each other Loan Party in the Loan Documents to which any of them is a party are and shall be true and correct in all material respects, except to the extent that such representations

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and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date) and except for changes in factual circumstances not prohibited under the Loan Documents, (iii) the Borrower shall have given the Administrative Agent at least 30-days' prior written notice of such merger, such notice to include a certification as to the matters described in the immediately preceding clause (ii) (except that such prior notice shall not be required in the case of the merger of a Subsidiary that does not own an Unencumbered Property with and into a Loan Party but the Borrower shall give the Administrative Agent notice of any such merger promptly following the effectiveness of such merger) and (iv) at the time the Borrower gives notice pursuant to clause (i) of this subsection, the Borrower shall have delivered to the Administrative Agent for distribution to each of the Lenders a Compliance Certificate, calculated on a pro forma basis, evidencing the continued compliance by the Loan Parties, as applicable, with the terms and conditions of this Agreement and the other Loan Documents, including without limitation, the financial covenants contained in Section 10.1., after giving effect to such consolidation, merger, acquisition, Investment, sale, lease or other transfer and any prepayment of Loans to be made in connection therewith; and

(d) the Parent, the Borrower and each other Subsidiary may sell, transfer or dispose of assets among themselves.

Further, no Loan Party nor any Subsidiary, shall enter into any sale-leaseback transactions or other transaction by which such Person shall remain liable as lessee (or the economic equivalent thereof) of any real or personal property that it has sold or leased to another Person.

## **2. Section 10.8. Fiscal Year.**

The Parent shall not change its fiscal year from that in effect as of the Agreement Date.

## **3. Section 10.9. Modifications of Material Contracts.**

The Parent and the Borrower shall not enter into, and shall not permit any Subsidiary or other Loan Party to enter into, any amendment or modification to any Material Contract which could reasonably be expected to have a Material Adverse Effect.

## **4. Section 10.10. Modifications of Organizational Documents.**

The Parent and the Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary to, amend, supplement, restate or otherwise modify its certificate or articles of incorporation or formation, by-laws, operating agreement, declaration of trust, partnership agreement or other applicable organizational document if such amendment, supplement, restatement or other modification (a) is materially adverse to the interest of the Administrative Agent or the Lenders or (b) could reasonably be expected to have a Material Adverse Effect.

## **5. Section 10.11. Transactions with Affiliates.**

The Parent and the Borrower shall not permit to exist or enter into, and shall not permit any other Loan Party or any other Subsidiary to permit to exist or enter into, any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate (other than the Parent, the Borrower, any other Loan Party or any Wholly Owned Subsidiary), except transactions pursuant to the reasonable requirements of the business of the Parent, the Borrower, such other Loan Party or such other Subsidiary and upon fair and reasonable terms which are no less favorable

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to the Parent, the Borrower, such other Loan Party or such other Subsidiary, as applicable, than would be obtained in a comparable arm's length transaction with a Person that is not an Affiliate.

## **6. Section 10.12. ERISA Exemptions.**

The Parent and the Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary to, permit any of its respective assets to become or be deemed to be "plan assets" within the meaning of ERISA, the Internal Revenue Code and the respective regulations promulgated thereunder.

The Parent and the Borrower shall not cause or permit to occur, and shall not permit any other member of the ERISA Group to cause or permit to occur, any ERISA Event if such ERISA Event could reasonably be expected to have a Material Adverse Effect.

#### **7. Section 10.13. Environmental Matters.**

The Parent and the Borrower shall not, and shall not permit any other Loan Party, any other Subsidiary or any other Person to, use, generate, discharge, emit, manufacture, handle, process, store, release, transport, remove, dispose of or clean up any Hazardous Materials on, under or from the Properties in material violation of any Environmental Law or in a manner that could reasonably be expected to lead to any material Environmental Claim or pose a material risk to human health, safety or the environment. Nothing in this Section shall impose any obligation or liability whatsoever on the Administrative Agent or any Lender.

#### **8. Section 10.14. Derivatives Contracts.**

The Parent and the Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary to, enter into or become obligated in respect of, Derivatives Contracts, other than Derivatives Contracts entered into by the Parent, the Borrower, any such Loan Party or any such Subsidiary in the ordinary course of business and which establish an effective hedge in respect of liabilities, commitments or assets held or reasonably anticipated by the Parent, the Borrower, such other Loan Party or such other Subsidiary.

### **9. ARTICLE XI. DEFAULT**

#### **10. Section 11.1. Events of Default.**

Each of the following shall constitute an Event of Default, whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of Applicable Law or pursuant to any judgment or order of any Governmental Authority:

- (a) Default in Payment of Principal. The Borrower shall fail to pay when due (whether upon demand, at maturity, by reason of acceleration or otherwise) the principal of any of the Loans.
- (b) Default in Payment of Interest and Other Obligations. The Borrower shall fail to pay when due any interest on any of the Loans or any of the other payment Obligations owing by the Borrower under this Agreement, any other Loan Document or the Fee Letters or any other Loan Party shall fail to pay when due any payment Obligation owing by such other Loan Party under any Loan Document to which it is a party, and such failure shall continue for a period of 3 Business Days.

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(c) Default in Performance.

- (i) Any Loan Party shall fail to perform or observe any term, covenant, condition or agreement on its part to be performed or observed and contained in the last two sentences of Section 8.8., Section 9.4.(h), or Article X. (other than Section 10.1.(e)); or
- (ii) Any Loan Party shall fail to perform or observe any term, covenant, condition or agreement contained in this Agreement or any other Loan Document to which it is a party and not otherwise mentioned in this Section, and in the case of this clause (ii) only, such failure shall continue for a period of 30 days after the earlier of (x) the date upon which a Responsible Officer of the Parent or the Borrower obtains knowledge of such failure or (y) the date upon which the Parent or any other Loan Party has received written notice of such failure from the Administrative Agent.

(d) Misrepresentations. Any written statement, representation or warranty made or deemed made by or on behalf of any Loan Party under this Agreement or under any other Loan Document, or any amendment hereto or thereto, or in any other writing or statement at any time furnished or made or deemed made by, or on behalf of, any Loan Party to the Administrative Agent or any Lender, shall at any time prove to have been incorrect or misleading, in light of the circumstances in which made or deemed made, in any material respect when furnished or made or deemed made.

(e) Indebtedness Cross-Default; Derivatives Contracts.

- (i) The Borrower, any other Loan Party or any other Subsidiary shall fail to pay when due and payable, within any applicable grace or cure period, the principal of, or interest on, any Indebtedness (other than the Loans) having an aggregate outstanding principal amount (or, in the case of any Derivatives Contract, having, without regard to the effect of any close-out netting provision, a Derivatives Termination Value), in each case, individually or in the aggregate with all other Indebtedness as to which such a failure exists, of \$30,000,000 or more (or \$60,000,000 or more in the case of Nonrecourse Indebtedness) (all such Indebtedness being "Material Indebtedness"); or
- (ii) (x) The maturity of any Material Indebtedness shall have been accelerated in accordance with the provisions of any indenture, contract or instrument evidencing, providing for the creation of or otherwise concerning such Material Indebtedness or (y) any Material Indebtedness shall have been required to be prepaid, repurchased, redeemed or defeased prior to the stated maturity thereof; or
- (iii) Any other event shall have occurred and be continuing which would permit any holder or holders of any Material Indebtedness, any trustee or agent acting on behalf of such holder or holders or any other Person, to accelerate the maturity of any such Material Indebtedness or require any such Material Indebtedness to be prepaid, repurchased, redeemed or defeased prior to its stated maturity;
- (iv) There occurs an "Event of Default" under and as defined in any Derivatives Contract as to which the Borrower, any Loan Party or any other Subsidiary is a "Defaulting Party" (as defined therein), or there occurs an "Early Termination Date" (as defined therein) in respect of any such Derivatives Contract as a result of a "Termination Event" (as defined therein) as to which the Borrower or any of its Subsidiaries is an "Affected Party" (as defined therein), in each case, if the Derivatives Termination Value payable by the Borrower, any other Loan Party or any other Subsidiary exceeds \$15,000,000 in the aggregate;

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provided, that notwithstanding the foregoing, a foreclosure on or a deed-in-lieu of foreclosure with respect to the Property known as the Marriott Courtyard Fifth Avenue in New York, New York, and the nonpayment of any Nonrecourse Indebtedness of any Subsidiary of the Borrower secured by such Property, shall not result in a Default or Event of Default under this clause (e); or

(v) There occurs an “Event of Default” under and as defined in the Revolving Facility or the Existing Term Loan.

(f) Voluntary Bankruptcy Proceeding. The Borrower, any other Loan Party or any Significant Subsidiary shall: (i) commence a voluntary case under the Bankruptcy Code or other federal bankruptcy laws (as now or hereafter in effect); (ii) file a petition seeking to take advantage of any other Applicable Laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts; (iii) consent to, or fail to contest in a timely and appropriate manner, any petition filed against it in an involuntary case under such bankruptcy laws or other Applicable Laws or consent to any proceeding or action described in the immediately following subsection; (iv) apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of a substantial part of its property, domestic or foreign; (v) admit in writing its inability to pay its debts as they become due; (vi) make a general assignment for the benefit of creditors; (vii) make a conveyance fraudulent as to creditors under any Applicable Law; or (viii) take any corporate or partnership action for the purpose of effecting any of the foregoing.

(g) Involuntary Bankruptcy Proceeding. A case or other proceeding shall be commenced against any Loan Party or any other Significant Subsidiary in any court of competent jurisdiction seeking: (i) relief under the Bankruptcy Code or other federal bankruptcy laws (as now or hereafter in effect) or under any other Applicable Laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts; or (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of such Person, or of all or any substantial part of the assets, domestic or foreign, of such Person, and such case or proceeding shall continue undismissed or unstayed for a period of 60 consecutive days, or an order granting the remedy or other relief requested in such case or proceeding against such Loan Party or such Significant Subsidiary (including, but not limited to, an order for relief under such Bankruptcy Code or such other federal bankruptcy laws) shall be entered.

(h) Revocation of Loan Documents. Any Loan Party shall (or shall attempt to) disavow, revoke or terminate any Loan Document or the Fee Letters to which it is a party or shall otherwise challenge or contest in any action, suit or proceeding in any court or before any Governmental Authority the validity or enforceability of any Loan Document or the Fee Letters, or any Loan Document or the Fee Letters shall cease to be in full force and effect (except as a result of the express terms thereof).

(i) Judgment. A judgment or order for the payment of money or for an injunction shall be entered against the Borrower, any other Loan Party, or any other Subsidiary by any court or other tribunal and (i) such judgment or order shall continue for a period of 30 days without being paid, stayed or dismissed through appropriate appellate proceedings and (ii) either (A) the amount of such judgment or order for which insurance has not been acknowledged in writing by the applicable insurance carrier (or the amount as to which the insurer has denied liability) exceeds, individually or together with all other such outstanding judgments or orders entered against any Loan Parties or any other Subsidiary, \$30,000,000 or (B) in the case of an injunction or other non-monetary judgment, such injunction or judgment or order could reasonably be expected to have a Material Adverse Effect.

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(j) Attachment. A warrant, writ of attachment, execution or similar process shall be issued against any property of any Loan Party or any other Subsidiary, which exceeds, individually or together with all other such warrants, writs, executions and processes, \$30,000,000 in amount and such warrant, writ, execution or process shall not be paid, discharged, vacated, stayed or bonded for a period of 30 days; provided, however, that if a bond has been issued in favor of the claimant or other Person obtaining such warrant, writ, execution or process, the issuer of such bond shall execute a waiver or subordination agreement in form and substance satisfactory to the Administrative Agent pursuant to which the issuer of such bond subordinates its right of reimbursement, contribution or subrogation to the Obligations and waives or subordinates any Lien it may have on the assets of any Loan Party.

(k) ERISA.

(i) Any ERISA Event shall have occurred that results or could reasonably be expected to result in liability to any member of the ERISA Group aggregating in excess of \$30,000,000; or

(ii) The “benefit obligation” of all Plans exceeds the “fair market value of plan assets” for such Plans by more than \$30,000,000, all as determined, and with such terms defined, in accordance with FASB ASC 715.

(l) Loan Documents. An Event of Default (as defined therein) shall occur under any of the other Loan Documents.

(m) Change of Control/Change in Management.

(i) Any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”)), is or becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a Person will be deemed to have “beneficial ownership” of all securities that such Person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of more than 35% of the total voting power of the then outstanding voting stock of the Parent;

(ii) During any period of 12 consecutive months ending after the Agreement Date, individuals who at the beginning of any such 12-month period constituted the Board of Directors of the Parent (together with any new directors whose election by such Board or whose nomination for election by the shareholders of the Parent was approved by a vote of a majority of the directors then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the Board of Directors of the Parent then in office; or

(iii) The Parent or a Wholly Owned Subsidiary of the Parent shall cease to be the sole general partner of the Borrower or shall cease to have the sole and exclusive power to exercise all management and control over the Borrower.

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## 2. Section 11.2. Remedies Upon Event of Default.

Upon the occurrence of an Event of Default the following provisions shall apply:

(a) Acceleration; Termination of Facilities.

(i) Automatic. Upon the occurrence of an Event of Default specified in Sections 11.1.(f) or 11.1.(g), (A)(1) the principal of, and all accrued interest on, the Loans and the Notes at the time outstanding and (2) all of the other Obligations, including, but not limited to, the other amounts owed to the Lenders and the Administrative Agent under this Agreement, the Notes or any of the other Loan Documents shall become immediately and automatically due and payable without presentment, demand, protest, or other notice of any kind, all of which are expressly waived by the Borrower on behalf of itself and the other Loan Parties, and (B) the Commitments, if then in effect, shall all immediately and automatically terminate.

(ii) Optional. If any other Event of Default shall exist, the Administrative Agent may, and at the direction of the Requisite Lenders shall: (A) declare (1) the principal of, and accrued interest on, the Loans and the Notes at the time outstanding and (2) all of the other Obligations, including, but not limited to, the other amounts owed to the Lenders and the Administrative Agent under this Agreement, the Notes or any of the other Loan Documents to be forthwith due and payable, whereupon the same shall immediately become due and payable without presentment, demand, protest or other notice of any kind, all of which are expressly waived by the Borrower on behalf of itself and the other Loan Parties, and (B) the Commitments, if then in effect.

(b) Loan Documents. The Requisite Lenders may direct the Administrative Agent to, and the Administrative Agent if so directed shall, exercise any and all of its rights under any and all of the other Loan Documents.

(c) Applicable Law. The Requisite Lenders may direct the Administrative Agent to, and the Administrative Agent if so directed shall, exercise all other rights and remedies it may have under any Applicable Law.

(d) Appointment of Receiver. To the extent permitted by Applicable Law, the Administrative Agent and the Lenders shall be entitled to the appointment of a receiver for the assets and properties of the Borrower and its Subsidiaries (other than Excluded Subsidiaries), without notice of any kind whatsoever and without regard to the adequacy of any security for the Obligations or the solvency of any party bound for its payment, to take possession of all or any portion of the property or the business operations of the Borrower and its Subsidiaries (other than Excluded Subsidiaries) and to exercise such power as the court shall confer upon such receiver.

(e) Specified Derivatives Contract Remedies. Notwithstanding any other provision of this Agreement or other Loan Document, each Specified Derivatives Provider shall have the right, with prompt notice to the Administrative Agent, but without the approval or consent of or other action by the Administrative Agent or the Lenders, and without limitation of other remedies available to such Specified Derivatives Provider under contract or Applicable Law, to undertake any of the following: (a) to declare an event of default, termination event or other similar event under any Specified Derivatives Contract and to create an "Early Termination Date" (as defined therein) in respect thereof, (b) to determine net termination amounts in respect of any and all Specified Derivatives Contracts in accordance with the terms thereof, and to set off amounts among such contracts, (c) to set off or proceed against deposit account balances, securities account balances and other property and amounts held by such Specified

Derivatives Provider pursuant to any Derivatives Support Document, including any "Posted Collateral" (as defined in any credit support annex included in any such Derivatives Support Document to which such Specified Derivatives Provider may be a party), and (d) to prosecute any legal action against the Parent, the Borrower, any other Loan Party or any other Subsidiary to enforce or collect net amounts owing to such Specified Derivatives Provider pursuant to any Specified Derivatives Contract.

## 2. Section 11.3. Marshaling; Payments Set Aside.

None of the Administrative Agent or any Lender shall be under any obligation to marshal any assets in favor of any Loan Party or any other party or against or in payment of any or all of the Guaranteed Obligations. To the extent that any Loan Party makes a payment or payments to the Administrative Agent or any Lender, or the Administrative Agent or any Lender enforce their security interests or exercise their rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then to the extent of such recovery, the Guaranteed Obligations, or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred.

## 3. Section 11.4. Allocation of Proceeds.

If an Event of Default exists, all payments received by the Administrative Agent (or any Lender as a result of its exercise of remedies permitted under Section 13.3. under any of the Loan Documents, in respect of any principal of or interest on the Guaranteed Obligations or any other amounts payable by the Borrower hereunder or thereunder, shall be applied in the following order and priority:

(a) to payment of that portion of the Guaranteed Obligations constituting fees, indemnities, expenses and other amounts, including attorney fees, payable to the Administrative Agent in its capacity as such;

(b) to payment of that portion of the Guaranteed Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders under the Loan Documents, including attorney fees, ratably among the Lenders in proportion to the respective amounts described in this clause (b) payable to them;

(c) to payment of that portion of the Guaranteed Obligations constituting accrued and unpaid interest on the Loans, ratably among the Lenders in proportion to the respective amounts described in this clause (c) payable to them;

(d) to payment of that portion of the Guaranteed Obligations constituting unpaid principal of the Loans and payment obligations then owing under Specified Derivatives Contracts, ratably among the Lenders and the Specified Derivatives Providers in proportion to the respective amounts described in this clause (d) payable to them; and

(e) the balance, if any, after all of the Guaranteed Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Applicable Law.

Notwithstanding the foregoing, Guaranteed Obligations arising under Specified Derivatives Contracts shall be excluded from the application described above if the Administrative Agent has not received written notice thereof, together with such supporting documentation as the Administrative Agent may

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request, from the applicable Specified Derivatives Provider, as the case may be. Each Specified Derivatives Provider not a party to this Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article XII. for itself and its Affiliates as if a "Lender" party hereto.

## **2. Section 11.5. Performance by Administrative Agent.**

If the Borrower or any other Loan Party shall fail to perform any covenant, duty or agreement contained in any of the Loan Documents, the Administrative Agent may, after notice to the Borrower, perform or attempt to perform such covenant, duty or agreement on behalf of the Borrower or such other Loan Party after the expiration of any cure or grace periods set forth herein. In such event, the Borrower shall, at the request of the Administrative Agent, promptly pay any amount reasonably expended by the Administrative Agent in such performance or attempted performance to the Administrative Agent, together with interest thereon at the applicable Post-Default Rate from the date of such expenditure until paid. Notwithstanding the foregoing, neither the Administrative Agent nor any Lender shall have any liability or responsibility whatsoever for the performance of any obligation of the Borrower under this Agreement or any other Loan Document.

## **3. Section 11.6. Rights Cumulative.**

(a) Generally. The rights and remedies of the Administrative Agent and the Lenders under this Agreement, each of the other Loan Documents and the Fee Letters shall be cumulative and not exclusive of any rights or remedies which any of them may otherwise have under Applicable Law. In exercising their respective rights and remedies the Administrative Agent and the Lenders may be selective and no failure or delay by the Administrative Agent or any of the Lenders in exercising any right shall operate as a waiver of it, nor shall any single or partial exercise of any power or right preclude its other or further exercise or the exercise of any other power or right.

(b) Enforcement by Administrative Agent. Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Article XI. for the benefit of all the Lenders; provided that the foregoing shall not prohibit (i) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (ii) any Specified Derivatives Provider from exercising the rights and remedies that inure to its benefit (solely in its capacity as a Specified Derivatives Provider) hereunder, under the other Loan Documents or under any Specified Derivatives Contract, as applicable, (iii) any Lender from exercising setoff rights in accordance with Section 13.3. (subject to the terms of Section 3.3.), or (iv) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (x) the Requisite Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Article XI. and (y) in addition to the matters set forth in clauses (ii), (iii) and (iv) of the preceding proviso and subject to Section 3.3., any Lender may, with the consent of the Requisite Lenders, enforce any rights and remedies available to it and as authorized by the Requisite Lenders.

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## **2. ARTICLE XII. THE ADMINISTRATIVE AGENT**

### **3. Section 12.1. Appointment and Authorization.**

Each Lender hereby irrevocably appoints and authorizes the Administrative Agent to take such action as contractual representative on such Lender's behalf and to exercise such powers under this Agreement and the other Loan Documents as are specifically delegated to the Administrative Agent by the terms hereof and thereof, together with such powers as are reasonably incidental thereto. Not in limitation of the foregoing, each Lender authorizes and directs the Administrative Agent to enter into the Loan Documents for the benefit of the Lenders. Each Lender hereby agrees that, except as otherwise set forth herein, any action taken by the Requisite Lenders in accordance with the provisions of this Agreement or the Loan Documents, and the exercise by the Requisite Lenders of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Lenders. Nothing herein shall be construed to deem the Administrative Agent a trustee or fiduciary for any Lender or to impose on the Administrative Agent duties or obligations other than those expressly provided for herein. Without limiting the generality of the foregoing, the use of the terms "Agent", "Administrative Agent", "agent" and similar terms in the Loan Documents with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any Applicable Law. Instead, use of such terms is merely a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties. The Administrative Agent shall deliver or otherwise make available to each Lender, promptly upon receipt thereof by the Administrative Agent, copies of each of the financial statements, certificates, notices and other documents delivered to the Administrative Agent pursuant to Article IX. that the Borrower is not otherwise required to deliver directly to the Lenders. The Administrative Agent will furnish to any Lender, upon the request of such Lender, a copy (or, where appropriate, an original) of any document, instrument, agreement, certificate or notice furnished to the Administrative Agent by the Borrower, any other Loan Party or any

other Affiliate of the Borrower, pursuant to this Agreement or any other Loan Document not already delivered or otherwise made available to such Lender pursuant to the terms of this Agreement or any such other Loan Document. As to any matters not expressly provided for by the Loan Documents (including, without limitation, enforcement or collection of any of the Obligations), the Administrative Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Requisite Lenders (or all of the Lenders if explicitly required under any other provision of this Agreement), and such instructions shall be binding upon all Lenders and all holders of any of the Obligations; provided, however, that, notwithstanding anything in this Agreement to the contrary, the Administrative Agent shall not be required to take any action which exposes the Administrative Agent to personal liability or which is contrary to this Agreement or any other Loan Document or Applicable Law. Not in limitation of the foregoing, the Administrative Agent may exercise any right or remedy it or the Lenders may have under any Loan Document upon the occurrence of a Default or an Event of Default unless the Requisite Lenders have directed the Administrative Agent otherwise. Without limiting the foregoing, no Lender shall have any right of action whatsoever against the Administrative Agent as a result of the Administrative Agent acting or refraining from acting under this Agreement or any of the other Loan Documents in accordance with the instructions of the Requisite Lenders, or where applicable, all the Lenders.

## **2. Section 12.2. Administrative Agent's Reliance.**

Notwithstanding any other provisions of this Agreement or any other Loan Documents, neither the Administrative Agent nor any of its Related Parties shall be liable for any action taken or not taken by it under or in connection with this Agreement or any other Loan Document, except for its or their own gross negligence or willful misconduct in connection with its duties expressly set forth herein or therein

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as determined by a court of competent jurisdiction in a final non-appealable judgment. Without limiting the generality of the foregoing, the Administrative Agent may consult with legal counsel (including its own counsel or counsel for the Parent, the Borrower or any other Loan Party), independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts. Neither the Administrative Agent nor any of its Related Parties: (a) makes any warranty or representation to any Lender or any other Person, or shall be responsible to any Lender or any other Person for any statement, warranty or representation made or deemed made by the Borrower, any other Loan Party or any other Person in or in connection with this Agreement or any other Loan Document; (b) shall have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement or any other Loan Document or the satisfaction of any conditions precedent under this Agreement or any Loan Document on the part of the Borrower or other Persons, or to inspect the property, books or records of the Borrower or any other Person; (c) shall be responsible to any Lender for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document, any other instrument or document furnished pursuant thereto or any collateral covered thereby or the perfection or priority of any Lien in favor of the Administrative Agent on behalf of the Lenders in any such collateral; (d) shall have any liability in respect of any recitals, statements, certifications, representations or warranties contained in any of the Loan Documents or any other document, instrument, agreement, certificate or statement delivered in connection therewith; and (e) shall incur any liability under or in respect of this Agreement or any other Loan Document by acting upon any notice, consent, certificate or other instrument or writing (which may be by telephone, teletype or electronic mail) believed by it to be genuine and signed, sent or given by the proper party or parties. The Administrative Agent may execute any of its duties under the Loan Documents by or through agents, employees or attorneys-in-fact and shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct in the selection of such agent or attorney-in-fact as determined by a court of competent jurisdiction in a final non-appealable judgment. Unless set forth in writing to the contrary, the making of its initial Loan by a Lender shall constitute a certification by such Lender to the Administrative Agent and the other Lenders that the conditions precedent for initial Loans set forth in Sections 6.1. and 6.2. that have not previously been waived by the Requisite Lenders have been satisfied.

## **2. Section 12.3. Notice of Events of Default.**

The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of a Default or Event of Default unless the Administrative Agent has received notice from a Lender or the Borrower referring to this Agreement, describing with reasonable specificity such Default or Event of Default and stating that such notice is a "notice of default." If any Lender (excluding the Lender which is also serving as the Administrative Agent) becomes aware of any Default or Event of Default, it shall promptly send to the Administrative Agent such a "notice of default"; provided, a Lender's failure to provide such a "notice of default" to the Administrative Agent shall not result in any liability of such Lender to any other party to any of the Loan Documents. Further, if the Administrative Agent receives such a "notice of default," the Administrative Agent shall give prompt notice thereof to the Lenders.

## **3. Section 12.4. Administrative Agent as Lender.**

The Lender acting as Administrative Agent shall have the same rights and powers as a Lender or a Specified Derivatives Provider, as the case may be, under this Agreement, any other Loan Document, any Specified Derivatives Contract, as the case may be, as any other Lender or Specified Derivatives Provider and may exercise the same as though it were not the Administrative Agent; and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated, include the Lender acting as Administrative Agent in each case in its individual capacity. Such Lender and its Affiliates may each

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accept deposits from, maintain deposits or credit balances for, invest in, lend money to, act as trustee under indentures of, serve as financial advisor to, and generally engage in any kind of business with the Borrower, any other Loan Party or any other Affiliate thereof as if it were any other bank and without any duty to account therefor to the other Lenders or any Specified Derivatives Providers. Further, the Administrative Agent and any Affiliate may accept fees and other consideration from the Borrower for services in connection with this Agreement or any Specified Derivatives Contract, or otherwise without having to account for the same to the other Lenders or any Specified Derivatives Providers. The Lenders acknowledge that, pursuant to such activities, the Lender acting as Administrative Agent or its Affiliates may receive information regarding the Borrower, other Loan Parties, other Subsidiaries and other Affiliates (including information that may be subject to confidentiality obligations in favor of such Person) and acknowledge that the Administrative Agent shall be under no obligation to provide such information to them.

## **4. Section 12.5. Approvals of Lenders.**

All communications from the Administrative Agent to any Lender requesting such Lender's determination, consent or approval (a) shall be given in the form of a written notice to such Lender, (b) shall be accompanied by a description of the matter or issue as to which such determination, consent or approval is requested, or shall advise such Lender where information, if any, regarding such matter or issue may be inspected, or shall otherwise describe the matter or issue to be resolved and (c) shall include, if reasonably requested by such Lender and to the extent not previously provided to such Lender, written materials provided to the Administrative Agent by the Borrower in respect of the matter or issue to be resolved. Unless a Lender shall give written notice to the Administrative Agent that it specifically objects to the requested determination, consent or approval (together with a reasonable written explanation of the reasons behind such objection) within 10 Business Days (or such lesser or greater period as may be specifically required under the express terms of the Loan Documents) of receipt of such communication, such Lender shall be deemed to have conclusively approved such requested determination, consent or approval.

#### **5. Section 12.6. Lender Credit Decision, Etc.**

Each of the Lenders expressly acknowledges and agrees that neither the Administrative Agent nor any of its Related Parties has made any representations or warranties to such Lender and that no act by the Administrative Agent hereafter taken, including any review of the affairs of the Parent, the Borrower, any other Loan Party or any other Subsidiary or Affiliate, shall be deemed to constitute any such representation or warranty by the Administrative Agent to any Lender. Each of the Lenders acknowledges that it has made its own credit and legal analysis and decision to enter into this Agreement and the transactions contemplated hereby, independently and without reliance upon the Administrative Agent, any other Lender or counsel to the Administrative Agent, or any of their respective Related Parties, and based on the financial statements of the Parent, the Borrower, the other Loan Parties, the other Subsidiaries and other Affiliate thereof, and inquiries of such Persons, its independent due diligence of the business and affairs of the Parent, the Borrower, the other Loan Parties, the other Subsidiaries and other Persons, its review of the Loan Documents, the legal opinions required to be delivered to it hereunder, the advice of its own counsel and such other documents and information as it has deemed appropriate. Each of the Lenders also acknowledges that it will, independently and without reliance upon the Administrative Agent, any other Lender or counsel to the Administrative Agent or any of their respective Related Parties, and based on such review, advice, documents and information as it shall deem appropriate at the time, continue to make its own decisions in taking or not taking action under the Loan Documents. The Administrative Agent shall not be required to keep itself informed as to the performance or observance by the Parent, the Borrower or any other Loan Party of the Loan Documents or any other document referred to or provided for therein or to inspect the properties or books of, or make any other

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investigation of, the Parent, the Borrower, any other Loan Party or any other Subsidiary. Except for notices, reports and other documents and information expressly required to be furnished to the Lenders by the Administrative Agent under this Agreement or any of the other Loan Documents, the Administrative Agent shall have no duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, financial and other condition or creditworthiness of the Parent, the Borrower, any other Loan Party or any other Affiliate thereof which may come into possession of the Administrative Agent or any of its Related Parties. Each of the Lenders acknowledges that the Administrative Agent's legal counsel in connection with the transactions contemplated by this Agreement is only acting as counsel to the Administrative Agent and is not acting as counsel to any Lender.

#### **6. Section 12.7. Indemnification of Administrative Agent.**

Each Lender agrees to indemnify the Administrative Agent (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so) pro rata in accordance with such Lender's respective Pro Rata Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, reasonable out-of-pocket costs and expenses of any kind or nature whatsoever which may at any time be imposed on, incurred by, or asserted against the Administrative Agent (in its capacity as Administrative Agent but not as a Lender) in any way relating to or arising out of the Loan Documents, any transaction contemplated hereby or thereby or any action taken or omitted by the Administrative Agent under the Loan Documents (collectively, "Indemnifiable Amounts"); provided, however, that no Lender shall be liable for any portion of such Indemnifiable Amounts to the extent resulting from the Administrative Agent's gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final, non-appealable judgment; provided, however, that no action taken in accordance with the directions of the Requisite Lenders (or all of the Lenders, if expressly required hereunder) shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section. Without limiting the generality of the foregoing, each Lender agrees to reimburse the Administrative Agent (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so) promptly upon demand for its Pro Rata Share (determined as of the time that the applicable reimbursement is sought) of any out-of-pocket expenses (including the reasonable fees and expenses of the counsel to the Administrative Agent) incurred by the Administrative Agent in connection with the preparation, negotiation, execution, administration, or enforcement (whether through negotiations, legal proceedings, or otherwise) of, or legal advice with respect to the rights or responsibilities of the parties under, the Loan Documents, any suit or action brought by the Administrative Agent to enforce the terms of the Loan Documents and/or collect any Obligations, any "lender liability" suit or claim brought against the Administrative Agent and/or the Lenders, and any claim or suit brought against the Administrative Agent and/or the Lenders arising under any Environmental Laws. Such out-of-pocket expenses (including counsel fees) shall be advanced by the Lenders on the request of the Administrative Agent notwithstanding any claim or assertion that the Administrative Agent is not entitled to indemnification hereunder upon receipt of an undertaking by the Administrative Agent that the Administrative Agent will reimburse the Lenders if it is actually and finally determined by a court of competent jurisdiction that the Administrative Agent is not so entitled to indemnification. The agreements in this Section shall survive the payment of the Loans and all other amounts payable hereunder or under the other Loan Documents and the termination of this Agreement. If the Borrower shall reimburse the Administrative Agent for any Indemnifiable Amount following payment by any Lender to the Administrative Agent in respect of such Indemnifiable Amount pursuant to this Section, the Administrative Agent shall share such reimbursement on a ratable basis with each Lender making any such payment.

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#### **7. Section 12.8. Successor Administrative Agent.**

(a) The Administrative Agent may (i) resign at any time as Administrative Agent under the Loan Documents by giving written notice thereof to the Lenders and the Borrower or (ii) be removed as Administrative Agent under the Loan Documents for gross negligence or willful misconduct, as determined by a court of competent jurisdiction in a final, non-appealable judgment, upon 30 days' prior written notice by all Lenders (other than the Lender then acting as Administrative Agent). Upon any such resignation or removal, the Requisite Lenders shall have the right to appoint a successor Administrative Agent which appointment shall, provided no Default or Event of Default exists, be subject to the Borrower's approval, which approval shall not be

unreasonably withheld or delayed (except that the Borrower shall, in all events, be deemed to have approved each Lender and any of its Affiliates as a successor Administrative Agent). If no successor Administrative Agent shall have been so appointed in accordance with the immediately preceding sentence, and shall have accepted such appointment, within 30 days after the resigning Administrative Agent's giving of notice of resignation or the giving of notice of removal of the Administrative Agent, then the current Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent, which shall be a Lender, if any Lender shall be willing to serve, or otherwise shall be a financial institution having total combined assets of at least \$50,000,000,000 and an Eligible Assignee or another Person acceptable to the Requisite Lenders.

(b) If the Administrative Agent shall notify the Borrower and the Lenders that no Lender has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (2) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made to each Lender directly, until such time as a successor Administrative Agent has been appointed as provided for above in this Section; provided, further that such Lenders so acting directly shall be and be deemed to be protected by all indemnities and other provisions herein for the benefit and protection of the Administrative Agent as if each such Lender was itself the Administrative Agent. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent pursuant to the terms of clause (a) or (b) above, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the current Administrative Agent, and the current Administrative Agent shall be discharged from its duties and obligations under the Loan Documents. After any Administrative Agent's resignation or removal hereunder as Administrative Agent pursuant to the terms of clause (a) above, the provisions of this Article XII. shall continue to inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under the Loan Documents. Notwithstanding anything contained herein to the contrary, the Administrative Agent may assign its rights and duties under the Loan Documents to any of its Affiliates by giving the Borrower and each Lender prior written notice.

## 2. Section 12.9. Titled Agents.

Each of the Lead Arrangers and the Syndication Agents (each a "Titled Agent") in each such respective capacity, assumes no responsibility or obligation hereunder, including, without limitation, for servicing, enforcement or collection of any of the Loans, nor any duties as an agent hereunder for the Lenders. The titles given to the Titled Agents are solely honorific and imply no fiduciary responsibility on the part of the Titled Agents to the Administrative Agent, any Lender, the Parent, the Borrower or any other Loan Party and the use of such titles does not impose on the Titled Agents any duties or obligations greater than those of any other Lender or entitle the Titled Agents to any rights other than those to which any other Lender is entitled.

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## 3. ARTICLE XIII. MISCELLANEOUS

### 4. Section 13.1. Notices.

Unless otherwise provided herein (including without limitation as provided in Section 9.5.), communications provided for hereunder shall be in writing and shall be mailed, telecopied, or delivered as follows:

If to the Borrower and/or the Parent:

Prior to December 1, 2017:

DiamondRock Hospitality Limited Partnership  
3 Bethesda Metro Center, Suite 1500  
Bethesda, Maryland 20814  
Attn: Chief Financial Officer and General Counsel  
Telephone: 240-744-1190  
Telecopy: 240-744-1199

From and after December 1, 2017:

DiamondRock Hospitality Limited Partnership  
2 Bethesda Metro Center, 14<sup>th</sup> Floor  
Bethesda, Maryland 20814  
Attn: Chief Financial Officer and General Counsel  
Telephone: 240-744-1190  
Telecopy: 240-744-1199

in each case, with a copy to:

Willkie Farr & Gallagher LLP  
787 Seventh Ave.  
New York, New York 10019  
Attn: David Drewes  
Telephone: 212-728-8653  
Telecopy: 212-728-9653

If to the Administrative Agent:

Regions Bank  
1180 West Peachtree St NW, Suite 1400  
Atlanta, GA 30309  
email: [agencyervices@regions.com](mailto:agencyervices@regions.com)  
Telephone: (404) 279-7478

with a copy to:

Regions Bank  
1900 5<sup>th</sup> Avenue North, 15<sup>th</sup> Floor  
Birmingham, AL 35303

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Attn: Real Estate Corporate Banking — Operations  
e-mail: RECB@regions.com  
Telephone: (205) 264-7437  
Telecopy: (205) 264-5456

If to any other Lender:

To such Lender's address or telecopy number as set forth in the applicable Administrative Questionnaire.

or, as to each party at such other address as shall be designated by such party in a written notice to the other parties delivered in compliance with this Section; provided, a Lender shall only be required to give notice of any such other address to the Administrative Agent and the Borrower. All such notices and other communications shall be effective (i) if mailed or sent by overnight courier, upon the first to occur of receipt or the expiration of 3 days after the deposit in the United States Postal Service mail, postage prepaid and addressed to the address of the Parent or the Borrower or the Administrative Agent and Lenders at the addresses specified; (ii) if telecopied, when transmitted; (iii) if hand delivered, when delivered; or (iv) if delivered in accordance with Section 9.5. to the extent applicable; provided, however, that, in the case of the immediately preceding clauses (i), (ii) and (iii), non-receipt of any communication as of the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. Notwithstanding the immediately preceding sentence, all notices or communications to the Administrative Agent or any Lender under Article II. shall be effective only when actually received. None of the Administrative Agent or any Lender shall incur any liability to any Loan Party (nor shall the Administrative Agent incur any liability to the Lenders) for acting upon any telephonic notice referred to in this Agreement which the Administrative Agent or such Lender, as the case may be, believes in good faith to have been given by a Person authorized to deliver such notice or for otherwise acting in good faith hereunder. Failure of a Person designated to get a copy of a notice to receive such copy shall not affect the validity of notice properly given to another Person.

## **2. Section 13.2. Expenses.**

The Borrower agrees (a) to pay or reimburse the Administrative Agent for all of its reasonable out-of-pocket costs and expenses incurred in connection with the preparation, negotiation and execution of, and any amendment, supplement or modification to, any of the Loan Documents (including due diligence expenses and reasonable travel expenses related to closing), and the consummation of the transactions contemplated hereby and thereby, including the reasonable and documented fees and disbursements of counsel to the Administrative Agent and all costs and expenses of the Administrative Agent in connection with the use of IntraLinks, SyndTrak or other similar information transmission systems in connection with the Loan Documents and of the Administrative Agent in connection with the review of Properties for inclusion as Unencumbered Properties and the Administrative Agent's other activities under Article IV., including the reasonable and documented fees and disbursements of counsel to the Administrative Agent relating to all such activities, (b) to pay or reimburse the Administrative Agent and the Lenders for all their reasonable costs and expenses incurred in connection with the enforcement or preservation of any rights under the Loan Documents and the Fee Letters, including the reasonable and documented fees and disbursements of their respective counsel (including the allocated fees and expenses of in-house counsel) and any payments in indemnification or otherwise payable by the Lenders to the Administrative Agent pursuant to the Loan Documents, (c) to pay, and indemnify and hold harmless the Administrative Agent and the Lenders from, any and all recording and filing fees and any and all liabilities with respect to, or resulting from any failure to pay or delay in paying, documentary,

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stamp, excise and other similar taxes, if any, which may be payable or determined to be payable in connection with the execution and delivery of any of the Loan Documents, or consummation of any amendment, supplement or modification of, or any waiver or consent under or in respect of, any Loan Document and (d) to the extent not already covered by any of the preceding subsections, to pay or reimburse the documented fees and disbursements of counsel to the Administrative Agent and any Lender incurred in connection with the representation of the Administrative Agent or such Lender in any matter relating to or arising out of any bankruptcy or other proceeding of the type described in Sections 11.1.(f) or 11.1.(g), including, without limitation (i) any motion for relief from any stay or similar order, (ii) the negotiation, preparation, execution and delivery of any document relating to the Obligations and (iii) the negotiation and preparation of any debtor-in-possession financing or any plan of reorganization of the Borrower or any other Loan Party, whether proposed by the Borrower, such Loan Party, the Lenders or any other Person, and whether such fees and expenses are incurred prior to, during or after the commencement of such proceeding or the confirmation or conclusion of any such proceeding. If the Borrower shall fail to pay any amounts required to be paid by it pursuant to this Section, the Administrative Agent and/or the Lenders may pay such amounts on behalf of the Borrower and such amounts shall be deemed to be Obligations owing hereunder.

## **2. Section 13.3. Setoff.**

Subject to Section 3.3. and in addition to any rights now or hereafter granted under Applicable Law and not by way of limitation of any such rights, the Borrower hereby authorizes the Administrative Agent, each Lender, each Affiliate of the Administrative Agent or any Lender, and each Participant (but not Affiliates of a Participant), at any time or from time to time, to the fullest extent permitted by Applicable Law, while an Event of Default exists, without notice to the Borrower or to any other Person, any such notice being hereby expressly waived, but in the case of a Lender, an Affiliate of a Lender, or a Participant, subject to receipt of the prior written consent of the Requisite Lenders exercised in their sole discretion, to set off and to appropriate and to apply any and all deposits (general or special, including, but not limited to, indebtedness evidenced by certificates of deposit, whether matured or unmatured) and any other indebtedness at any time held or owing by the Administrative Agent, such Lender, any Affiliate of the Administrative Agent or such Lender, or such Participant, to or for the credit or the account of the Borrower against and on account of any of the Obligations, irrespective of whether or not any or all of the

Loans and all other Obligations have been declared to be, or have otherwise become, due and payable as permitted by Section 11.2., and although such Obligations shall be contingent or unmatured. Notwithstanding anything to the contrary in this Section, if any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 3.9. and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. Each Lender agree to make reasonable efforts to notify the Borrower promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

## 2. Section 13.4. Litigation; Jurisdiction; Other Matters; Waivers.

(a) EACH PARTY HERETO ACKNOWLEDGES THAT ANY DISPUTE OR CONTROVERSY BETWEEN OR AMONG THE PARENT, THE BORROWER, THE ADMINISTRATIVE AGENT OR ANY OF THE LENDERS WOULD BE BASED ON DIFFICULT AND COMPLEX ISSUES OF LAW AND FACT AND WOULD RESULT IN DELAY AND EXPENSE TO THE PARTIES. ACCORDINGLY, TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE LENDERS, THE ADMINISTRATIVE AGENT, THE PARENT AND THE

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BORROWER HEREBY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING OF ANY KIND OR NATURE IN ANY COURT OR TRIBUNAL IN WHICH AN ACTION MAY BE COMMENCED BY OR AGAINST ANY PARTY HERETO ARISING OUT OF THIS AGREEMENT, THE NOTES, ANY OTHER LOAN DOCUMENT OR THE FEE LETTERS OR BY REASON OF ANY OTHER SUIT, CAUSE OF ACTION OR DISPUTE WHATSOEVER BETWEEN OR AMONG THE PARENT, THE BORROWER, THE ADMINISTRATIVE AGENT OR ANY OF THE LENDERS OF ANY KIND OR NATURE RELATING TO ANY OF THE LOAN DOCUMENTS.

(b) EACH OF THE PARENT, THE BORROWER, THE ADMINISTRATIVE AGENT AND EACH LENDER HEREBY AGREES THAT THE FEDERAL DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK AND ANY STATE COURT LOCATED IN THE BOROUGH OF MANHATTAN OF NEW YORK, NEW YORK SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN OR AMONG THE PARENT, THE BORROWER, THE ADMINISTRATIVE AGENT OR ANY OF THE LENDERS, ARISING OUT OF THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE FEE LETTERS OR IN CONNECTION WITH OR BY REASON OF ANY OTHER SUIT, CAUSE OF ACTION OR DISPUTE WHATSOEVER BETWEEN OR AMONG THE PARENT, THE BORROWER, THE ADMINISTRATIVE AGENT OR ANY OF THE LENDERS OF ANY KIND OR NATURE RELATING TO ANY OF THE LOAN DOCUMENTS. THE PARENT, THE BORROWER AND EACH OF THE LENDERS EXPRESSLY SUBMIT AND CONSENT IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED IN SUCH COURTS. EACH PARTY FURTHER WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURT OR THAT SUCH ACTION OR PROCEEDING WAS BROUGHT IN AN INCONVENIENT FORUM AND EACH AGREES NOT TO PLEAD OR CLAIM THE SAME. THE CHOICE OF FORUM SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE BRINGING OF ANY ACTION BY THE ADMINISTRATIVE AGENT OR ANY LENDER REGARDING THE ENFORCEMENT BY THE ADMINISTRATIVE AGENT OR ANY LENDER OF ANY JUDGMENT OBTAINED IN SUCH FORUM IN ANY OTHER APPROPRIATE JURISDICTION.

(c) THE PROVISIONS OF THIS SECTION HAVE BEEN CONSIDERED BY EACH PARTY WITH THE ADVICE OF COUNSEL AND WITH A FULL UNDERSTANDING OF THE LEGAL CONSEQUENCES THEREOF, AND SHALL SURVIVE THE PAYMENT OF THE LOANS AND ALL OTHER AMOUNTS PAYABLE HEREUNDER OR UNDER THE OTHER LOAN DOCUMENTS AND THE TERMINATION OF THIS AGREEMENT.

## 3. Section 13.5. Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Parent or the Borrower may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of the immediately following subsection (b), (ii) by way of participation in accordance with the provisions of the immediately following subsection (d) or (iii) by way of pledge or assignment of a security interest subject to the restrictions of the immediately following subsection (f) (and, subject to the last sentence of the immediately following subsection (b), any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in the

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immediately following subsection (d) and, to the extent expressly contemplated hereby, the Related Parties of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of an assigning Lender's Commitment and/or the Loans at the time owing to it or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in the immediately preceding subsection (A), the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding

balance of the Loans of the assigning Lender subject to each such assignment (in each case, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$5,000,000 in the case of any assignment of a Commitment or a Loan, unless each of the Administrative Agent and, so long as no Default or Event of Default shall exist, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided, however, that if, after giving effect to such assignment, the amount of the Commitment held by such assigning Lender or the outstanding principal balance of the Loans of such assigning Lender, as applicable, would be less than \$5,000,000, then such assigning Lender shall assign the entire amount of its Commitment or the Loans at the time owing to it.

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan or the Commitment assigned.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by clause (i)(B) of this subsection (b) and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (x) a Default or Event of Default shall exist at the time of such assignment or (y) such assignment is to a Lender, to an Affiliate of a Lender or to an Approved Fund; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within 10 Business Days after having received notice thereof; and

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of a Loan if such assignment is to a Person that is not already a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender.

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(iv) Assignment and Assumption; Notes. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$4,500 for each assignment (which fee the Administrative Agent may, in its sole discretion, elect to waive), and the assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire. If requested by the transferor Lender or the assignee, upon the consummation of any assignment, the transferor Lender, the Administrative Agent and the Borrower shall make appropriate arrangements so that new Notes are issued to the assignee and such transferor Lender, as appropriate.

(v) No Assignment to Certain Person. No such assignment shall be made to (A) the Borrower or any of the Borrower's Affiliates or Subsidiaries (except as permitted by Section 13.5.(g)) or (B) to any Defaulting Lender or any of its Subsidiaries, or to any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B).

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural person.

(vii) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full pro rata share of all Loans in accordance with its Pro Rata Share. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under Applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to the immediately following subsection (c), from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 5.4., 13.2. and 13.9. and the other provisions of this Agreement and the other Loan Documents as provided in Section 13.10. with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with the immediately following subsection (d).

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(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at the Principal Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) **Participations.** Any Lender may at any time, without the consent of, or notice to, the Parent, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person or the Borrower or any of their respective Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Parent, the Borrower, the Administrative Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver of any provision of any Loan Document described in the second sentence of Section 13.6. that adversely affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.10., 5.1., 5.4. (subject to the requirements and limitations therein, including the requirements under Section 3.10.(g) (it being understood that the documentation required under Section 3.10.(g) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Section 5.8. as if it were an assignee under subsection (b) of this Section; and (B) shall not be entitled to receive any greater payment under Sections 5.1. or 3.10., with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Regulatory Change that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 5.8. with respect to any Participant. To the extent permitted by Applicable Law, each Participant also shall be entitled to the benefits of Section 13.3. as though it were a Lender, provided such Participant agrees to be subject to Section 3.3. as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the

Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) **Certain Pledges.** Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) **No Registration.** Each Lender agrees that, without the prior written consent of the Borrower and the Administrative Agent, it will not make any assignment hereunder in any manner or under any circumstances that would require registration or qualification of, or filings in respect of, any Loan or Note under the Securities Act or any other securities laws of the United States of America or of any other jurisdiction.

(g) **Borrower Buybacks.** Notwithstanding anything in this Agreement to the contrary, any Lender may, at any time, assign all or a portion of its Loans on a non-pro rata basis to the Borrower or any of its Subsidiaries or Affiliates in accordance with the procedures set forth on Exhibit I, pursuant to an offer made available to all Lenders on a pro rata basis (a "Dutch Auction"), subject to the following limitations:

(i) The Borrower and any such Subsidiary or Affiliate to which such assignment is made, as applicable, shall represent and warrant, as of the date of the launch of the Dutch Auction and on the date of any such assignment, that neither it, its Affiliates nor any of its respective directors or officers has any Excluded Information that has not been disclosed to the Lenders generally (other than to the extent any such Lender does not wish to receive material non-public information with respect to the Borrower or such Subsidiary or Affiliate or any of their respective securities) prior to such date;

(ii) immediately and automatically, without any further action on the part of the Borrower or any of its Subsidiaries or Affiliates, any Lender, the Administrative Agent or any other Person, upon the effectiveness of such assignment of Loans from a Lender to the Borrower or its Subsidiaries or Affiliates, as applicable, such Loans and all rights and obligations as a Lender related thereto shall, for all purposes under this Agreement, the other Loan Documents and otherwise, be deemed to be irrevocably prepaid, terminated, extinguished, cancelled and of no further force and effect and the Borrower (or any such Subsidiary or Affiliate to which such assignment is made, as applicable) shall neither obtain nor have any rights as a Lender hereunder or under the other Loan Documents by virtue of such assignment; and

(iii) no Default or Event of Default shall have occurred and be continuing before or immediately after giving effect to such assignment.

## 2. Section 13.6. Amendments and Waivers.

(a) **Generally.** Except as otherwise expressly provided in this Agreement, (i) any consent or approval required or permitted by this Agreement or in any other Loan Document to be given by the Lenders may be given, (ii) any term of this Agreement or of any other Loan Document may be amended, (iii) the performance or observance by the Parent, the Borrower, any other Loan Party or any other Subsidiary of any terms of this Agreement or such other Loan Document may be waived, and (iv) the continuance of any Default or Event of Default may be waived (either generally or in a particular instance and either retroactively or prospectively) with, but only with, the written consent of the Requisite Lenders

(or the Administrative Agent at the written direction of the Requisite Lenders), and, in the case of an amendment to any Loan Document, the written consent of each Loan Party which is party thereto.

(b) **Additional Lender Consents.** In addition to the forgoing requirements, no amendment, waiver or consent shall:

- (i) increase (or reinstate) the Commitment of a Lender or subject a Lender to any additional obligations without the written consent of such Lender;
- (ii) reduce the principal of, or interest that has accrued or the rates of interest that will be charged on the outstanding principal amount of, any Loans or other Obligations without the written consent of each Lender directly affected thereby; provided, however, only the written consent of the Requisite Lenders shall be required for the waiver of interest payable at the Post-Default Rate, retraction of the imposition of interest at the Post-Default Rate and amendment of the definition of “Post-Default Rate”;
- (iii) reduce the amount of any Fees payable to a Lender hereunder or postpone any date fixed for payment thereof without the written consent of such Lender;
- (iv) modify the definition of “Termination Date” or otherwise postpone any date fixed for any payment of principal of, or interest on, any Loans or for the payment of Fees or any other Obligations (including the waiver of any Default or Event of Default as a result of the nonpayment of any such Obligations as and when due), in each case, without the written consent of each Lender;
- (v) modify the definition of “Pro Rata Share” or amend or otherwise modify the provisions of Section 3.2., in each case, without the written consent of each Lender;
- (vi) amend this Section or amend the definitions of the terms used in this Agreement or the other Loan Documents insofar as such definitions affect the substance of this Section, in each case, without the written consent of each Lender;
- (vii) modify the definition of the term “Requisite Lenders” or modify in any other manner the number or percentage of the Lenders required to make any determinations or waive any rights hereunder or to modify any provision hereof, in each case, without the written consent of each Lender;
- (viii) modify any provision of a Loan Document the modification of which expressly requires the consent of all Lenders or all Lenders directly affected by such modification, in each case, without the written consent of all Lenders or all such directly affected Lenders, as the case may be;
- (ix) release any Guarantor from its obligations under the Guaranty except as contemplated by Section 8.15., without the written consent of each Lender; or
- (x) waive a Default or Event of Default under Section 11.1.(a) or Section 11.1.(b), in each case, without the written consent of each Lender directly affected thereby.

(c) Amendment of Administrative Agent’s Duties, Etc. No amendment, waiver or consent unless in writing and signed by the Administrative Agent, in addition to the Lenders required hereinabove to take such action, shall affect the rights or duties of the Administrative Agent under this Agreement or

any of the other Loan Documents. No waiver shall extend to or affect any obligation not expressly waived or impair any right consequent thereon and any amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose set forth therein. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased, reinstated or extended without the written consent of such Defaulting Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the written consent of such Defaulting Lender. Except as otherwise provided in Section 12.5., no course of dealing or delay or omission on the part of the Administrative Agent or any Lender in exercising any right shall operate as a waiver thereof or otherwise be prejudicial thereto. Any Event of Default occurring hereunder shall continue to exist until such time as such Event of Default is waived in writing in accordance with the terms of this Section, notwithstanding any attempted cure or other action by the Borrower, any other Loan Party or any other Person subsequent to the occurrence of such Event of Default. Except as otherwise explicitly provided for herein or in any other Loan Document, no notice to or demand upon any Loan Party shall entitle such Loan Party to other or further notice or demand in similar or other circumstances.

(d) Technical Amendments. Notwithstanding anything to the contrary in this Section 13.6., if the Administrative Agent and the Borrower have jointly identified an ambiguity, omission, mistake or defect in any provision of this Agreement or an inconsistency between provisions of this Agreement, the Administrative Agent and the Borrower shall be permitted to amend such provision or provisions to cure such ambiguity, omission, mistake, defect or inconsistency so long as to do so would not adversely affect the interests of the Lenders. Any such amendment shall become effective without any further action or consent of any other party to this Agreement.

## **2. Section 13.7. Nonliability of Administrative Agent and Lenders.**

The relationship between the Borrower, on the one hand, and the Lenders and the Administrative Agent, on the other hand, shall be solely that of borrower and lender. Neither the Administrative Agent nor any Lender shall have any fiduciary responsibilities to the Borrower or the Parent and no provision in this Agreement or in any of the other Loan Documents, and no course of dealing between or among any of the parties hereto, shall be deemed to create any fiduciary duty owing by the Administrative Agent or any Lender to any Lender, the Borrower, any Subsidiary or any other Loan Party. Neither the Administrative Agent nor any Lender undertakes any responsibility to the Borrower or the Parent to review or inform the Borrower or the Parent of any matter in connection with any phase of the business or operations of the Borrower or the Parent.

## **3. Section 13.8. Confidentiality.**

The Administrative Agent and each Lender shall maintain the confidentiality of all Information (as defined below) but in any event may make disclosure: (a) to its Affiliates and to its and its Affiliates' other respective Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any actual or proposed assignee, Participant or other transferee in connection with a potential transfer of any Commitment or participation therein as permitted hereunder, or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations; (c) as required or requested by any Governmental Authority or representative thereof

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or pursuant to legal process or in connection with any legal proceedings, or as otherwise required by Applicable Law; (d) to the Administrative Agent's or such Lender's independent auditors and other professional advisors (provided they shall be notified of the confidential nature of the information); (e) in connection with the exercise of any remedies under any Loan Document (or any Specified Derivatives Contract) or any action or proceeding relating to any Loan Document (or any Specified Derivatives Contract) or the enforcement of rights hereunder or thereunder; (f) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section actually known by the Administrative Agent or such Lender to be a breach of this Section or (ii) becomes available to the Administrative Agent, any Lender or any Affiliate of the Administrative Agent or any Lender on a nonconfidential basis from a source other than the Borrower or any Affiliate of the Borrower; (g) to the extent requested by, or required to be disclosed to, any nationally recognized rating agency or regulatory or similar authority (including any self-regulatory authority, such as the National Association of Insurance Commissioners) having or purporting to have jurisdiction over it; (h) to bank trade publications, such information to consist of deal terms and other information customarily found in such publications; (i) to any other party hereto; (j) on a confidential basis to the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Loan Documents; and (k) with the consent of the Borrower. Notwithstanding the foregoing, the Administrative Agent and each Lender may disclose any such confidential information, without notice to the Borrower or any other Loan Party, to Governmental Authorities in connection with any regulatory examination of the Administrative Agent or such Lender or in accordance with the regulatory compliance policy of the Administrative Agent or such Lender. As used in this Section, the term "Information" means all information received from the Borrower, any other Loan Party, any other Subsidiary or Affiliate relating to any Loan Party or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender on a nonconfidential basis prior to disclosure by the Borrower, any other Loan Party, any other Subsidiary or any Affiliate, provided that, in the case of any such information received from the Borrower, any other Loan Party, any other Subsidiary or any Affiliate after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

#### **4. Section 13.9. Indemnification.**

(a) The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnified Party") against, and hold each Indemnified Party harmless from, and shall pay or reimburse any such Indemnified Party for, any and all losses, claims (including without limitation, Environmental Claims), damages, liabilities and related expenses (including without limitation, the fees, charges and disbursements of any counsel for any Indemnified Party (which counsel may be employees of any Indemnified Party)), incurred by any Indemnified Party or asserted against any Indemnified Party by any Person (including the Borrower, any other Loan Party or any other Subsidiary) other than such Indemnified Party and its Related Parties, arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto or thereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower, any other Loan Party or any other Subsidiary, or any Environmental Claim related in any way to the Borrower, any other Loan Party or any other Subsidiary, (iv) any actual or prospective claim, litigation, investigation or proceeding (an "Indemnity Proceeding") relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower, any other Loan

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Party or any other Subsidiary, and regardless of whether any Indemnified Party is a party thereto, or (v) any claim (including without limitation, any Environmental Claims), investigation, litigation or other proceeding (whether or not the Administrative Agent or any Lender is a party thereto) and the prosecution and defense thereof, arising out of or in any way connected with the Loans, this Agreement, any other Loan Document, or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby, including without limitation, reasonable attorneys and consultant's fees; provided, however, that such indemnity shall not, as to any Indemnified Party, be available to the extent that such losses, claims, damages, liabilities or related expenses (i) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnified Party or (ii) resulted from any dispute solely between and among Indemnified Parties that does not arise from an act or omission by any Loan Party or any of its Affiliates (other than with respect to a claim against an Indemnified Party acting in its capacity as Administrative Agent or arranger or similar role under the Loan Documents); provided, that this Section 13.9.(a) shall not apply with respect to Taxes other than any Taxes that represent losses or damages arising under any non-Tax claim.

(b) If and to the extent that the obligations of the Borrower under this Section are unenforceable for any reason, the Borrower hereby agrees to make the maximum contribution to the payment and satisfaction of such obligations which is permissible under Applicable Law.

(c) The Borrower's obligations under this Section shall survive any termination of this Agreement and the other Loan Documents and the payment in full in cash of the Obligations, and are in addition to, and not in substitution of, any of the other obligations set forth in this Agreement or any other Loan Document to which it is a party.

References in this Section 13.9. to "Lender" or "Lenders" shall be deemed to include such Persons (and their Affiliates) in their capacity as Specified Derivatives Providers.

#### **2. Section 13.10. Termination; Survival.**

This Agreement shall terminate at such time as (a) all of the Commitments have been terminated, (b) none of the Lenders is obligated any longer under this Agreement to make any Loans and (d) all Obligations (other than obligations which survive as provided in the following sentence) have been paid and satisfied in full. The indemnities to which the Administrative Agent and the Lenders are entitled under the provisions of Sections 3.10., 5.1., 5.4., 12.7., 13.2. and 13.9. and any other provision of this Agreement and the other Loan Documents, and the provisions of Section 13.4., shall continue in full force and effect and shall protect the Administrative Agent and the Lenders (i) notwithstanding any termination of this Agreement, or of the other Loan Documents, against events arising after such termination as well as before and (ii) at all times after any such party ceases to be a party to this Agreement with respect to all matters and events existing on or prior to the date such party ceased to be a party to this Agreement. The Administrative Agent agrees to furnish to the Borrower, upon the Borrower's request and at the Borrower's sole cost and expense, any release, termination, or other agreement or document evidencing the foregoing termination. The provisions of Section 13.9 shall survive termination of this Agreement for a period of one year.

## **2. Section 13.11. Severability of Provisions.**

If any provision under this Agreement or the other Loan Documents shall be determined by a court of competent jurisdiction to be invalid or unenforceable, that provision shall be deemed severed from the Loan Documents, and the validity, legality and enforceability of the remaining provisions shall

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remain in full force as though the invalid, illegal, or unenforceable provision had never been part of the Loan Documents.

## **3. Section 13.12. GOVERNING LAW.**

THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS EXECUTED, AND TO BE FULLY PERFORMED, IN SUCH STATE.

## **4. Section 13.13. Counterparts.**

To facilitate execution, this Agreement and any amendments, waivers, consents or supplements may be executed in any number of counterparts as may be convenient or required (which may be effectively delivered by facsimile, in portable document format ("PDF") or other similar electronic means). It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto.

## **5. Section 13.14. Obligations with Respect to Loan Parties.**

The obligations of the Parent or the Borrower to direct or prohibit the taking of certain actions by the other Loan Parties as specified herein shall be absolute and not subject to any defense the Parent or the Borrower may have that the Parent or the Borrower does not control such Loan Parties.

## **6. Section 13.15. Independence of Covenants.**

All covenants hereunder shall be given in any jurisdiction independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or be otherwise within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

## **7. Section 13.16. Limitation of Liability.**

None of the Administrative Agent or any Lender, or any Related Party shall have any liability with respect to, and each of the Parent and the Borrower hereby waives, releases, and agrees not to sue any of them upon, any claim for any special, indirect, incidental, or consequential damages suffered or incurred by the Borrower in connection with, arising out of, or in any way related to, this Agreement, any of the other Loan Documents or the Fee Letters, or any of the transactions contemplated by this Agreement or any of the other Loan Documents. Each of the Parent and the Borrower hereby waives, releases, and agrees not to sue the Administrative Agent or any Lender or any of the Administrative Agent's or any Lender's affiliates, officers, directors, employees, attorneys, or agents for punitive damages in respect of any claim in connection with, arising out of, or in any way related to, this Agreement, any of the other Loan Documents, the Fee Letters, or any of the transactions contemplated by this Agreement or financed hereby. No Indemnified Party referred to in Section 13.9. shall be liable for damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby, except to the extent resulting from such Indemnified Party's gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final, non-appealable judgment).

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## **2. Section 13.17. Entire Agreement.**

This Agreement, the Notes, the other Loan Documents and the Fee Letters embody the final, entire agreement among the parties hereto and supersede any and all prior commitments, agreements, representations, and understandings, whether written or oral, relating to the subject matter hereof and thereof and may not be contradicted or varied by evidence of prior, contemporaneous, or subsequent oral agreements or discussions of the parties hereto. There are no oral agreements among the parties hereto. To the extent any term of this Agreement is inconsistent with a term of any other Loan Document to which the parties of this Agreement are party, the term of this Agreement shall control to the extent of such inconsistency.

## **3. Section 13.18. Construction.**

The Administrative Agent, the Parent, the Borrower and each Lender acknowledge that each of them has had the benefit of legal counsel of its own choice and has been afforded an opportunity to review this Agreement and the other Loan Documents with its legal counsel and that this Agreement and the

other Loan Documents shall be construed as if jointly drafted by the Administrative Agent, the Parent, the Borrower and each Lender.

#### 4. Section 13.19. Headings.

The paragraph and section headings in this Agreement are provided for convenience of reference only and shall not affect its construction or interpretation.

#### 5. Section 13.20. New York Mortgages.

(a) Generally. The parties hereto acknowledge and agree that as an accommodation to the Parent and the Borrower, the Administrative Agent and the Lenders may, from time to time, in their sole discretion, accept the benefits of Mortgages encumbering real property located in the State of New York assigned from time to time pursuant to the terms of this Section to the Administrative Agent, for its benefit and the benefit of the Lenders (any such Mortgage, including the Closing Date Mortgage, a “New York Mortgage”) and the Administrative Agent intends to accept the Closing Date Mortgage on the Effective Date subject to the terms and conditions set forth herein. Any Lender’s agreement to accept the benefit of a New York Mortgage in its sole discretion will be subject to, among other things, such Lender’s determination that the real property subject to such Mortgage is not in a special flood hazard area.

(b) Assignment of New York Mortgages. In connection with the acceptance of the benefits of a New York Mortgage by the Administrative Agent and the Lenders, the Borrower shall cause to be delivered to the Administrative Agent each of the following, in form and substance satisfactory to the Administrative Agent:

- (i) the originals (or if not available, copies) of each outstanding promissory note evidencing the Indebtedness secured by such New York Mortgage, duly endorsed (by allonge or otherwise) to the order of the Administrative Agent (collectively, “Existing New York Notes”);
- (ii) an amended and restated promissory note (each a “Restated New York Note”) which amends, restates and, if applicable, consolidates the applicable Existing New York Notes, which (x) shall be payable to the order of the Administrative Agent for the benefit of itself and the Lenders, (y) shall be in an initial aggregate principal amount equal to the principal amount of

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Loans advanced hereunder in connection with the transfer of such Existing New York Notes to the Administrative Agent for the benefit of itself and the Lenders and (z) shall incorporate by reference all of the applicable terms and conditions of this Agreement and the other Loan Documents;

- (iii) a copy of such New York Mortgage, including all amendments thereto, showing all recording information thereon certified to the knowledge of an authorized officer of the Borrower as being true, correct and complete;
- (iv) an assignment of such New York Mortgage, in recordable form, executed by each holder of the Indebtedness secured by such New York Mortgage (or an authorized agent acting on behalf of each such holder);
- (v) a modification to such New York Mortgage executed by the applicable Loan Parties, such modification, among other things, to modify such New York Mortgage (x) to provide that it secures the applicable Restated New York Note, (y) to provide that the maximum principal sum of Obligations secured by such New York Mortgage at execution or in the future shall not exceed the initial principal amount of the applicable Restated New York Note and (z) to include language reasonably satisfactory to the Administrative Agent to the effect that payments in respect of the Obligations shall not be deemed to reduce the amount of the Obligations secured by such New York Mortgage until such time as the outstanding principal amount of the Obligations shall have been reduced to the initial principal amount of the applicable Restated New York Note;
- (vi) terminations of, or assignments and modifications to, any assignment of leases and rents, financing statements and any other document, instrument or agreement securing the Indebtedness secured by such New York Mortgage, as the Administrative Agent may reasonably request;
- (vii) a copy of any environmental assessment report on the Property subject to such New York Mortgage available to the Borrower, and if reasonably requested by the Administrative Agent, reliance letters from the environmental engineering firms performing such assessments addressed to the Administrative Agent and the Lenders; provided, however, if such a reliance letter is not provided, the Administrative Agent and the Lenders shall have no obligation to accept an assignment of such New York Mortgage;
- (viii) and environmental indemnity agreement executed by the Borrower, the Parent and any other Loan Party that owns or leases the Property encumbered by such New York Mortgage in favor of the Administrative Agent for its benefit and the benefit of the Lenders and in a form reasonably acceptable to the Administrative Agent; and
- (ix) such other documents, agreements and instruments as the Administrative Agent and the Lenders may reasonably request.

(c) Release of New York Mortgages. Notwithstanding any other provision of this Agreement or any other Loan Document to the contrary, including without limitation, Section 13.7., (i) upon the Borrower’s written request and at the Borrower’s sole cost and expense, the Administrative Agent shall release any or all of the New York Mortgages or assign any or all of the New York Mortgages to any Person requested by the Borrower (any such assignment to be without recourse or warranty whatsoever) and (ii) the Administrative Agent may in its discretion, and shall at the direction of the Requisite Lenders, release any or all of the New York Mortgages if the Administrative Agent has, or the Requisite Lenders

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have, reasonably determined that holding any of such New York Mortgages could be detrimental to the Administrative Agent or the Lenders, and so long as the Administrative Agent shall have given the Borrower written notice at least 5 days prior to any such release; provided, however, the Administrative Agent

shall not be required to give any such prior notice to the Borrower if the Administrative Agent, in its sole discretion, has determined that delay of such release would be detrimental to the Administrative Agent or the Lenders.

(d) **Indemnity.** Not in limitation of any of the Borrower’s obligations under Section 13.2. or 13.10., the Borrower shall and hereby agrees to indemnify, defend and hold harmless the Administrative Agent, each Lender and each other Indemnified Party from and against any and all losses, costs, claims, damages, liabilities, deficiencies, judgments or expenses of every kind and nature (including, without limitation, amounts paid in settlement, court costs and the fees and disbursements of counsel incurred in connection with any litigation, investigation, claim or proceeding or any advice rendered in connection therewith) incurred by an Indemnified Party in connection with, arising out of, or by reason of, any Indemnity Proceeding which is in any way related directly or indirectly to (i) the failure of any Person to pay any recording tax payable pursuant to N.Y. Tax Law, Ch. 60, Art. 11, Sec. 253 et seq. or other Applicable Laws of the State of New York or any political subdivision of such State or (ii) any New York Mortgage.

(e) The Borrower represents and warrants that no Property encumbered by a New York Mortgage is located in an area determined by the Federal Emergency Management Agency to have special flood hazards.

**6. Section 13.21. Acknowledgement and Consent to Bail-In of EEA Financial Institutions.**

Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and
- (b) the effects of any Bail-in Action on any such liability, including, if applicable:
  - (i) a reduction in full or in part or cancellation of any such liability;
  - (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial 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 this Agreement or any other Loan Document; or
  - (iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

[Signatures on Following Pages]

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

BORROWER:

DIAMONDROCK HOSPITALITY LIMITED PARTNERSHIP

By: DiamondRock Hospitality Company, its sole General Partner

By: /s/ Sean M. Mahoney

Name:	Sean M. Mahoney
Title:	Executive Vice President, Chief Financial Officer and Treasurer

PARENT:

DIAMONDROCK HOSPITALITY COMPANY

By: /s/ Sean M. Mahoney

Name:	Sean M. Mahoney
Title:	Executive Vice President, Chief Financial Officer and Treasurer

[Signatures Continued on Next Page]

By: /s/ T. Barrett Vawter  
Name: T. Barrett Vawter  
Title: Vice President

[Signatures Continued on Next Page]

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**[Signature Page to Term Loan Agreement with DiamondRock Hospitality Limited Partnership]**

KEYBANK NATIONAL ASSOCIATION, as a Lender

By: /s/ James Komperda  
Name: James Komperda  
Title: Vice President

[Signatures Continued on Next Page]

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**[Signature Page to Term Loan Agreement with DiamondRock Hospitality Limited Partnership]**

PNC BANK, NATIONAL ASSOCIATION, as a Lender

By: /s/ Katie Chowdhry  
Name: Katie Chowdhry  
Title: Vice President

[Signatures Continued on Next Page]

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**[Signature Page to Term Loan Agreement with DiamondRock Hospitality Limited Partnership]**

U.S. BANK NATIONAL ASSOCIATION, as a Lender

By: /s/ Timothy J. Tillman  
Name: Timothy J. Tillman  
Title: Vice President

[Signatures Continued on Next Page]

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**[Signature Page to Term Loan Agreement with DiamondRock Hospitality Limited Partnership]**

BANK OF AMERICA, N.A., as a Lender

By: /s/ Suzanne E. Pickett  
Name: Suzanne E. Pickett  
Title: Vice President

[Signatures Continued on Next Page]

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**[Signature Page to Term Loan Agreement with DiamondRock Hospitality Limited Partnership]**

BMO HARRIS BANK, N.A., as a Lender

By: /s/ Gwendolyn Gatz  
Name: Gwendolyn Gatz  
Title: Vice President

## SCHEDULE I

## Commitments

<u>Lender</u>		<u>Commitment Amount</u>
Regions Bank	\$	37,500,000
KeyBank National Association	\$	37,500,000
PNC Bank, National Association	\$	37,500,000
U.S. Bank National Association	\$	37,500,000
Bank of America, N.A.	\$	25,000,000
BMO Harris Bank N.A.	\$	25,000,000
Total:	\$	200,000,000

SCHEDULE 1.1(a)Approved Managers

<u>Manager</u>	<u>Notes</u>
Access Hotels & Resorts	
AccorHotels	Owner of Fairmont
Ace Hotel Group	
Aimbridge Hospitality	Owner of Evolution, Pillar, InterMountain
Auberge Resorts Collection	
Benchmark Resorts & Hotels	Recently merged with Gemstone
Charlie Palmer Group	
Crescent Hotels & Resorts, LLC,	
Crestline Hotels & Resorts, Inc.	
Concord Hospitality Enterprises Company	
Davidson Hotels & Resorts	
Denihan Hospitality Group	
Four Seasons Hotels & Resorts	
HEI Hotels & Resorts	
Hersha Hospitality Management	
Highgate Hotels	
Hilton Hotels Corporation	
Hyatt Hotels Corporation	
Intercontinental Hotel Group (IHG)	Includes Kimpton Hotels
Interstate Hotel Group	Includes RIM Hospitality
IMH Financial Corp.	
Kessler Collection Management, LLC	
Kokua Hospitality	
Loews Hotels & Resorts	
Magna Hospitality Group, L.C.	
Marriott International, Inc.	Includes Starwood, Ritz-Carlton
Montage Hotels & Resorts	
Noble House IKW, LLC	
Ocean Properties Ltd.	
OLS Hotels & Resorts	
OTO Development, LLC	
Pacifica Hotels	
Provenance Hotels	
Pyramid Hotel Group	
Sage Hospitality Resources, LLC	
sbe Hotel Group	Includes Morgans Hotel Group
Stonebridge Companies	
TPG Hotels & Resorts	
Two Roads Hospitality	Includes JDV, Commune, Destination
Vail Resorts Management Company	
Viceroy Hotel Group	
White Lodging Services	

SCHEDULE 1.1(b)

List of Loan Parties

DiamondRock Hospitality Limited Partnership	Borrower
DiamondRock Hospitality Company	Parent
Bloodstone TRS, Inc.	Guarantor
DiamondRock Alpharetta Owner, LLC	Guarantor
<i>DiamondRock Alpharetta Tenant, LLC</i>	<i>Guarantor</i>
DiamondRock Bethesda Owner Limited Partnership	Guarantor
<i>DiamondRock Bethesda Tenant, LLC</i>	<i>Guarantor</i>
DiamondRock Boston Broad Street Owner, LLC	Guarantor
<i>DiamondRock Boston Broad Street Tenant, LLC</i>	<i>Guarantor</i>
DiamondRock Burlington Owner, LLC	Guarantor
<i>DiamondRock Burlington Tenant, LLC</i>	<i>Guarantor</i>
DiamondRock Charleston Owner, LLC	Guarantor
<i>DiamondRock Charleston Tenant, LLC</i>	<i>Guarantor</i>
DiamondRock Chicago Conrad Owner, LLC	Guarantor
<i>DiamondRock Chicago Conrad Tenant, LLC</i>	<i>Guarantor</i>
DiamondRock Chicago Owner, LLC	Guarantor
<i>DiamondRock Chicago Tenant, LLC</i>	<i>Guarantor</i>
DiamondRock Denver Downtown Owner, LLC	Guarantor
<i>DiamondRock Denver Downtown Tenant, LLC</i>	<i>Guarantor</i>
DiamondRock FL Owner, LLC	Guarantor
<i>DiamondRock FL Tenant, LLC</i>	<i>Guarantor</i>
DiamondRock HB Owner, LLC	Guarantor
<i>DiamondRock HB Tenant, LLC</i>	<i>Guarantor</i>
DiamondRock Key West North Owner, LLC	Guarantor
<i>DiamondRock Key West North Tenant, LLC</i>	<i>Guarantor</i>
DiamondRock KW South Owner, LLC	Guarantor
<i>DiamondRock KW South Tenant, LLC</i>	<i>Guarantor</i>
DiamondRock SF Sutter Street Owner, LLC	Guarantor
<i>DiamondRock SF Sutter Street Tenant, LLC</i>	<i>Guarantor</i>
DiamondRock Times Square Owner, LLC	Guarantor
<i>DiamondRock Times Square Tenant, LLC</i>	<i>Guarantor</i>
DiamondRock Vail Owner, LLC	Guarantor
<i>DiamondRock Vail Tenant, LLC</i>	<i>Guarantor</i>
DiamondRock AZ Holdings, LLC	Guarantor
Diamondrock AZ LA Owner, LLC	Guarantor
<i>Diamondrock AZ LA Tenant, LLC</i>	<i>Guarantor</i>
DiamondRock AZ OR Owner, LLC	Guarantor
<i>DiamondRock AZ OR Tenant, LLC</i>	<i>Guarantor</i>

*Accommodation Subsidiaries are noted in italics.*

SCHEDULE 4.1

Initial Unencumbered Borrowing Base Properties

**Property**

Atlanta Marriott Alpharetta  
The Gwen Chicago  
Courtyard Denver Downtown  
Hilton Burlington  
Hilton Garden Inn New York City/Times Square Central  
Renaissance Charleston Hotel  
Westin Fort Lauderdale Beach Resort  
Sheraton Suites Key West  
Chicago Marriott Downtown Magnificent Mile

SCHEDULE 7.1.(b)

Ownership Structure

PART I

Company	Jurisdiction of	Equity Interest Holders	% of Ownership	Material/ Significant/Foreign/	State Qualification
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	Organization			and/or Excluded/or Accommodation (1) Subsidiary or N/A	
Bloodstone TRS, Inc.	Delaware	DiamondRock Hospitality Limited Partnership	100%	Material	CA, MA, SC(2)
DiamondRock Acquisition, LLC	Delaware	DiamondRock Hospitality Limited Partnership	100%	N/A	N/A
DiamondRock Alpharetta Owner, LLC	Delaware	DiamondRock Hospitality Limited Partnership	100%	Material	GA
<i>DiamondRock Alpharetta Tenant, LLC</i>	<i>Delaware</i>	<i>Bloodstone TRS, Inc.</i>	<i>100%</i>	<i>Accommodation Subsidiary</i>	<i>GA</i>
DiamondRock AZ Holdings, LLC	Delaware	DiamondRock Hospitality Limited Partnership	100%	N/A	N/A
DiamondRock AZ LA Owner, LLC	Delaware	DiamondRock Hospitality Limited Partnership	100%	Significant	AZ
<i>DiamondRock AZ LA Tenant, LLC</i>	<i>Delaware</i>	<i>DiamondRock AZ Holdings, LLC</i>	<i>100%</i>	<i>Accommodation Subsidiary</i>	<i>AZ</i>
DiamondRock AZ OR Owner, LLC	Delaware	DiamondRock Hospitality Limited Partnership	100%	Significant	AZ
<i>DiamondRock AZ OR Tenant, LLC</i>	<i>Delaware</i>	<i>DiamondRock AZ Holdings, LLC</i>	<i>100%</i>	<i>Accommodation Subsidiary</i>	<i>AZ</i>
DiamondRock Bethesda General, LLC	Delaware	DiamondRock Hospitality Limited Partnership	100%	N/A	MD
DiamondRock Bethesda Limited, LLC	Delaware	DiamondRock Hospitality Limited Partnership	100%	N/A	MD
DiamondRock Bethesda Owner Limited Partnership (f/k/a Rock Spring Hotel Owner Limited Partnership)	Maryland	DiamondRock Bethesda General, LLC	1% (GP Interest)	Significant	N/A
		DiamondRock Bethesda Limited, LLC	99% (LP Interest)		

Company	Jurisdiction of Organization	Equity Interest Holders	% of Ownership	Material/ Significant/Foreign/ and/or Excluded/or Accommodation (1) Subsidiary or N/A	State Qualification
<i>DiamondRock Bethesda Tenant, LLC</i>	<i>Delaware</i>	<i>Bloodstone TRS, Inc.</i>	<i>100%</i>	<i>Accommodation Subsidiary</i>	<i>MD</i>
DiamondRock Boston Broad Street Owner, LLC	Delaware	DiamondRock Hospitality Limited Partnership	100%	Significant	MA
<i>DiamondRock Boston Broad Street Tenant, LLC</i>	<i>Delaware</i>	<i>Bloodstone TRS, Inc.</i>	<i>100%</i>	<i>Accommodation Subsidiary</i>	<i>MA</i>
DiamondRock Boston Owner, LLC	Delaware	DiamondRock Hospitality Limited Partnership	100%	Excluded	MA
DiamondRock Boston Retail Owner, LLC	Delaware	DiamondRock Hospitality Limited Partnership	100%	Excluded	MA
DiamondRock Boston Tenant, LLC	Delaware	Bloodstone TRS, Inc.	100%	Excluded	MA
DiamondRock Burlington Owner, LLC	Delaware	DiamondRock Hospitality Limited Partnership	100%	Significant	VT
<i>DiamondRock Burlington Tenant, LLC</i>	<i>Delaware</i>	<i>Bloodstone TRS, Inc.</i>	<i>100%</i>	<i>Accommodation Subsidiary</i>	<i>VT</i>
DiamondRock Cayman Islands, Inc.	Cayman Islands	DiamondRock Frenchman's Holdings, LLC	100%	Foreign	N/A
DiamondRock Charleston Owner, LLC	Delaware	DiamondRock Hospitality Limited Partnership	100%	Significant	SC
<i>DiamondRock Charleston Tenant, LLC</i>	<i>Delaware</i>	<i>Bloodstone TRS, Inc.</i>	<i>100%</i>	<i>Accommodation Subsidiary</i>	<i>SC</i>
DiamondRock Cherry Creek	Delaware	DiamondRock	100%	Excluded	CO

Owner, LLC		Hospitality Limited Partnership			
DiamondRock Cherry Creek Tenant, LLC	Delaware	Bloodstone TRS, Inc.	100%	Excluded	CO
DiamondRock Chicago Conrad Owner, LLC	Delaware	DiamondRock Hospitality Limited Partnership	100%	Significant	IL
<i>DiamondRock Chicago Conrad Tenant, LLC</i>	<i>Delaware</i>	<i>Bloodstone TRS, Inc.</i>	<i>100%</i>	<i>Accommodation Subsidiary</i>	<i>IL</i>
DiamondRock Chicago Owner, LLC	Delaware	DiamondRock Hospitality Limited Partnership	100%	Material	IL

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<b>Company</b>	<b>Jurisdiction of Organization</b>	<b>Equity Interest Holders</b>	<b>% of Ownership</b>	<b>Material/ Significant/Foreign/ and/or Excluded/or Accommodation (1) Subsidiary or N/A</b>	<b>State Qualification</b>
<i>DiamondRock Chicago Tenant, LLC</i>	<i>Delaware</i>	<i>Bloodstone TRS, Inc.</i>	<i>100%</i>	<i>Accommodation Subsidiary</i>	<i>IL</i>
DiamondRock DC Holdings, LLC	Delaware	DiamondRock Hospitality Limited Partnership	100%	N/A	N/A
DiamondRock DC M Street Owner, LLC	Delaware	DiamondRock DC Holdings, LLC	100%	Excluded	DC
DiamondRock DC M Street Tenant, LLC	Delaware	Bloodstone TRS, Inc.	100%	Excluded	DC
DiamondRock Denver Downtown Owner, LLC	Delaware	DiamondRock Hospitality Limited Partnership	100%	Significant	CO
<i>DiamondRock Denver Downtown Tenant, LLC</i>	<i>Delaware</i>	<i>Bloodstone TRS, Inc.</i>	<i>100%</i>	<i>Accommodation Subsidiary</i>	<i>CO</i>
DiamondRock East 40th Street NYC Owner Holdings, LLC	Delaware	DiamondRock Hospitality Limited Partnership	100%	N/A	NY
DiamondRock East 40th Street NYC Owner, LLC	Delaware	DiamondRock East 40 <sup>th</sup> Street NYC Owner Holdings, LLC	100%	Excluded	NY
DiamondRock East 40th Street NYC Tenant, LLC	Delaware	Bloodstone TRS, Inc.	100%	Excluded	NY
DiamondRock FL Owner, LLC	Delaware	DiamondRock Hospitality Limited Partnership	100%	Material	FL
<i>DiamondRock FL Tenant, LLC</i>	<i>Delaware</i>	<i>Bloodstone TRS, Inc.</i>	<i>100%</i>	<i>Accommodation Subsidiary</i>	<i>FL</i>
DiamondRock Frenchman's Holdings, LLC	Delaware	DiamondRock Hospitality Limited Partnership	100%	N/A	N/A
DiamondRock Frenchman's Owner, Inc.	U.S. Virgin Islands	DiamondRock Cayman Islands, Inc.	100%	Foreign	N/A
DiamondRock HB Owner, LLC	Delaware	DiamondRock Hospitality Limited Partnership	100%	Significant	CA
DiamondRock HB Tenant, LLC	<i>Delaware</i>	<i>Bloodstone TRS, Inc.</i>	<i>100%</i>	<i>Accommodation Subsidiary</i>	<i>CA</i>
DiamondRock Hospitality Limited Partnership	Delaware	DiamondRock Hospitality Company	1% (GP interest)	Material	CA & MA
		DiamondRock Hospitality, LLC	99% (LP interest)		

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<b>Company</b>	<b>Jurisdiction of Organization</b>	<b>Equity Interest Holders</b>	<b>% of Ownership</b>	<b>Material/ Significant/Foreign/ and/or Excluded/or Accommodation (1) Subsidiary or N/A</b>	<b>State Qualification</b>
DiamondRock Hospitality, LLC	Delaware	DiamondRock Hospitality Company	100%	N/A	N/A
DiamondRock Key West North Owner, LLC	Delaware	DiamondRock Hospitality Limited Partnership	100%	Significant	FL
DiamondRock Key West	<i>Delaware</i>	<i>Bloodstone TRS, Inc.</i>	<i>100%</i>	<i>Accommodation Subsidiary</i>	<i>FL</i>

North Tenant, LLC					
DiamondRock KW South Owner, LLC	Delaware	DiamondRock Hospitality Limited Partnership	100%	Significant	FL
DiamondRock KW South Tenant, LLC	<i>Delaware</i>	<i>Bloodstone TRS, Inc.</i>	<i>100%</i>	<i>Accommodation Subsidiary</i>	<i>FL</i>
DiamondRock LAX Owner, LLC	Delaware	DiamondRock Hospitality Limited Partnership	100%	N/A	CA
DiamondRock LAX Tenant, LLC	Delaware	Bloodstone TRS, Inc.	100%	N/A	CA
DiamondRock Manhattan/Midtown East Owner, LLC	Delaware	DiamondRock Hospitality Limited Partnership	100%	Excluded	NY
DiamondRock Manhattan/Midtown East Tenant, LLC	Delaware	Bloodstone TRS, Inc.	100%	Excluded	NY
DiamondRock Minneapolis Owner, LLC	Delaware	DiamondRock Hospitality Limited Partnership	100%	N/A	MN
DiamondRock Minneapolis Tenant, LLC	Delaware	Bloodstone TRS, Inc	100%	N/A	MN
DiamondRock NY Lex Owner, LLC	Delaware	DiamondRock Hospitality Limited Partnership	100%	Excluded	NY
DiamondRock NY Lex Tenant, LLC	Delaware	Bloodstone TRS, Inc	100%	Excluded	NY
DiamondRock Orlando Airport Owner, LLC	Delaware	DiamondRock Hospitality Limited Partnership	100%	N/A	FL
DiamondRock Orlando Airport Tenant, LLC	Delaware	Bloodstone TRS, Inc.	100%	N/A	FL
DiamondRock Salt Lake City Fee Owner, LLC	Delaware	DiamondRock Hospitality Limited Partnership	100%	Excluded	UT
DiamondRock Salt Lake Owner, LLC	Delaware	DiamondRock Hospitality Limited Partnership	100%	Excluded	UT

<u>Company</u>	<u>Jurisdiction of Organization</u>	<u>Equity Interest Holders</u>	<u>% of Ownership</u>	<u>Material/ Significant/Foreign/ and/or Excluded/or Accommodation (1) Subsidiary or N/A</u>	<u>State Qualification</u>
DiamondRock Salt Lake Tenant, LLC	Delaware	Bloodstone TRS, Inc.	100%	Excluded	UT
DiamondRock San Diego Owner, LLC	Delaware	DiamondRock Hospitality Limited Partnership	100%	Excluded	CA
DiamondRock San Diego Tenant, LLC	Delaware	Bloodstone TRS, Inc.	100%	Excluded	CA
DiamondRock SF Sutter Street Owner, LLC	Delaware	DiamondRock Hospitality Limited Partnership	100%	Significant	CA
<i>DiamondRock SF Sutter Street Tenant, LLC</i>	<i>Delaware</i>	<i>Bloodstone TRS, Inc.</i>	<i>100%</i>	<i>Accommodation Subsidiary</i>	<i>CA</i>
DiamondRock Sonoma Owner, LLC	Delaware	DiamondRock Hospitality Limited Partnership	100%	Excluded	CA
DiamondRock Sonoma Tenant, LLC	Delaware	Bloodstone TRS, Inc.	100%	Excluded	CA
DiamondRock Times Square Owner, LLC	Delaware	DiamondRock Hospitality Limited Partnership	100%	Significant	NY
<i>DiamondRock Times Square Tenant, LLC</i>	<i>Delaware</i>	<i>Bloodstone TRS, Inc.</i>	<i>100%</i>	<i>Accommodation Subsidiary</i>	<i>NY</i>
DiamondRock Torrance Owner, LLC	Delaware	DiamondRock Hospitality Limited Partnership	100%	N/A	CA
DiamondRock Torrance Tenant, LLC	Delaware	Bloodstone TRS, Inc.	100%	N/A	CA
DiamondRock Vail Owner, LLC	Delaware	DiamondRock Hospitality Limited	100%	Significant	CO

		Partnership			
DiamondRock Vail Tenant, LLC	Delaware	Bloodstone TRS, Inc.	100%	Accommodation Subsidiary	CO
DRH Worthington Owner General, LLC	Delaware	DiamondRock Hospitality Limited Partnership	100%	N/A	TX
DRH Worthington Owner Limited, LLC	Delaware	DiamondRock Hospitality Limited Partnership	100%	N/A	N/A
DRH Worthington Owner Limited Partnership	Delaware	DRH Worthington Owner General, LLC	1% (GP interest)	Excluded	TX
DRH Worthington Tenant General, LLC	Delaware	DRH Worthington Owner Limited, LLC	99% (LP interest)		
		Bloodstone TRS, Inc.	100%	N/A	TX

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Company	Jurisdiction of Organization	Equity Interest Holders	% of Ownership	Material/ Significant/Foreign/ and/or Excluded/or Accommodation (1) Subsidiary or N/A	State Qualification
DRH Worthington Tenant Limited, LLC	Delaware	Bloodstone TRS, Inc.	100%	N/A	N/A
DRH Worthington Tenant Limited Partnership	Delaware	DRH Worthington Tenant General, LLC	1% (GP interest)	Excluded	TX
		DRH Worthington Tenant Limited, LLC	99% (LP interest)		

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SCHEDULE 7.1.(b)

PART II

Unconsolidated Affiliates

None

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SCHEDULE 7.1.(f)

Title to Properties; Occupancy Rates and Liens

**Part I**

Property	Occupancy Rate,(1)
Atlanta Marriott Alpharetta	72.2%
Bethesda Marriott Suites	72.1%
Chicago Marriott Downtown Magnificent Mile	70.0%
The Gwen Chicago	79.2%
Courtyard Denver Downtown	79.9%
Courtyard New York Manhattan/Fifth Avenue	89.5%
Courtyard New York Manhattan/Midtown East	92.5%
Frenchman's Reef & Morning Star Marriott Beach Resort	84.0%
Hilton Boston	86.8%
Hilton Burlington	80.4%
Hilton Garden Inn New York City/Times Square Central	96.8%
Hotel Rex	82.1%
Inn at Key West	82.4%
JW Marriott Cherry Creek	81.5%
L'Auberge de Sedona	71.3%
Lexington Hotel, New York	91.9%
Orchards Inn Sedona	79.8%
Renaissance Charleston Hotel	85.8%
Renaissance Worthington Hotel Fort Worth	61.7%
Salt Lake City Marriott Downtown	69.1%

Sheraton Suites Key West	85.8%
Shorebreak Hotel	79.0%
The Lodge at Sonoma Renaissance Resort & Spa	79.4%
Vail Marriott Mountain Resort & Spa	69.4%
Westin Boston Waterfront	78.0%
Westin Fort Lauderdale Beach Resort	88.2%
Westin San Diego	85.1%
Westin Washington D.C. City Center	85.4%

**Part II**

Liens in Existence on the Agreement Date

(1) Reported occupancy reflects the period for which each asset was owned by the Company. L'Auberge de Sedona and Orchards Inn Sedona were purchased on February 28, 2017, and reflect the full-year 2016.

See Schedule 7.1(g): Existing Indebtedness and Total Indebtedness

SCHEDULE 7.1.(g)

Indebtedness and Guaranties

	Current Amount of Debt as of April 26, 2017	Secured or Unsecured
<b><u>Mortgage Loan Indebtedness</u></b>		
Courtyard New York Manhattan/Midtown East	\$ 84,989,572	Secured
JW Marriott Denver at Cherry Creek	\$ 64,225,532	Secured
Renaissance Worthington Hotel Forth Worth	\$ 85,000,000	Secured
Salt Lake City Marriott Downtown	\$ 57,925,814	Secured
The Lodge at Sonoma, a Renaissance Resort & Spa	\$ 28,739,513	Secured
Westin Boston Waterfront Hotel	\$ 200,329,455	Secured
Westin San Diego	\$ 65,804,881	Secured
Westin Washington, D.C. City Center	\$ 66,180,408	Secured

Note: The \$170,368,000 Citibank loan is being paid off on April 26<sup>th</sup>, 2017, simultaneously with the closing hereunder. The mortgage on the Lexington Hotel New York is being assigned to the Lenders hereunder as security for the loan.

On May 11<sup>th</sup>, 2016, simultaneously with the closing of the 2016 Term Loan, a mortgage on the Courtyard New York/Fifth Avenue was assigned to the lenders under the 2016 Term Loan as security for that loan.

**Guaranty Indebtedness**

**Other Indebtedness**

Senior Unsecured Credit Facility	-0-	Unsecured
2016 Term Loan	\$ 100,000,000	Unsecured
2017 Term Loan	\$ 200,000,000	Unsecured

SCHEDULE 7.1.(h)

Material Contracts

None

SCHEDULE 7.1.(i)

Litigation

## EXHIBIT A

## FORM OF ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption Agreement (the "Assignment and Assumption") is dated as of the Effective Date set forth below and is entered into by and between [the][each](1) Assignor identified in item 1 below ([the][each, an] "Assignor") and [the][each](2) Assignee identified in item 2 below ([the][each, an] "Assignee"). [It is understood and agreed that the rights and obligations of [the Assignors][the Assignees](3) hereunder are several and not joint.](4) Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, the "Credit Agreement"), receipt of a copy of which is hereby acknowledged by [the][each] Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, [the][each] Assignor hereby irrevocably sells and assigns to [the Assignee][the respective Assignees], and [the][each] Assignee hereby irrevocably purchases and assumes from [the Assignor][the respective Assignors], subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of [the Assignor's][the respective Assignors'] rights and obligations in [its capacity as a Lender][their respective capacities as Lenders] under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of [the Assignor][the respective Assignors] under the facility identified below (including without limitation any guarantees included in such facility) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of [the][any] Assignor (in its capacity as a Lender)[the respective Assignors (in their respective capacities as Lenders)] against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by [the][any] Assignor to [the][any] Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as [the][an] "Assigned Interest"). Each such sale and assignment is without recourse to [the][any] Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by [the][any] Assignor.

- (1) For bracketed language here and elsewhere in this form relating to the Assignor(s), if the assignment is from a single Assignor, choose the first bracketed language. If the assignment is from multiple Assignors, choose the second bracketed language.
- (2) For bracketed language here and elsewhere in this form relating to the Assignee(s), if the assignment is to a single Assignee, choose the first bracketed language. If the assignment is to multiple Assignees, choose the second bracketed language.
- (3) Select as appropriate.
- (4) Include bracketed language if there are either multiple Assignors or multiple Assignees.

1. Assignor[s]:  
[Assignor [is][is not] a Defaulting Lender]
2. Assignee[s]:  
[for each Assignee, indicate [Affiliate][Approved Fund] of [identify Lender]]
3. Borrower(s): DiamondRock Hospitality Limited Partnership
4. Administrative Agent: Regions Bank, as the administrative agent under the Credit Agreement
5. Credit Agreement: The \$200,000,000.00 Term Loan Agreement dated as of April 26, 2017, among DiamondRock Hospitality Limited Partnership, Diamondrock Hospitality Company, the Lenders parties thereto, and Regions Bank, as Administrative Agent.
6. Assigned Interest[s]:

Assignor[s](5)	Assignee[s](6)	Facility Assigned (7)	Aggregate Amount of Commitment/Loans for all Lenders(8)	Amount of Commitment/Loans Assigned	Percentage Assigned of Commitment/Loans(9)	CUSIP Number
			\$	\$	%	
			\$	\$	%	

- [7. Trade Date: ](10)

[Page break]

- (5) List each Assignor, as appropriate.

- (6) List each Assignee, as appropriate.
- (7) Fill in the appropriate terminology for the type of facility under the Credit Agreement that are being assigned under this Assignment.
- (8) Amount to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.
- (9) Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.
- (10) To be completed if the Assignor(s) and the Assignee(s) intend that the minimum assignment amount is to be determined as of the Trade Date.

Effective Date: \_\_\_\_\_, 20 [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR[S](11)

[NAME OF ASSIGNOR]

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

[NAME OF ASSIGNOR]

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

ASSIGNEE[S](12)

[NAME OF ASSIGNEE]

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

[NAME OF ASSIGNEE]

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

[Page Break]

(11) Add additional signature blocks as needed.

(12) Add additional signature blocks as needed.

[Consented to and](13) Accepted:

REGIONS BANK, as Administrative Agent

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

[Consented to:](14)

By: DiamondRock Hospitality Company,  
its sole General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[RELEVANT PARTY](15)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

(13) To be added only if the consent of the Administrative Agent is required by the terms of the Credit Agreement.

(14) Include signature of the Borrower only if required under Section 13.5.(b) of the Credit Agreement.

(15) To be added only if the consent of the other parties is required by the terms of the Credit Agreement.

[ (16)

STANDARD TERMS AND CONDITIONS FOR  
ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1 Assignor[s]. [The][Each] Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of [the][the relevant] Assigned Interest, (ii) [the][such] Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and (iv) it is [not] a Defaulting Lender; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee[s]. [The][Each] Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all the requirements to be an Eligible Assignee as defined in the Credit Agreement (subject to such consents, if any, as may be required under such definition), (iii) from and after the Effective Date specified for this Assignment and Assumption, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of [the][the relevant] Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 9.1 or 9.2., as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, (vi) it has, independently and without reliance upon the Administrative Agent, the Assignor, or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, and (vii) if it is a Foreign Lender, attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by [the][such] Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, [the][any] Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in

(16) Describe Credit Agreement at option of Administrative Agent.

taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of [the][each] Assigned Interest (including payments of principal, interest, fees and other amounts) to [the][the relevant] Assignee whether such amounts have accrued prior to, on or after the

Effective Date specified for this Assignment and Assumption. The Assignor[s] and the Assignee[s] shall make all appropriate adjustments in payments by the Administrative Agent for periods prior to such Effective Date or with respect to the making of this assignment directly between themselves.

3. **General Provisions.** This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

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EXHIBIT B

FORM OF GUARANTY

THIS GUARANTY (this "Guaranty") dated as of April 26, 2017, is executed and delivered by each of the undersigned and the other Persons from time to time party hereto pursuant to the execution and delivery of an Accession Agreement in the form of Annex I hereto (all of the undersigned, together with such other Persons each a "Guarantor" and collectively, the "Guarantors") in favor of REGIONS BANK, in its capacity as Administrative Agent (the "Administrative Agent") for the Lenders under that certain Term Loan Agreement dated as of April 26, 2017 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among DiamondRock Hospitality Limited Partnership (the "Borrower"), DiamondRock Hospitality Company (the "Parent"), the financial institutions party thereto and their assignees under Section 13.5. thereof (the "Lenders"), the Administrative Agent, for its benefit and the benefit of the Lenders, and the other parties thereto, and the Specified Derivatives Providers (the Administrative Agent, the Lenders and the Specified Derivatives Providers, each individually a "Guarantied Party" and collectively, the "Guarantied Parties").

WHEREAS, pursuant to the Credit Agreement, the Administrative Agent and the Lenders have agreed to make available to the Borrower certain financial accommodations on the terms and conditions set forth in the Credit Agreement;

WHEREAS, the Specified Derivatives Providers may from time to time enter into Specified Derivatives Contracts with the Parent, the Borrower and/or Subsidiaries of the Parent;

WHEREAS, the Borrower and each of the Guarantors, though separate legal entities, are mutually dependent on each other in the conduct of their respective businesses as an integrated operation and have determined it to be in their mutual best interests to obtain financing from the Guarantied Parties through their collective efforts;

WHEREAS, each Guarantor acknowledges that it will receive direct and indirect benefits from the Guarantied Parties making such financial accommodations available to the Borrower under the Credit Agreement and, accordingly, each Guarantor is willing to guarantee the Borrower's obligations to the Guarantied Parties on the terms and conditions contained herein; and

WHEREAS, each Guarantor's execution and delivery of this Guaranty is a condition to the Guarantied Parties' making, and continuing to make, such financial accommodations to the Borrower.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each Guarantor, each Guarantor agrees as follows:

Section 1. **Guaranty.** Each Guarantor hereby absolutely, irrevocably and unconditionally guaranties the due and punctual payment and performance when due, whether at stated maturity, by acceleration or otherwise, of all of the following (collectively referred to as the "Guarantied Obligations"): (a) all indebtedness and obligations owing by the Borrower or any other Loan Party to any Lender or the Administrative Agent under or in connection with the Credit Agreement and any other Loan Document to which the Borrower or such other Loan Party is a party, including without limitation, the repayment of all principal of the Loans and the payment of all interest, Fees, charges,

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attorneys' fees and other amounts payable to any Lender or the Administrative Agent thereunder or in connection therewith; (b) all existing or future payment and other obligations owing by any Loan Party under any Specified Derivatives Contract (other than any Excluded Swap Obligation); (c) any and all extensions, renewals, modifications, amendments or substitutions of the foregoing; (d) all reasonable expenses, including, without limitation, reasonable attorneys' fees and disbursements, that are incurred by the Administrative Agent or any other Guarantied Party in the enforcement of any of the foregoing or any obligation of such Guarantor hereunder; and (e) all other Guaranteed Obligations.

Section 2. **Guaranty of Payment and Not of Collection.** This Guaranty is a guaranty of payment, and not of collection, and a debt of each Guarantor for its own account. Accordingly, the Guarantied Parties shall not be obligated or required before enforcing this Guaranty against any Guarantor: (a) to pursue any right or remedy the Guarantied Parties may have against the Borrower, any other Loan Party or any other Person or commence any suit or other proceeding against the Borrower, any other Loan Party or any other Person in any court or other tribunal; (b) to make any claim in a liquidation or bankruptcy of the Borrower, any other Loan Party or any other Person; or (c) to make demand of the Borrower, any other Loan Party or any other Person or to enforce or seek to enforce or realize upon any collateral security held by the Guarantied Parties which may secure any of the Guarantied Obligations.

Section 3. **Guaranty Absolute.** Each Guarantor guarantees that the Guarantied Obligations will be paid strictly in accordance with the terms of the documents evidencing the same, regardless of any Applicable Law now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Guarantied Parties with respect thereto. The liability of each Guarantor under this Guaranty shall be absolute, irrevocable and unconditional in accordance with its terms and shall remain in full force and effect without regard to, and shall not be released, suspended, discharged, terminated or otherwise affected by, any circumstance or occurrence whatsoever, including without limitation, the following (whether or not such Guarantor consents thereto or has notice thereof):

(a) (i) any change in the amount, interest rate or due date or other term of any of the Guaranteed Obligations, (ii) any change in the time, place or manner of payment of all or any portion of the Guaranteed Obligations, (iii) any amendment or waiver of, or consent to the departure from or other indulgence with respect to, the Credit Agreement, any other Loan Document, any Specified Derivatives Contract or any other document, instrument or agreement evidencing or relating to any Guaranteed Obligations (the "Guaranteed Documents"), or (iv) any waiver, renewal, extension, addition, or supplement to, or deletion from, or any other action or inaction under or in respect of, any Guaranteed Document or any assignment or transfer of any Guaranteed Document;

(b) any lack of validity or enforceability of any Guaranteed Document or any assignment or transfer of any Guaranteed Document;

(c) any furnishing to any of the Guaranteed Parties of any security for any of the Guaranteed Obligations, or any sale, exchange, release or surrender of, or realization on, any collateral securing any of the Guaranteed Obligations;

(d) any settlement or compromise of any of the Guaranteed Obligations, any security therefor, or any liability of any other party with respect to any of the Guaranteed Obligations, or any subordination of the payment of any of the Guaranteed Obligations to the payment of any other liability of the Borrower or any other Loan Party;

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(e) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to such Guarantor, the Borrower, any other Loan Party or any other Person, or any action taken with respect to this Guaranty by any trustee or receiver, or by any court, in any such proceeding;

(f) any act or failure to act by the Borrower, any other Loan Party or any other Person which may adversely affect such Guarantor's subrogation rights, if any, against the Borrower, any other Loan Party or any other Person to recover payments made under this Guaranty;

(g) any nonperfection or impairment of any security interest or other Lien on any collateral, if any, securing in any way any of the Guaranteed Obligations;

(h) any application of sums paid by the Borrower, any other Loan Party or any other Person with respect to the liabilities of the Borrower or any other Loan Party to any of the Guaranteed Parties, regardless of what liabilities of the Borrower remain unpaid;

(i) any defect, limitation or insufficiency in the borrowing powers of the Borrower or in the exercise thereof;

(j) any defense, set-off, claim or counterclaim (other than indefeasible payment and performance in full) which may at any time be available to or be asserted by the Borrower, any other Loan Party, or any other Person against any Guaranteed Party;

(k) any statement, representation or warranty made or deemed to be made by or on behalf of the Borrower, any Guarantor or any other Loan Party under any Guaranteed Document, or any amendment hereto or thereto, proves to have been incorrect or misleading in any respect;

(l) any change in the corporate existence, structure, or ownership of the Borrower or any other Loan Party; or

(m) any other circumstance which might otherwise constitute a defense available to, or a discharge of, a Guarantor hereunder (other than indefeasible payment and performance in full).

Section 4. Action with Respect to Guaranteed Obligations. The Guaranteed Parties may, at any time and from time to time, without the consent of, or notice to, any Guarantor, and without discharging any Guarantor from its obligations hereunder, take any and all actions described in Section 3 and may otherwise: (a) amend, modify, alter or supplement the terms of any of the Guaranteed Obligations, including, but not limited to, extending or shortening the time of payment of any of the Guaranteed Obligations or changing the interest rate that may accrue on any of the Guaranteed Obligations; (b) amend, modify, alter or supplement any Guaranteed Document; (c) sell, exchange, release or otherwise deal with all, or any part, of any collateral securing any of the Guaranteed Obligations; (d) release any Loan Party or other Person liable in any manner for the payment or collection of any of the Guaranteed Obligations; (e) exercise, or refrain from exercising, any rights against the Borrower, any other Loan Party or any other Person; and (f) apply any sum, by whomsoever paid or however realized, to the Guaranteed Obligations in such order as the Guaranteed Parties shall elect.

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Section 5. Representations and Warranties. Each Guarantor hereby makes to the Administrative Agent and the other Guaranteed Parties all of the representations and warranties made by the Borrower with respect to or in any way relating to such Guarantor in the Credit Agreement and the other Guaranteed Documents, as if the same were set forth herein in full.

Section 6. Covenants. Each Guarantor will comply with all covenants with which the Borrower is to cause such Guarantor to comply under the terms of the Credit Agreement or any of the other Guaranteed Documents.

Section 7. Waiver. Each Guarantor, to the fullest extent permitted by Applicable Law, hereby waives notice of acceptance hereof or any presentment, demand, protest or notice of any kind, and any other act or thing, or omission or delay to do any other act or thing, which in any manner or to any extent might vary the risk of such Guarantor or which otherwise might operate to discharge such Guarantor from its obligations hereunder.

Section 8. Inability to Accelerate Loan. If the Guaranteed Parties or any of them are prevented under Applicable Law or otherwise from demanding or accelerating payment of any of the Guaranteed Obligations by reason of any automatic stay or otherwise, the Administrative Agent and/or the other Guaranteed Parties shall be entitled to receive from each Guarantor, upon demand therefor, the sums which otherwise would have been due had such demand or acceleration occurred.

Section 9. Reinstatement of Guaranteed Obligations. If claim is ever made on the Administrative Agent or any other Guaranteed Party for repayment or recovery of any amount or amounts received in payment or on account of any of the Guaranteed Obligations, and the Administrative Agent or such other Guaranteed Party repays all or part of said amount by reason of (a) any judgment, decree or order of any court or administrative body of competent jurisdiction, or (b) any settlement or compromise of any such claim effected by the Administrative Agent or such other Guaranteed Party with any such claimant (including the Borrower or a trustee in bankruptcy for the Borrower), then and in such event each Guarantor agrees that any such judgment, decree, order, settlement or compromise shall be binding on it, notwithstanding any revocation hereof or the cancellation of any of the Guaranteed Documents, and such Guarantor shall be and remain liable to the Administrative Agent or such other Guaranteed Party for the amounts so repaid or recovered to the same extent as if such amount had never originally been paid to the Administrative Agent or such other Guaranteed Party.

Section 10. Subrogation. Upon the making by any Guarantor of any payment hereunder for the account of the Borrower or any other Loan Party, such Guarantor shall be subrogated to the rights of the payee against the Borrower or such other Loan Party; provided, however, that such Guarantor shall not enforce any right or receive any payment by way of subrogation or otherwise take any action in respect of any other claim or cause of action such Guarantor may have against the Borrower or such other Loan Party arising by reason of any payment or performance by such Guarantor pursuant to this Guaranty, unless and until all of the Guaranteed Obligations have been indefeasibly paid and performed in full. If any amount shall be paid to such Guarantor on account of or in respect of such subrogation rights or other claims or causes of action, such Guarantor shall hold such amount in trust for the benefit of the Guaranteed Parties and shall forthwith pay such amount to the Administrative Agent to be credited and applied against the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms of the Credit Agreement or to be held by the Administrative Agent as collateral security for any Guaranteed Obligations existing.

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Section 11. Right of Contribution. The Guarantors hereby agree as among themselves that, if any Guarantor shall make an Excess Payment (as defined below), such Guarantor shall have a right of contribution from each other Guarantor in an amount equal to such other Guarantor's Contribution Share (as defined below) of such Excess Payment. The payment obligations of any Guarantor under this Section shall be subordinate and subject in right of payment to the Guaranteed Obligations until such time as the Guaranteed Obligations have been paid in full and the Commitments have expired or terminated, and none of the Guarantors shall exercise any right or remedy under this Section against any other Guarantor until such Obligations have been indefeasibly paid and performed in full and the Commitments have expired or terminated. Subject to Section 10 of this Guaranty, this Section shall not be deemed to affect any right of subrogation, indemnity, reimbursement or contribution that any Guarantor may have under Applicable Law against the Borrower or any other Loan Party in respect of any payment of Guaranteed Obligations. Notwithstanding the foregoing, all rights of contribution against any Guarantor shall terminate from and after such time, if ever, that such Guarantor shall cease to be a Guarantor in accordance with the applicable provisions of the Loan Documents. For purposes of this Section, the following terms have the indicated meanings:

(a) "Excess Payment" means the amount paid by any Guarantor in excess of its Ratable Share of any Guaranteed Obligations.

(b) "Ratable Share" means, for any Guarantor in respect of any payment of Obligations, the ratio (expressed as a percentage) as of the date of such payment of Guaranteed Obligations of (i) the amount by which the aggregate present fair salable value of all of its assets and properties exceeds the amount of all debts and liabilities of such Guarantor (including contingent, subordinated, unmatured, and unliquidated liabilities, but excluding the obligations of such Guarantor hereunder) to (ii) the amount by which the aggregate present fair salable value of all assets and other properties of all of the Loan Parties exceeds the amount of all of the debts and liabilities (including contingent, subordinated, unmatured, and unliquidated liabilities, but excluding the obligations of the Loan Parties hereunder) of the Loan Parties; provided, however, that, for purposes of calculating the Ratable Shares of the Guarantors in respect of any payment of Obligations, any Guarantor that became a Guarantor subsequent to the date of any such payment shall be deemed to have been a Guarantor on the date of such payment and the financial information for such Guarantor as of the date such Guarantor became a Guarantor shall be utilized for such Guarantor in connection with such payment.

(c) "Contribution Share" means, for any Guarantor in respect of any Excess Payment made by any other Guarantor, the ratio (expressed as a percentage) as of the date of such Excess Payment of (i) the amount by which the aggregate present fair salable value of all of its assets and properties exceeds the amount of all debts and liabilities of such Guarantor (including contingent, subordinated, unmatured, and unliquidated liabilities, but excluding the obligations of such Guarantor hereunder) to (ii) the amount by which the aggregate present fair salable value of all assets and other properties of the Loan Parties other than the maker of such Excess Payment exceeds the amount of all of the debts and liabilities (including contingent, subordinated, unmatured, and unliquidated liabilities, but excluding the obligations of the Loan Parties) of the Loan Parties other than the maker of such Excess Payment; provided, however, that, for purposes of calculating the Contribution Shares of the Guarantors in respect of any Excess Payment, any Guarantor that became a Guarantor subsequent to the date of any such Excess Payment shall be deemed to have been a Guarantor on the date of such Excess Payment and the financial information for such Guarantor as of the date such Guarantor became a Guarantor shall be utilized for such Guarantor in connection with such Excess Payment.

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Section 12. Payments Free and Clear. All sums payable by each Guarantor hereunder, whether of principal, interest, Fees, expenses, premiums or otherwise, shall be paid in full, without set-off or counterclaim or any deduction or withholding whatsoever (including any Taxes), and if such Guarantor is required by Applicable Law or by any Governmental Authority to make any such deduction or withholding, such Guarantor shall pay to the Administrative Agent and the Lenders such additional amount as will result in the receipt by the Administrative Agent and the Lenders of the full amount payable hereunder had such deduction or withholding not occurred or been required.

Section 13. Set-off. In addition to any rights now or hereafter granted under any of the other Guaranteed Documents or Applicable Law and not by way of limitation of any such rights, each Guarantor hereby authorizes each Guaranteed Party, each Affiliate of a Guaranteed Party, and each Participant (but not Affiliates of such Participant) at any time during the continuance of an Event of Default, without any prior notice to such Guarantor or to any other Person, any such notice being hereby expressly waived, but in the case of a Guaranteed Party (other than the Administrative Agent), an Affiliate of a Guaranteed Party (other than the Administrative Agent), or a Participant (but not Affiliates of a Participant) subject to receipt of the prior written consent of the Administrative Agent exercised in its sole discretion to the fullest extent permitted by law, to set off and to appropriate and to apply any and all deposits (general or special, including, but not limited to, indebtedness evidenced by certificates of deposit, whether matured or unmatured) and any other indebtedness at any time held or owing by a Guaranteed Party, an Affiliate of a Guaranteed Party, or such Participant (but not Affiliates of such Participant) to or for the credit or the account of such Guarantor against and on account of any of the Guaranteed Obligations, although such obligations shall be contingent

or unmatured. Each Guarantor agrees, to the fullest extent permitted by Applicable Law, that any Participant may exercise rights of setoff or counterclaim and other rights with respect to its participation as fully as if such Participant were a direct creditor of such Guarantor in the amount of such participation. Each Lender agrees to notify the Borrower and such Guarantor after any such set off made by such Lender; provided, that the failure to give such notice shall not affect the validity of such set off.

Section 14. Subordination. Each Guarantor hereby expressly covenants and agrees for the benefit of the Guaranteed Parties that all obligations and liabilities of the Borrower or any other Loan Party to such Guarantor of whatever description, including without limitation, all intercompany receivables of such Guarantor from the Borrower or any other Loan Party (collectively, the "Junior Claims") shall be subordinate and junior in right of payment to all Guaranteed Obligations. If an Event of Default shall exist, no Guarantor shall accept any direct or indirect payment (in cash, property or securities, by setoff or otherwise) from the Borrower or any other Loan Party on account of or in any manner in respect of any Junior Claim until all of the Guaranteed Obligations have been indefeasibly paid in full.

Section 15. Avoidance Provisions. It is the intent of each Guarantor and the Guaranteed Parties that in any Proceeding, such Guarantor's maximum obligation hereunder shall equal, but not exceed, the maximum amount which would not otherwise cause the obligations of such Guarantor hereunder (or any other obligations of such Guarantor to the Guaranteed Parties) to be avoidable or unenforceable against such Guarantor in such Proceeding as a result of Applicable Law, including without limitation, (a) Section 548 of the Bankruptcy Code of 1978, as amended (the "Bankruptcy Code") and (b) any state fraudulent transfer or fraudulent conveyance act or statute applied in such Proceeding, whether by virtue of Section 544 of the Bankruptcy Code or otherwise. The Applicable Laws under which the possible avoidance or unenforceability of the obligations of such Guarantor hereunder (or any other obligations of such Guarantor to the Guaranteed Parties) shall be determined

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in any such Proceeding are referred to as the "Avoidance Provisions". Accordingly, to the extent that the obligations of any Guarantor hereunder would otherwise be subject to avoidance under the Avoidance Provisions, the maximum Guaranteed Obligations for which such Guarantor shall be liable hereunder shall be reduced to that amount which, as of the time any of the Guaranteed Obligations are deemed to have been incurred under the Avoidance Provisions, would not cause the obligations of such Guarantor hereunder (or any other obligations of such Guarantor to the Guaranteed Parties), to be subject to avoidance under the Avoidance Provisions. This Section is intended solely to preserve the rights of the Guaranteed Parties hereunder to the maximum extent that would not cause the obligations of any Guarantor hereunder to be subject to avoidance under the Avoidance Provisions, and no Guarantor or any other Person shall have any right or claim under this Section as against the Guaranteed Parties that would not otherwise be available to such Person under the Avoidance Provisions.

Section 16. Information. Each Guarantor assumes all responsibility for being and keeping itself informed of the financial condition of the Borrower and the other Guarantors, and of all other circumstances bearing upon the risk of nonpayment of any of the Guaranteed Obligations and the nature, scope and extent of the risks that such Guarantor assumes and incurs hereunder, and agrees that neither of the Administrative Agent nor any other Guaranteed Party shall have any duty whatsoever to advise any Guarantor of information regarding such circumstances or risks.

Section 17. Governing Law. THIS GUARANTY SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS EXECUTED, AND TO BE FULLY PERFORMED, IN SUCH STATE.

SECTION 18. WAIVER OF JURY TRIAL.

(a) EACH PARTY HERETO ACKNOWLEDGES THAT ANY DISPUTE OR CONTROVERSY BETWEEN OR AMONG ANY GUARANTOR OR ANY OF THE GUARANTIED PARTIES WOULD BE BASED ON DIFFICULT AND COMPLEX ISSUES OF LAW AND FACT AND WOULD RESULT IN DELAY AND EXPENSE TO THE PARTIES. ACCORDINGLY, TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE GUARANTIED PARTIES AND EACH GUARANTOR HEREBY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING OF ANY KIND OR NATURE IN ANY COURT OR TRIBUNAL IN WHICH AN ACTION MAY BE COMMENCED BY OR AGAINST ANY PARTY HERETO ARISING OUT OF THIS GUARANTY OR ANY OTHER LOAN DOCUMENT OR BY REASON OF ANY OTHER SUIT, CAUSE OF ACTION OR DISPUTE WHATSOEVER BETWEEN OR AMONG ANY GUARANTOR, THE AGENT OR ANY OF THE LENDERS OF ANY KIND OR NATURE RELATING TO ANY OF THE LOAN DOCUMENTS.

(b) EACH OF THE GUARANTORS AND EACH GUARANTIED PARTY HEREBY AGREES THAT THE FEDERAL DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK OR ANY STATE COURT LOCATED IN THE BOROUGH OF MANHATTAN OF NEW YORK, SHALL HAVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN OR AMONG ANY GUARANTOR OR ANY GUARANTIED PARTY, PERTAINING DIRECTLY OR INDIRECTLY TO THIS GUARANTY OR ANY OTHER LOAN DOCUMENT OR TO ANY MATTER ARISING HEREFROM OR THEREFROM. EACH GUARANTOR AND EACH OF THE LENDERS EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED IN

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SUCH COURTS WITH RESPECT TO SUCH CLAIMS OR DISPUTES. EACH GUARANTOR HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN, AND AGREES THAT SERVICE OF SUCH SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO SUCH GUARANTOR AT ITS ADDRESS FOR NOTICES PROVIDED FOR HEREIN. SHOULD A GUARANTOR FAIL TO APPEAR OR ANSWER ANY SUMMONS, COMPLAINT, PROCESS OR PAPERS SO SERVED WITHIN THIRTY DAYS AFTER THE MAILING THEREOF, SUCH GUARANTOR SHALL BE DEEMED IN DEFAULT AND AN ORDER AND/OR JUDGMENT MAY BE ENTERED AGAINST IT AS DEMANDED OR PRAYED FOR IN SUCH SUMMONS, COMPLAINT, PROCESS OR PAPERS. EACH PARTY FURTHER WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURT OR THAT SUCH ACTION OR PROCEEDING WAS BROUGHT IN AN INCONVENIENT FORUM AND EACH AGREES NOT TO PLEAD OR CLAIM THE SAME. THE CHOICE OF FORUM SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE BRINGING OF ANY ACTION BY ANY GUARANTIED PARTY OR THE ENFORCEMENT BY ANY GUARANTIED PARTY OF ANY JUDGMENT OBTAINED IN SUCH FORUM IN ANY OTHER APPROPRIATE JURISDICTION.

(c) THE PROVISIONS OF THIS SECTION HAVE BEEN CONSIDERED BY EACH PARTY WITH THE ADVICE OF COUNSEL AND WITH A FULL UNDERSTANDING OF THE LEGAL CONSEQUENCES THEREOF, AND SHALL SURVIVE THE PAYMENT OF THE LOANS AND ALL OTHER AMOUNTS PAYABLE HEREUNDER OR UNDER THE OTHER GUARANTIED DOCUMENTS, THE TERMINATION OR EXPIRATION OF ALL LETTERS OF CREDIT AND THE TERMINATION OF THIS GUARANTY.

Section 19. Loan Accounts. The Administrative Agent and each other Guarantied Party may maintain books and accounts setting forth the amounts of principal, interest and other sums paid and payable with respect to the Guarantied Obligations, and in the case of any dispute relating to any of the outstanding amount, payment or receipt of any of such Guarantied Obligations or otherwise, the entries in such books and accounts shall be deemed conclusive evidence of the amounts and other matters set forth herein, absent manifest error. The failure of the Administrative Agent or any other Guarantied Party to maintain such books and accounts shall not in any way relieve or discharge any Guarantor of any of its obligations hereunder.

Section 20. Waiver of Remedies. No delay or failure on the part of the Administrative Agent or any other Guarantied Party in the exercise of any right or remedy it may have against any Guarantor hereunder or otherwise shall operate as a waiver thereof, and no single or partial exercise by the Administrative Agent or any other Guarantied Party of any such right or remedy shall preclude any other or further exercise thereof or the exercise of any other such right or remedy.

Section 21. Termination. This Guaranty shall remain in full force and effect with respect to each Guarantor until indefeasible payment in full of the Guarantied Obligations and the termination or cancellation of all Guarantied Documents in accordance with their respective terms.

Section 22. Successors and Assigns. Each reference herein to the Administrative Agent or any other Guarantied Party shall be deemed to include such Person's respective successors and assigns (including, but not limited to, any holder of the Guarantied Obligations) in whose favor the provisions of this Guaranty also shall inure, and each reference herein to each Guarantor shall be

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deemed to include such Guarantor's successors and assigns, upon whom this Guaranty also shall be binding. The Guarantied Parties may, in accordance with the applicable provisions of the Guarantied Documents, assign, transfer or sell any Guarantied Obligation, or grant or sell participations in any Guarantied Obligations, to any Person without the consent of, or notice to, any Guarantor and without releasing, discharging or modifying any Guarantor's obligations hereunder. Subject to Section 13.8. of the Credit Agreement, each Guarantor hereby consents to the delivery by the Administrative Agent or any other Guarantied Party to any Assignee or Participant (or any prospective Assignee or Participant) of any financial or other information regarding the Borrower or any Guarantor. No Guarantor may assign or transfer its obligations hereunder to any Person without the prior written consent of all Lenders and any such assignment or other transfer to which all of the Lenders have not so consented shall be null and void.

Section 23. JOINT AND SEVERAL OBLIGATIONS. THE OBLIGATIONS OF THE GUARANTORS HEREUNDER SHALL BE JOINT AND SEVERAL, AND ACCORDINGLY, EACH GUARANTOR CONFIRMS THAT IT IS LIABLE FOR THE FULL AMOUNT OF THE "GUARANTIED OBLIGATIONS" AND ALL OF THE OBLIGATIONS AND LIABILITIES OF EACH OF THE OTHER GUARANTORS HEREUNDER.

Section 24. Amendments. This Guaranty may not be amended except in writing signed by the Requisite Lenders (or all of the Lenders if required under the terms of the Credit Agreement), the Administrative Agent and each Guarantor, subject to Section 13.6. of the Credit Agreement.

Section 25. Payments. All payments to be made by any Guarantor pursuant to this Guaranty shall be made in Dollars, in immediately available funds to the Administrative Agent at the Principal Office, not later than 5:00 p.m. Eastern time on the date of demand therefor.

Section 26. Notices. All notices, requests and other communications hereunder shall be in writing (including facsimile transmission or similar writing) and shall be given (a) to each Guarantor at its address set forth below its signature hereto, (b) to the Administrative Agent or any other Guarantied Party at its respective address for notices provided for in the Guarantied Documents, as applicable, or (c) as to each such party at such other address as such party shall designate in a written notice to the other parties. Each such notice, request or other communication shall be effective (i) if mailed, upon the first to occur of receipt or the expiration of 3 days after the deposit in the United States Postal Service mail, postage prepaid and addressed to the address of a Guarantor or Guarantied Party at the addresses specified; (ii) if telecopied, when transmitted; or (iii) if hand delivered, when delivered; provided, however, that any notice of a change of address for notices shall not be effective until received.

Section 27. Severability. In case any provision of this Guaranty shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 28. Headings. Section headings used in this Guaranty are for convenience only and shall not affect the construction of this Guaranty.

Section 29. Limitation of Liability. None of the Administrative Agent, nor any other Guarantied Party, nor any Affiliate, officer, director, employee, attorney, or agent of the Administrative Agent or any other Guarantied Party shall have any liability with respect to, and each Guarantor hereby waives, releases, and agrees not to sue any of them upon, any claim for any special,

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indirect, incidental, or consequential damages suffered or incurred by a Guarantor in connection with, arising out of, or in any way related to, this Guaranty, any of the other Guarantied Documents, or any of the transactions contemplated by this Guaranty or any of the other Guarantied Documents. Each Guarantor hereby waives, releases, and agrees not to sue the Administrative Agent, any other Guarantied Party or any of the Administrative Agent's or any other Guarantied Party's Affiliates, officers, directors, employees, attorneys, or agents for punitive damages in respect of any claim in connection with, arising out of, or in any way related to, this Guaranty, any of the other Guarantied Documents, or any of the transactions contemplated thereby.

Section 30. Electronic Delivery of Certain Information. Each Guarantor acknowledges and agrees that information regarding the Guarantor may be delivered electronically pursuant to Section 9.5. of the Credit Agreement.

Section 31. Release of Guarantor. If expressly permitted by the Credit Agreement, a Guarantor may be released from this Guaranty in accordance with the terms of the Credit Agreement.

Section 32. Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under this Guaranty in respect of Swap Obligations (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section, or otherwise under this Guaranty, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified ECP Guarantor under this Section shall remain in full force and effect until termination of this Guaranty in accordance with Section 20 hereof. Each Qualified ECP Guarantor intends that this Section constitute, and this Section shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act

Section 33. Definitions. (a) For the purposes of this Guaranty:

"Proceeding" means any of the following: (i) a voluntary or involuntary case concerning any Guarantor shall be commenced under the Bankruptcy Code; (ii) a custodian (as defined in such Bankruptcy Code or any other applicable bankruptcy laws) is appointed for, or takes charge of, all or any substantial part of the property of any Guarantor; (iii) any other proceeding under any Applicable Law, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding-up or composition for adjustment of debts, whether now or hereafter in effect, is commenced relating to any Guarantor; (iv) any Guarantor is adjudicated insolvent or bankrupt; (v) any order of relief or other order approving any such case or proceeding is entered by a court of competent jurisdiction; (vi) any Guarantor makes a general assignment for the benefit of creditors; (vii) any Guarantor shall fail to pay, or shall state that it is unable to pay, or shall be unable to pay, its debts generally as they become due; (viii) any Guarantor shall call a meeting of its creditors with a view to arranging a composition or adjustment of its debts; (ix) any Guarantor shall by any act or failure to act indicate its consent to, approval of or acquiescence in any of the foregoing; or (x) any corporate action shall be taken by any Guarantor for the purpose of effecting any of the foregoing.

(b) As used herein, "Guarantors" shall mean, as the context requires, collectively, (a) each Subsidiary identified as a "Guarantor" on the signature pages hereto, (b) each Person that joins this Guaranty as a Guarantor pursuant to Section 8.14 of the Credit Agreement, (c) with respect to (i)

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any Specified Derivatives Obligations between any Loan Party (other than the Borrower) and any Specified Derivatives Provider, the Borrower and (ii) the payment and performance by each other Loan Party of its obligations under the Guaranty with respect to all Swap Obligations, the Borrower, and (d) the successors and permitted assigns of the foregoing.

(c) Terms not otherwise defined herein are used herein with the respective meanings given them in the Credit Agreement.

IN WITNESS WHEREOF, each Guarantor has duly executed and delivered this Guaranty as of the date and year first written above.

[GUARANTOR]

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

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

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

Address for Notices for all Guarantors:

c/o DiamondRock Hospitality Limited Partnership

Attention:

Telecopier: ( )

Telephone: ( )

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## ANNEX I

### FORM OF ACCESSION AGREEMENT

THIS ACCESSION AGREEMENT dated as of \_\_\_\_\_, \_\_\_\_\_, executed and delivered by \_\_\_\_\_, a (the "New Guarantor") in favor of REGIONS BANK, in its capacity as Administrative Agent (the "Administrative Agent") for the Lenders under that certain Term Loan Agreement dated as of April 26, 2017 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among DiamondRock Hospitality Limited Partnership (the "Borrower"), DiamondRock Hospitality Company (the "Parent"), the financial institutions party thereto and their assignees under Section 13.5. thereof (the "Lenders"), the Administrative Agent, and the other parties thereto, for its benefit and the benefit of the other Guaranteed Parties.

WHEREAS, pursuant to the Credit Agreement, the Administrative Agent and the Lenders have agreed to make available to the Borrower certain financial accommodations on the terms and conditions set forth in the Credit Agreement;

WHEREAS, the Specified Derivatives Providers may from time to time enter into Specified Derivatives Contracts with the Parent, the Borrower and/or Subsidiaries of the Parent;

WHEREAS, the Borrower, the New Guarantor and the existing Guarantors, though separate legal entities, are mutually dependent on each other in the conduct of their respective businesses as an integrated operation and have determined it to be in their mutual best interests to obtain financing from the Guarantied Parties through their collective efforts;

WHEREAS, the New Guarantor acknowledges that it will receive direct and indirect benefits from the Guarantied Parties making such financial accommodations available to the Borrower under the Credit Agreement and, accordingly, the New Guarantor is willing to guarantee the Borrower's obligations to the Guarantied Parties on the terms and conditions contained herein; and

WHEREAS, the New Guarantor's execution and delivery of this Agreement is a condition to the Guarantied Parties continuing to make such financial accommodations to the Borrower.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the New Guarantor, the New Guarantor agrees as follows:

Section 1. Accession to Guaranty. The New Guarantor hereby agrees that it is a "Guarantor" under that certain Guaranty dated as of April 26, 2017 (as amended, supplemented, restated or otherwise modified from time to time, the "Guaranty"), made by the Guarantors party thereto in favor of the Administrative Agent, for its benefit and the benefit of the other Guarantied Parties and assumes all obligations of a "Guarantor" thereunder and agrees to be bound thereby, all as if the New Guarantor had been an original signatory to the Guaranty. Without limiting the generality of the foregoing, the New Guarantor hereby:

(a) irrevocably and unconditionally guarantees the due and punctual payment and performance when due, whether at stated maturity, by acceleration or otherwise, of all Guarantied Obligations (as defined in the Guaranty);

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(b) makes to the Administrative Agent and the other Guarantied Parties as of the date hereof each of the representations and warranties contained in Section 5 of the Guaranty and agrees to be bound by each of the covenants contained in Section 6 of the Guaranty; and

(c) consents and agrees to each provision set forth in the Guaranty.

SECTION 2. GOVERNING LAW. THIS ACCESSION AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS EXECUTED, AND TO BE FULLY PERFORMED, IN SUCH STATE.

Section 3. Definitions. Capitalized terms used herein and not otherwise defined herein shall have their respective defined meanings given them in the Credit Agreement.

IN WITNESS WHEREOF, the New Guarantor has caused this Accession Agreement to be duly executed and delivered under seal by its duly authorized officers as of the date first written above.

[NEW GUARANTOR]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address for Notices:

c/o DiamondRock Hospitality Limited Partnership

Attention:  
Telecopier: ()  
Telephone: ()

Accepted:

REGIONS BANK, as Administrative Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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FOR VALUE RECEIVED, the undersigned, DIAMONDROCK HOSPITALITY LIMITED PARTNERSHIP, a limited partnership formed under the laws of the State of Delaware (the "Borrower") hereby unconditionally promises to pay to the order of \_\_\_\_\_ or registered assigns (the "Lender"), in care of Regions Bank, as Administrative Agent (the "Administrative Agent"), to Regions Bank, 1180 West Peachtree St NW, Suite 1400, Atlanta, GA 30309, or at such other address as may be specified in writing by the Administrative Agent to the Borrower, the principal sum of \_\_\_\_\_ AND \_\_\_\_\_/100 DOLLARS (\$ \_\_\_\_\_) (or such lesser amount as shall equal the aggregate unpaid principal amount of Loans made by the Lender to the Borrower under the Credit Agreement (as herein defined)), on the dates and in the principal amounts provided in the Credit Agreement, and to pay interest on the unpaid principal amount owing hereunder, at the rates and on the dates provided in the Credit Agreement.

The date, amount of each Loan made by the Lender to the Borrower, and each payment made on account of the principal thereof, shall be recorded by the Lender on its books and, prior to any transfer of this Note, endorsed by the Lender on the schedule attached hereto or any continuation thereof, provided that the failure of the Lender to make any such recordation or endorsement shall not affect the obligations of the Borrower to make a payment when due of any amount owing under the Credit Agreement or hereunder in respect of the Loans made by the Lender.

This Term Note (this "Note") is one of the "Notes" referred to in the Term Loan Agreement dated as of April 26, 2017 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among the Borrower, DiamondRock Hospitality Company (the "Parent"), the financial institutions party thereto and their assignees under Section 13.5. thereof, the Administrative Agent, and the other parties thereto, and is subject to, and entitled to, all provisions and benefits thereof. Capitalized terms used herein and not defined herein shall have the respective meanings given to such terms in the Credit Agreement.

The Credit Agreement, among other things, (a) provides for the making of Loans evidenced by this Note by the Lender to the Borrower from time to time in an aggregate amount not to exceed at any time outstanding the Dollar amount first above mentioned, (b) permits the prepayment of the Loans evidenced by this Note by the Borrower subject to certain terms and conditions and (c) provides for the acceleration of the maturity of the Loans evidenced by this Note upon the occurrence of certain specified events.

Except as permitted by Section 13.5. of the Credit Agreement, this Note may not be assigned by the Lender to any other Person.

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS EXECUTED, AND TO BE FULLY PERFORMED, IN SUCH STATE.

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The Borrower hereby waives presentment for payment, demand, notice of demand, notice of non-payment, protest, notice of protest and all other similar notices.

Time is of the essence for this Note.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Term Note under seal as of the date first written above.

DIAMONDROCK HOSPITALITY LIMITED PARTNERSHIP

By: DiamondRock Hospitality Company,  
its sole General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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SCHEDULE OF LOANS

This Note evidences Loans made under the within-described Credit Agreement to the Borrower, on the dates, in the principal amounts, bearing interest at the rates and maturing on the dates set forth below, subject to the payments and prepayments of principal set forth below:

Date of Loan	Principal Amount of Loan	Amount Paid or Prepaid	Unpaid Principal Amount	Notation Made By

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EXHIBIT D

FORM OF NOTICE OF BORROWING

Regions Bank  
1180 West Peachtree St NW, Suite 1400  
Atlanta, GA 30309  
email: [agencysservices@regions.com](mailto:agencysservices@regions.com)  
Telephone: (404) 279-7425  
Telecopy: (404) 279-7425

Regions Bank  
1900 5th Avenue North, 15th Floor  
Birmingham, AL 35303  
Attn: Real Estate Corporate Banking — Operations  
e-mail: [RECB@regions.com](mailto:RECB@regions.com)  
Telephone: (205) 264-7437  
Telecopy: (205) 264-5456

Ladies and Gentlemen:

Reference is made to that certain Term Loan Agreement dated as of April 26, 2017 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among DiamondRock Hospitality Limited Partnership (the "Borrower"), DiamondRock Hospitality Company (the "Parent"), the financial institutions party thereto and their assignees under Section 13.5. thereof (the "Lenders"), Regions Bank, as Administrative Agent (the "Administrative Agent"), and the other parties thereto. Capitalized terms used herein, and not otherwise defined herein, have their respective meanings given them in the Credit Agreement.

1. Pursuant to Section 2.1.(b) of the Credit Agreement, the Borrower hereby requests that the Lenders make Loans to the Borrower in an aggregate principal amount equal to \$200,000,000.
2. The Borrower requests that such Loans be made available to the Borrower on the Effective Date.
3. The Borrower hereby requests that the requested Loans all be of the following Type:

**[Check one box only]**

- Base Rate Loans
- LIBOR Loans, each with an initial Interest Period for a duration of:

- [Check one box only]**
- 1 month
  - 3 months

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- 6 months

4. The proceeds of this borrowing of Loans will be used for the purposes set forth in Section 8.8. of the Credit Agreement.
5. The Borrower requests that the proceeds of this borrowing of Loans be made available to the Borrower by wire transfer in immediately available funds to:

[insert wire instructions for Borrower's account].

The Borrower hereby certifies to the Administrative Agent and the Lenders that as of the date hereof and as of the date of the making of the requested Loans and after giving effect thereto, (a) no Default or Event of Default exists or shall exist; and (b) the representations and warranties made or deemed made by the Borrower and each other Loan Party in the Loan Documents to which any of them is a party are and shall be true and correct in all material respects, except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and correct on and as of such earlier date) and except for changes in factual circumstances not prohibited under the Loan Documents. In addition, the Borrower certifies to the Administrative Agent and the Lenders that all conditions to the making of the requested Loans contained in Article VI. of the Credit Agreement will have been satisfied (or waived in accordance with the applicable provisions of the Loan Documents) at the time such Loans are made.

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Notice of Borrowing as of the date first written above.

DIAMONDROCK HOSPITALITY LIMITED PARTNERSHIP

By: DiamondRock Hospitality Company,  
its sole General Partner

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

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

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

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FORM OF NOTICE OF CONTINUATION

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Regions Bank  
1180 West Peachtree St NW, Suite 1400  
Atlanta, GA 30309  
email: [agencyervices@regions.com](mailto:agencyervices@regions.com)  
Telephone: (404) 279-7425  
Telecopy: (404) 279-7425

Regions Bank  
1900 5th Avenue North, 15th Floor  
Birmingham, AL 35303  
Attn: Real Estate Corporate Banking — Operations  
e-mail: [RECB@regions.com](mailto:RECB@regions.com)  
Telephone: (205) 264-7437  
Telecopy: (205) 264-5456

Ladies and Gentlemen:

Reference is made to that certain Term Loan Agreement dated as of April 26, 2017 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among DiamondRock Hospitality Limited Partnership (the "Borrower"), DiamondRock Hospitality Company (the "Parent"), the financial institutions party thereto and their assignees under Section 13.5. thereof (the "Lenders"), Regions Bank, as Administrative Agent (the "Administrative Agent"), and the other parties thereto. Capitalized terms used herein, and not otherwise defined herein, have their respective meanings given them in the Credit Agreement.

Pursuant to Section 2.6. of the Credit Agreement, the Borrower hereby requests a Continuation of LIBOR Loans under the Credit Agreement, and in that connection sets forth below the information relating to such Continuation as required by such Section of the Credit Agreement:

1. The proposed date of such Continuation is \_\_\_\_\_, 20 .
2. The aggregate principal amount of Loans subject to the requested Continuation is \$ \_\_\_\_\_ and was originally borrowed by the Borrower on the Effective Date.
3. The portion of such principal amount subject to such Continuation is \$ \_\_\_\_\_ .
4. The current Interest Period for each of the Loans subject to such Continuation ends on \_\_\_\_\_, 20 .

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5. The duration of the new Interest Period for each of such Loans or portion thereof subject to such Continuation is:

- [Check one box only]**
- 1 month
  - 3 months
  - 6 months

The Borrower hereby certifies to the Administrative Agent and the Lenders that as of the date hereof and as of the proposed date of the requested Continuation and after giving effect thereto, (a) no Default or Event of Default exists or will exist, and (b) the representations and warranties made or deemed made by the Borrower and each other Loan Party in the Loan Documents to which any of them is a party are and shall be true and correct in all material respects, except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and correct on and as of such earlier date) and except for changes in factual circumstances not prohibited under the Loan Documents.

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Notice of Continuation as of the date first written above.

DIAMONDRock HOSPITALITY LIMITED PARTNERSHIP

By: DiamondRock Hospitality Company, its sole General Partner

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

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

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

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## FORM OF NOTICE OF CONVERSION

, 20

Regions Bank  
 1180 West Peachtree St NW, Suite 1400  
 Atlanta, GA 30309  
 email: [agencyservices@regions.com](mailto:agencyservices@regions.com)  
 Telephone: (404) 279-7425  
 Telecopy: (404) 279-7425

Regions Bank  
 1900 5th Avenue North, 15th Floor  
 Birmingham, AL 35303  
 Attn: Real Estate Corporate Banking — Operations  
 e-mail: [RECB@regions.com](mailto:RECB@regions.com)  
 Telephone: (205) 264-7437  
 Telecopy: (205) 264-5456

Ladies and Gentlemen:

Reference is made to that certain Term Loan Agreement dated as of April 26, 2017 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among DiamondRock Hospitality Limited Partnership (the "Borrower"), DiamondRock Hospitality Company (the "Parent"), the financial institutions party thereto and their assignees under Section 13.5. thereof (the "Lenders"), Regions Bank, as Administrative Agent (the "Administrative Agent"), and the other parties thereto. Capitalized terms used herein, and not otherwise defined herein, have their respective meanings given them in the Credit Agreement.

Pursuant to Section 2.7. of the Credit Agreement, the Borrower hereby requests a Conversion of a borrowing of Loans of one Type into Loans of another Type under the Credit Agreement, and in that connection sets forth below the information relating to such Conversion as required by such Section of the Credit Agreement:

1. The proposed date of such Conversion is \_\_\_\_\_, 20\_\_.
2. The Loans to be Converted pursuant hereto are **currently**:
 

<b>[Check one box only]</b>	<input type="radio"/>	Base Rate Loans
	<input type="radio"/>	LIBOR Loans
3. The aggregate principal amount of Loans subject to the requested Conversion is \$ \_\_\_\_\_ and was originally borrowed by the Borrower on the Effective Date.

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4. The portion of such principal amount subject to such Conversion is \$ \_\_\_\_\_.
5. The amount of such Loans to be so Converted is to be converted into Loans of the following Type:
 

<b>[Check one box only]</b>	<input type="radio"/>	Base Rate Loans
	<input type="radio"/>	LIBOR Loans, each with an initial Interest Period for a duration of:
<b>[Check one box only]</b>	<input type="radio"/>	1 month
	<input type="radio"/>	3 months
	<input type="radio"/>	6 months

The Borrower hereby certifies to the Administrative Agent and the Lenders that as of the date hereof and as of the date of the requested Conversion and after giving effect thereto, (a) no Default or Event of Default exists or will exist (provided the certification under this clause (a) shall not be made in connection with the Conversion of a Loan into a Base Rate Loan), and (b) the representations and warranties made or deemed made by the Borrower and each other Loan Party in the Loan Documents to which any of them is a party are and shall be true and correct in all material respects, except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and correct on and as of such earlier date) and except for changes in factual circumstances not prohibited under the Loan Documents.

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Notice of Conversion as of the date first written above.

DIAMONDRock HOSPITALITY LIMITED PARTNERSHIP

By: DiamondRock Hospitality Company,  
 its sole General Partner

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

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

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

EXHIBIT G-1

FORM OF U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to Term Loan Agreement dated as of April 26, 2017 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among DiamondRock Hospitality Limited Partnership (the "Borrower"), DiamondRock Hospitality Company, each of the financial institutions initially a signatory thereto together with their assignees under Section 13.5. thereof (the "Lenders"), Regions Bank, as the Administrative Agent (the "Administrative Agent"), and the other parties thereto.

Pursuant to the provisions of Section 3.10. of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN or W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_, 20

EXHIBIT G-2

FORM OF U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to Term Loan Agreement dated as of April 26, 2017 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among DiamondRock Hospitality Limited Partnership (the "Borrower"), DiamondRock Hospitality Company, each of the financial institutions initially a signatory thereto together with their assignees under Section 13.5. thereof (the "Lenders"), Regions Bank, as the Administrative Agent (the "Administrative Agent"), and the other parties thereto.

Pursuant to the provisions of Section 3.10. of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN or W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_, 20

## EXHIBIT G-3

## FORM OF U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to Term Loan Agreement dated as of April 26, 2017 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among DiamondRock Hospitality Limited Partnership (the "Borrower"), DiamondRock Hospitality Company, each of the financial institutions initially a signatory thereto together with their assignees under Section 13.5. thereof (the "Lenders"), Regions Bank, as the Administrative Agent (the "Administrative Agent"), and the other parties thereto.

Pursuant to the provisions of Section 3.10. of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

Date: \_\_\_\_\_, 20

## EXHIBIT G-4

## FORM OF U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to Term Loan Agreement dated as of April 26, 2017 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among DiamondRock Hospitality Limited Partnership (the "Borrower"), DiamondRock Hospitality Company, each of the financial institutions initially a signatory thereto together with their assignees under Section 13.5. thereof (the "Lenders"), Regions Bank, as the Administrative Agent (the "Administrative Agent"), and the other parties thereto.

Pursuant to the provisions of Section 3.10. of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to this Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_, 20

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EXHIBIT H  
FORM OF COMPLIANCE CERTIFICATE

, 20

Regions Bank  
1180 West Peachtree St NW, Suite 1400  
Atlanta, GA 30309  
email: [agencyservices@regions.com](mailto:agencyservices@regions.com)  
Telephone: (404) 279-7425  
Telecopy: (404) 279-7425

Regions Bank  
1900 5th Avenue North, 15th Floor  
Birmingham, AL 35303  
Attn: Real Estate Corporate Banking — Operations  
e-mail: [RECB@regions.com](mailto:RECB@regions.com)  
Telephone: (205) 264-7437  
Telecopy: (205) 264-5456

Ladies and Gentlemen:

Reference is made to that certain Term Loan Agreement dated as of April 26, 2017 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among DiamondRock Hospitality Limited Partnership (the "Borrower"), DiamondRock Hospitality Company (the "Parent"), the financial institutions party thereto and their assignees under Section 13.5. thereof (the "Lenders"), Regions Bank, as Administrative Agent (the "Administrative Agent"), and the other parties thereto. Capitalized terms used herein, and not otherwise defined herein, have their respective meanings given them in the Credit Agreement.

Pursuant to Section 9.3. of the Credit Agreement, the undersigned hereby certifies, in such person's corporate and not individual capacity, to the Administrative Agent and the Lenders that:

1. The undersigned is the [ ] of the Parent.
2. The undersigned has examined the books and records of the Parent and the Borrower and has conducted such other examinations and investigations as are reasonably necessary to provide this Compliance Certificate.
3. As of the date of this Compliance Certificate, to the best of my knowledge, information and belief after due inquiry, no Default or Event of Default exists and the Borrower and its Subsidiaries are in compliance with all covenants under the Credit Agreement. *[if such is not the case, specify such Default, Event of Default or covenant non-compliance and its nature, when it occurred and whether it is continuing and the steps being taken by the Borrower with respect to such event, condition or failure].*

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4. Attached hereto as Schedule 1 are reasonably detailed calculations establishing whether or not the Borrower and its Subsidiaries were in compliance with the covenants contained in Sections 10.1., 10.2. and 10.4. of the Credit Agreement.

5. *[Attached hereto as Schedule 2 is a list of all Persons that are a Material Subsidiary or a Significant Subsidiary as of the date hereof]*  
(1) *[Attached hereto as Schedule 2 is a list of all Persons that have become a Material Subsidiary or a Significant Subsidiary since the date of the Compliance Certificate most recently delivered by the Borrower or the Parent prior to the date hereof.]*

6. *[Attached hereto as Schedule 3 is a report of the Properties of the Parent, the Borrower and each of the other Subsidiaries, including their Net Operating Income for the trailing four (4) fiscal quarters most recently ending and mortgage debt as of the date hereof, if any, in each case, as of the date hereof.](2) [Attached hereto as Schedule 3 is a report of newly acquired Properties of the Parent, the Borrower and each of the other Subsidiaries, including their Net Operating Income for the trailing four (4) fiscal quarters ending \_\_\_\_\_, purchase price, and principal amount of the mortgage debt as of the date hereof, if any, since the date of the Compliance Certificate most recently delivered by the Borrower or the Parent prior to the date hereof.]*

7. As of the date hereof [the aggregate outstanding principal amount of all outstanding Loans is less than or equal to the Maximum Loan Availability at such time.]

8. Schedule 4 attached hereto accurately and completely sets forth, in reasonable detail, the information to determine the Unencumbered Property Value of all Unencumbered Properties and Maximum Loan Availability as of \_\_\_\_\_, 20\_\_\_\_, including, without limitation, the aggregate principal amount of all Secured Recourse Indebtedness.(3)

9. [Each Property listed on Schedule 5 attached hereto constitutes an Eligible Property and the Administrative Agent has received such information and reports regarding such Property as required under Section 4.1.(b) of the Credit Agreement.](4)

10. [Schedule 6 attached hereto accurately and completely sets forth, in reasonable detail, the information required to determine the Unencumbered Property Value of each Eligible Property as of \_\_\_\_\_, 20\_\_\_\_.](5)

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- (1) **Substitute this statement and the corresponding Schedule, upon the delivery of this Certificate on the Effective Date.**
  - (2) **Substitute this statement and the corresponding Schedule, upon the delivery of this Certificate on the Effective Date.**
  - (3) **If this Certificate is delivered in connection with the submission of an Eligible Property as an Unencumbered Property pursuant to Section 4.1.(b), then each of the calculations set forth on Schedules 3 should include such Property as if it is already an Unencumbered Property.**
  - (4) **Include this statement and the corresponding Schedule, if this Certificate is delivered in connection with the submission of an Eligible Property as an Unencumbered Property pursuant to Section 4.1.(b).**
  - (5) **Include this statement and the corresponding Schedule, if this Certificate is delivered in connection with the submission of an Eligible Property as an Unencumbered Property pursuant to Section 4.1.(b).**

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IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date first above written.

\_\_\_\_\_  
[INSERT NAME], as [Chief Financial Officer][Chief Executive Officer] of  
DiamondRock Hospitality Company

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Schedule 1

Financial Covenant Compliance

[Calculations to be Attached]

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Schedule 2

Material Subsidiary or a Significant Subsidiary since \_\_\_\_\_, 20\_\_\_\_

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Schedule 3

New Properties

[Report to be Attached]

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Schedule 4

Maximum Loan Availability

[Report to be Attached]

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Schedule 5

Eligible Properties

[Report to be Attached]

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Schedule 6

Unencumbered Property Value of each Eligible Property

[Report to be Attached]

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EXHIBIT I

FORM OF DUTCH AUCTION PROCEDURES

*This outline is intended to summarize certain basic terms of procedures with respect to certain Borrower buy-backs pursuant to and in accordance with the terms and conditions of Section 13.5.(g) of the Credit Agreement to which this Exhibit I is attached. It is not intended to be a definitive list of all of the terms and conditions of a Dutch Auction and all such terms and conditions shall be set forth in the applicable auction procedures documentation set for each Dutch Auction (the "Offer Documents"). None of the Administrative Agent, Regions Capital Markets (or, if Regions Capital Markets declines to act in such capacity, an investment bank of recognized standing selected by the Borrower) (the "Auction Manager") or any of their respective Affiliates makes any recommendation pursuant to the Offer Documents as to whether or not any Lender should sell by assignment any of its Loans pursuant to the Offer Documents (including, for the avoidance of doubt, by participating in the Dutch Auction as a Lender) or whether or not the Borrower should purchase by assignment any Loans from any Lender pursuant to any Dutch Auction. Each Lender should make its own decision as to whether to sell by assignment any of its Loans and, if so, the principal amount of and price to be sought for such Loans. In addition, each Lender should consult its own attorney, business advisor or tax advisor as to legal, business, tax and related matters concerning any Dutch Auction and the Offer Documents. Capitalized terms not otherwise defined in this Exhibit I have the meanings assigned to them in the Credit Agreement.*

**Summary.** The Borrower may purchase (by assignment) Loans on a non-pro rata basis by conducting one or more Dutch Auctions pursuant to the procedures described herein; *provided* that no more than one Dutch Auction may be ongoing at any one time and no more than two Dutch Auctions may be made in any period of four consecutive fiscal quarters of the Borrower.

1. **Notice Procedures.** In connection with each Dutch Auction, the Borrower will notify the Auction Manager (for distribution to the Lenders) of the Loans that will be the subject of the Dutch Auction by delivering to the Auction Manager a written notice in form and substance reasonably satisfactory to the Auction Manager (an "Auction Notice"). Each Auction Notice shall contain (i) the maximum principal amount of Loans the Borrower is willing to purchase (by assignment) in the Dutch Auction (the "Auction Amount"), which shall be no less than \$5,000,000 or an integral multiple of \$1,000,000 in excess of thereof, (ii) the range of discounts to par (the "Discount Range"), expressed as a range of prices per \$1,000 of Loans, at which the Borrower would be willing to purchase Loans in the Dutch Auction and (iii) the date on which the Dutch Auction will conclude, on which date Return Bids (as defined below) will be due at the time provided in the Auction Notice (such time, the "Expiration Time"), as such date and time may be extended upon notice by the Borrower to the Auction Manager not less than 24 hours before the original Expiration Time. The Auction Manager will deliver a copy of the Offer Documents to each Lender promptly following completion thereof.

2. **Reply Procedures.** In connection with any Dutch Auction, each Lender holding Loans wishing to participate in such Dutch Auction shall, prior to the Expiration Time, provide the Auction Manager with a notice of participation in form and substance reasonably satisfactory to the Auction Manager (the "Return Bid") to be included in the Offer Documents, which shall specify (i) a discount to par that must be expressed as a price per \$1,000 of Loans (the "Reply Price") within the Discount Range and (ii) the principal amount of Loans, in an amount not less than \$1,000,000 that such Lender is willing to offer for sale at its Reply Price (the "Reply Amount"); *provided* that each Lender may submit a Reply Amount that is less than the minimum amount and incremental amount requirements described above only if the Reply Amount equals the entire amount of the Loans held by such Lender at such time. A Lender may only submit one Return Bid per Dutch Auction, but each Return Bid may contain up to three component bids, each of which may result in a separate Qualifying Bid (as defined below) and each of

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which will not be contingent on any other component bid submitted by such Lender resulting in a Qualifying Bid. In addition to the Return Bid, a participating Lender must execute and deliver, to be held by the Auction Manager, an assignment and acceptance in the form included in the Offer Documents which shall be in form and substance reasonably satisfactory to the Auction Manager and the Administrative Agent (the "Auction Assignment and Acceptance"). The Borrower will not purchase any Loans at a price that is outside of the applicable Discount Range, nor will any Return Bids (including any component bids specified therein) submitted at a price that is outside such applicable Discount Range be considered in any calculation of the Applicable Threshold Price (as defined below).

3. **Acceptance Procedures.** Based on the Reply Prices and Reply Amounts received by the Auction Manager, the Auction Manager, in consultation with the Borrower, will calculate the lowest purchase price (the "Applicable Threshold Price") for the Dutch Auction within the Discount Range

for the Dutch Auction that will allow the Borrower to complete the Dutch Auction by purchasing the full Auction Amount (or such lesser amount of Loans for which the Borrower has received Qualifying Bids). The Borrower shall purchase (by assignment) Loans from each Lender whose Return Bid is within the Discount Range and contains a Reply Price that is equal to or less than the Applicable Threshold Price (each, a "Qualifying Bid"). All Loans included in Qualifying Bids received at a Reply Price lower than the Applicable Threshold Price will be purchased at a purchase price equal to the applicable Reply Price and shall not be subject to proration. If a Lender has submitted a Return Bid containing multiple component bids at different Reply Prices, then all Loans of such Lender offered in any such component bid that constitutes a Qualifying Bid with a Reply Price lower than the Applicable Threshold Price shall also be purchased at a purchase price equal to the applicable Reply Price and shall not be subject to proration.

4. Proration Procedures. All Loans offered in Return Bids (or, if applicable, any component bid thereof) constituting Qualifying Bids equal to the Applicable Threshold Price will be purchased at a purchase price equal to the Applicable Threshold Price; *provided* that if the aggregate principal amount of all Loans for which Qualifying Bids have been submitted in any given Dutch Auction equal to the Applicable Threshold Price would exceed the remaining portion of the Auction Amount (after deducting all Loans purchased below the Applicable Threshold Price), the Borrower shall purchase the Loans for which the Qualifying Bids submitted were at the Applicable Threshold Price ratably based on the respective principal amounts offered and in an aggregate amount up to the amount necessary to complete the purchase of the Auction Amount. For the avoidance of doubt, no Return Bids (or any component thereof) will be accepted above the Applicable Threshold Price.

5. Notification Procedures. The Auction Manager will calculate the Applicable Threshold Price no later than the second Business Day after the date that the Return Bids were due. The Auction Manager will insert the amount of Loans to be assigned and the applicable settlement date determined by the Auction Manager in consultation with the Borrower onto each applicable Auction Assignment and Acceptance received in connection with a Qualifying Bid. Upon written request of the submitting Lender, the Auction Manager will promptly return any Auction Assignment and Acceptance received in connection with a Return Bid that is not a Qualifying Bid.

6. Additional Procedures. Once initiated by an Auction Notice, the Borrower may withdraw a Dutch Auction by written notice to the Auction Manager no later than 24 hours before the original Expiration Time so long as no Qualifying Bids have been received by the Auction Manager at or prior to the time the Auction Manager receives such written notice from the Borrower. Any Return Bid (including any component bid thereof) delivered to the Auction Manager may not be modified, revoked, terminated or cancelled; *provided* that a Lender may modify a Return Bid at any time prior to the Expiration Time solely to reduce the Reply Price included in such Return Bid. However, a Dutch Auction shall become void if the Borrower fails to satisfy one or more of the conditions to the purchase of Loans set forth in, or

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to otherwise comply with the provisions of Section 13.5.(g) of the Credit Agreement to which this Exhibit I is attached. The purchase price for all Loans purchased in a Dutch Auction shall be paid in cash by the Borrower directly to the respective assigning Lender on a settlement date as determined by the Auction Manager in consultation with the Borrower (which shall be no later than ten (10) Business Days after the date Return Bids are due), along with accrued and unpaid interest (if any) on the applicable Loans up to the settlement date. The Borrower shall execute each applicable Auction Assignment and Acceptance received in connection with a Qualifying Bid.

All questions as to the form of documents and validity and eligibility of Loans that are the subject of a Dutch Auction will be determined by the Auction Manager, in consultation with the Borrower, and the Auction Manager's determination will be conclusive, absent manifest error. The Auction Manager's interpretation of the terms and conditions of the Offer Document, in consultation with the Borrower, will be final and binding.

None of the Administrative Agent, the Auction Manager, any other Titled Agent or any of their respective Affiliates assumes any responsibility for the accuracy or completeness of the information concerning the Borrower, the Subsidiaries or any of their Affiliates contained in the Offer Documents or otherwise or for any failure to disclose events that may have occurred and may affect the significance or accuracy of such information.

The Auction Manager acting in its capacity as such under a Dutch Auction shall be entitled to the benefits of the provisions of Article XII and Section 13.9. of the Credit Agreement to the same extent as if each reference therein to the "Administrative Agent" were a reference to the Auction Manager, each reference therein to the "Loan Documents" were a reference to the Offer Documents, the Auction Notice and Auction Assignment and Acceptance and each reference therein to the transactions contemplated by the Credit Agreement or any other Loan document, or any agreement or instrument contemplated by the Credit Agreement or any other Loan Document, were a reference to the transactions contemplated hereby and the Administrative Agent shall cooperate with the Auction Manager as reasonably requested by the Auction Manager in order to enable it to perform its responsibilities and duties in connection with each Dutch Auction.

This Exhibit I shall not require the Borrower or any Subsidiary to initiate any Dutch Auction, nor shall any Lender be obligated to participate in any Dutch Auction.

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