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Inter-Creditor Agreement
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INTERCREDITOR AGREEMENT

INTERCREDITOR AGREEMENT (this “**Agreement**”), dated as of July 21, 2005, between **MERRILL LYNCH MORTGAGE LENDING, INC.**, a Delaware corporation, having an address at 250 Vesey Street, 16th Floor, 4 World Financial Center, 16th Floor, New York, New York 10080 (in such capacity, together with its successors and assigns, “**Mortgage Lender**”), and **STARWOOD HOTELS & RESORTS WORLDWIDE, INC.**, a Maryland corporation, having an address at 1111 Westchester Avenue, White Plains, New York 10604 (in such capacity, together with its successors and assigns, “**Mezzanine Lender**”).

WHEREAS, pursuant to a certain Promissory Note, dated as of December 15, 2000, made by THR Chicago Holding LLC, a Delaware limited liability company (“**Mezzanine Borrower**”) in favor of Mezzanine Lender (the “**Mezzanine Note**”) and a certain Pledge and Security Agreement, dated as of December 15, 2000 between Mezzanine Borrower and Mezzanine Lender (the “**Pledge Agreement**”); the Mezzanine Note, the Mezzanine Pledge and related UCC-1 Financing Statements, as each may be amended, supplemented or otherwise modified in accordance with this Agreement and in effect from time to time, collectively, the “**Mezzanine Loan Documents**”), Mezzanine Lender has made a loan in the principal amount of \$35,000,000 (the “**Mezzanine Loan**”); and

WHEREAS, Mortgage Lender has made a loan in the principal amount of \$84,000,000 (the “**Mortgage Loan**”) to THR Chicago LLC, a Delaware limited liability company (“**Mortgage Borrower**”); which Mortgage Loan is evidenced and secured by, among other things, that certain Mortgage, Security Agreement, Financing Statement, Fixture Filing and Assignment of Leases, Rents and Security Deposits, dated as of July __, 2005, between Mortgage Lender and Mortgage Borrower (“**Mortgage**”) encumbering that certain parcel of land in the City of Chicago, County of Cook and State of Illinois, as more particularly described on Exhibit A attached hereto.

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

1. Defined Terms. The following terms shall have the meanings herein specified unless the context otherwise requires (such meanings to apply to such terms in both the singular and plural forms):

“**Affiliate**” shall mean, as to any Person, any other Person that, directly or indirectly, owns more than fifty percent (50%) of, is in control of, is controlled by or is under common ownership or control with such Person or is a director or officer of such Person or of an Affiliate of such Person. As used in this definition, the term “**control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise.

“**Certificates**” shall mean any securities representing beneficial interests in the Mortgage Loan or in a pool of mortgage loans including the Mortgage Loan.

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“Control” means the ownership, directly or indirectly, in the aggregate of more than fifty percent (50%) of the beneficial ownership interests of an entity and the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity, whether through the ability to exercise voting power, by contract or otherwise. “Controlled by”, “controlling” and “under common control with” shall have the respective correlative meaning thereto.

“Eligibility Requirements” means, with respect to any Person, that such Person (i) has total assets (in name or under management) in excess of \$800,000,000 and (except with respect to a pension advisory firm or similar fiduciary) capital/statutory surplus or shareholder's equity of \$400,000,000, and (ii) is regularly engaged in the business of making or owning commercial real estate loans or operating commercial mortgage properties.

“Fitch” means Fitch IBCA, Inc.

“LBHI” shall mean Lehman Brothers Holdings Inc., together with any successor by merger, consolidation, amalgamation or sale of all or substantially all of its assets.

“Mezzanine Event of Default” shall mean a “Default” under and as defined in the Mezzanine Loan Documents.

“Mezzanine Loan Collateral” shall mean all equity interests in Mortgage Borrower pledged to Mezzanine Lender as security for the Mezzanine Loan.

“Mezzanine Loan Liabilities” shall mean, collectively, all of the indebtedness, liabilities and obligations of Mezzanine Borrower evidenced by the Mezzanine Loan Documents and all amounts due or to become due pursuant to the Mezzanine Loan Documents, including interest thereon and any other amounts payable in respect thereof or in connection therewith, including, without limitation, any late charges, default interest, prepayment fees or premiums, exit fees, advances and post-petition interest.

“Moody’s” means Moody’s Investors Service, Inc.

“Mortgage Event of Default” shall mean an “Event of Default” under and as defined in the Mortgage.

“Mortgage Loan Documents” shall mean the “Loan Documents,” as defined in the Mortgage.

“Mortgage Loan Liabilities” shall mean, collectively, all of the indebtedness, liabilities and obligations of Mortgage Borrower evidenced by the Mortgage Loan Documents and all amounts due or to become due pursuant to the Mortgage Loan Documents, including interest thereon and any other amounts payable in respect thereof or in connection therewith, including, without limitation, any late charges, default interest, prepayment fees or premiums, exit fees, advances and post-petition interest.

“Non-Consolidation Opinion” shall mean a legal non-consolidation opinion that is either (a) acceptable to the Rating Agencies, or (b) substantially in form and substance as

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Exhibit B attached hereto, as the same may be further revised, as required, to reflect any changes in the applicable law, the then current standards of the Rating Agencies or the subject matter thereof.

“Permitted Fund Manager” means any Person that on the date of determination is (i) LBHI or any other nationally-recognized manager of investment funds investing in debt or equity interests relating to commercial real estate, (ii) investing through a fund with committed capital of at least \$250,000,000 and (iii) not subject to any case, proceeding or other action, whether voluntary or involuntary, against such Person under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors.

“Permitted Owner” shall mean (t) any entity as to which a Rating Agency Confirmation is issued, (u) any partners (or members or shareholders) of Mortgage Borrower or any of their respective Affiliates, (v) any insurance company with direct or indirect interests in hotel assets of at least \$100,000,000, exclusive of the Property, (w) any pension fund or separate account or investment vehicle established by such an entity or any publicly traded real estate investment trust or other publicly traded real estate company, that has direct or indirect interests in hotel assets of at least \$100,000,000, exclusive of the Property, (x) any privately held real estate company as to which a Rating Agency Confirmation is issued and which has direct or indirect interests in hotel assets of at least \$250,000,000 other than the Property including a minimum of 5 hotels other than the Property, (y) any entity controlled directly or indirectly by THR, TTV or LBHI, or (z) any Qualified Institutional Lender.

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

“Property” shall have the meaning set forth in the Mortgage.

“Qualified Institutional Lender” means one or more of the following:

(a) a real estate investment trust, bank, saving and loan association, investment bank, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, government entity or plan, provided that any such Person referred to in this clause (a) satisfies the Eligibility Requirements;

(b) an investment company, money management firm or “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional “accredited investor” within the meaning of Regulation D under the Securities Act of 1933, as amended, provided that any such Person referred to in this clause (b) satisfies the Eligibility Requirements;

(c) an institution substantially similar to any of the foregoing entities described in clauses (a) or (b) that satisfies the Eligibility Requirements;

(d) any entity Controlled by any of the entities described in clauses (a) or (c) above; or

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(e) an investment fund, limited liability company, limited partnership or general partnership where a Permitted Fund Manager or an entity that is otherwise a Qualified Institutional Lender under clauses (a), (b), (c) or (d) of this definition acts as the general partner, managing member or fund manager and at least 50% of the equity interests in such investment vehicle are owned, directly or indirectly, by one or more entities that are otherwise Qualified Institutional Lenders under clauses (a), (b), (c) or (d) of this definition.

“Qualified Manager” means (a) Westin Management Company North or its Affiliate, or (b) a property manager of the Property which is a reputable management company having at least five (5) years’ experience in the management of commercial properties with similar size, scope, use and value as the Property and in the jurisdiction in which the Property is located.

“Qualified Transferee” means (a) Mezzanine Lender or an Affiliate of Mezzanine Lender or (b) one or more of the following: (i) a real estate investment trust, bank, saving and loan association, investment bank, insurance company, trust company, commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, government entity or plan, (ii) investment company, money management firm or “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, which is regularly engaged in the business of making or owning loans of similar types to the Mezzanine Loan, (iii) a trustee in connection with a securitization of the Mezzanine Loan, so long as such trustee or the servicer therefor is an entity that otherwise would be a Qualified Transferee, (iv) an institution substantially similar to any of the foregoing, in each case of clauses (b) (i), (ii), (iii) or (iv) of this definition, which (A) has the Required Assets and, except with respect to a pension advisory firm or similar fiduciary the Required Capital/Equity, and (B) is regularly engaged in the business of making or owning commercial loans, (v) any entity Controlled (as defined below) by any of the entities described in clause (b) above, (vi) any Permitted Owner or (vii) any other entity approved by the Rating Agencies. For purposes of this definition only, “Control” means the ownership, directly or indirectly, in the aggregate of more than fifty percent (50%) of the beneficial ownership interest of an entity and the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity, whether through the ability to exercise voting power, by contract or otherwise.

“Rating Agencies” shall mean, prior to the final Securitization of the Mortgage Loan, each of Standard & Poor’s, Moody’s, and Fitch, or any other nationally-recognized statistical rating agency which has been designated by Mortgage Lender and, after the final Securitization of the Mortgage Loan, shall mean any of the foregoing that have rated any of the Certificates.

“Rating Agency Confirmation” shall mean a written affirmation from each of the Rating Agencies that the credit rating of the Certificates assigned by such Rating Agency immediately prior to the occurrence of the event with respect to which such Rating Agency Confirmation is sought will not be qualified, downgraded or withdrawn as a result of the occurrence of such event.

“Required Assets” shall mean total assets (in name or under management) in excess of (a) \$600,000,000 if Standard & Poor’s is an applicable Rating Agency,

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(b) \$1,000,000,000 if Moody's is an applicable Rating Agency, and (c) \$12,000,000,000 if Fitch is an applicable Rating Agency.

"Required Capital/Equity" shall mean capital/statutory surplus or shareholder's equity of no less than (a) \$200,000,000 if Standard & Poor's is an applicable Rating Agency, (b) \$500,000,000 if Moody's is an applicable Rating Agency, and (c) \$250,000,000 if Fitch is an applicable Rating Agency.

"Securitization" shall have the meaning set forth in the Mortgage.

"Standard & Poor's" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

"THR" shall mean Tishman Hotel & Realty LP, a Delaware limited partnership, together with any successor by merger, consolidation, amalgamation or sale of all or substantially all of its assets.

"Transfer" means to sell, assign, convey, transfer, mortgage, encumber, grant a security or other interest in, pledge or otherwise dispose of, or where used as a noun, a sale, assignment, conveyance, transfer mortgage, encumbrance, lien, grant of a security or other interest in, pledge or other disposition.

"TTV" shall mean TTV Realty Holdings, Inc., a New York corporation, together with any successor by merger, consolidation, amalgamation or sale of all or substantially all of its assets.

2. Consent to Mezzanine Loan and Pledge of Mezzanine Loan Collateral.

(a) Mortgage Lender hereby acknowledges that Mezzanine Lender has made the Mezzanine Loan to Mezzanine Borrower. Mortgage Lender hereby consents to Mezzanine Lender having made the Mezzanine Loan to Mezzanine Borrower, executed and delivered the Mezzanine Loan Documents to Mezzanine Lender and to the liens and security interests in the Mezzanine Loan Collateral created in favor of Mezzanine Lender by the Mezzanine Loan Documents. Mortgage Lender hereby acknowledges and agrees that any conditions precedent to Mortgage Lender's consent to mezzanine financing on the Property as set forth in the Mortgage Loan Documents or any other agreements with Mortgage Borrower, as they apply to the Mezzanine Loan Documents or the making of the Mezzanine Loan, have been either satisfied or waived.

(b) Mezzanine Lender hereby acknowledges that Mortgage Lender has made the Mortgage Loan to Mortgage Borrower, that Mortgage Borrower has executed and delivered the Mortgage Loan Documents to Mortgage Lender and that certain liens and security interests have been created in favor of Mortgage Lender by the Mortgage Loan Documents.

3. Rating Agency Confirmation. (a) If there are any Certificates outstanding, then, without receiving a Rating Agency Confirmation, Mezzanine Lender shall not take the following actions:

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(i) transfer any or all of its interest in the Mezzanine Loan to any Person other than a Qualified Transferee; and

(ii) exercise its rights under the Mezzanine Loan Documents to obtain title to any of the Mezzanine Loan Collateral unless (A) the transferee of the title to the Mezzanine Loan Collateral is a Qualified Transferee (or was a Qualified Transferee at the time it acquired the Mezzanine Loan), (B) the Property will be managed by a Qualified Manager after the transfer of title and (C) the transferee delivers a Non-Consolidation Opinion. No transfer fee under the Mortgage Loan shall be payable in connection with any transfer resulting from the exercise of Mezzanine Lender's remedies under the Mezzanine Loan Documents.

(b) In the event that no Certificates are outstanding, Mezzanine Lender shall be required to obtain the consent of Mortgage Lender (which shall not be unreasonably withheld, conditioned or delayed) prior to taking any action that would otherwise require a Rating Agency Confirmation pursuant to Section 3(a).

4. Constructive Trust. In the event Mezzanine Lender receives any payment or other distribution of any kind or character directly or indirectly from Mortgage Borrower or the Property prior to the satisfaction in full of the Mortgage Loan Liabilities, other than as expressly provided for by the terms of the Mezzanine Loan Documents or permitted by the terms of this Agreement and the Mortgage Loan Documents, such payment or other distribution shall be received and shall be held by Mezzanine Lender in trust for Mortgage Lender and promptly turned over by Mezzanine Lender to Mortgage Lender. Mezzanine Lender shall execute such further documents or instruments and take such further action as Mortgage Lender may reasonably require from time to time to carry out the intent of this Agreement. Notwithstanding the foregoing, Mortgage Lender hereby agrees that Mezzanine Borrower may at any time except during the continuance of an Event of Default (as defined in the Mortgage Loan Documents) pay or prepay any amount outstanding under the Mezzanine Loan Documents and Mezzanine Lender may retain all such amounts and apply them under the Mezzanine Loan Documents.

5. Amendments to Loan Documentation; Mezzanine Borrower Organizational Documents.

(a) Notwithstanding any provision in the Mezzanine Loan Documents, Mortgage Lender shall have the right to enter into, execute and agree to modify, amend, consolidate, spread, restate or waive any provision of the Mortgage Loan Documents without obtaining the consent of Mezzanine Lender.

(b) Mortgage Lender shall deliver to Mezzanine Lender copies of any and all modifications, amendments, extensions, consolidations, spreaders, restatements, alterations, changes or revisions to any one or more of the Mortgage Loan Documents (including, without limitation, any side letters, waivers or consents entered into, executed or delivered by Mortgage Lender) within five (5) Business Days after any of such applicable instruments have been executed by Mortgage Lender.

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(c) Notwithstanding any provision in the Mortgage Loan Documents, Mezzanine Lender shall have the right to enter into, execute and agree to modify, amend, consolidate, spread, restate or waive any provision of the Mezzanine Loan Documents without obtaining the consent of Mortgage Lender, provided no such modification, amendment, consolidation, spreader, restatement or waiver shall (i) (1) increase the principal amount of the Mezzanine Loan other than by reason of the accrual of unpaid interest or (2) increase the principal amount of the Mezzanine Loan, including, without duplication, all accrued and unpaid interest thereon, in excess of the principal amount, including, without duplication, all accrued and unpaid interest thereon, that could be outstanding under the Mezzanine Loan assuming that Mortgage Borrower had exercised all maturity date extension options available to Mortgage Borrower under the Mortgage Loan Documents (whether or not Mortgage Borrower has exercised such extension options) (the latest maturity date after the assumed exercise of all such extension options being hereinafter referred to as the "Outside Maturity Date") and assuming that the maturity date of the Mezzanine Loan had also been extended to the Outside Maturity Date, (ii) increase the interest rate payable under the Mezzanine Loan, (iii) provide for the payment of any additional interest, kicker or similar equity feature, (iv) extend the maturity date of the Mezzanine Loan beyond the Outside Maturity Date unless the outstanding principal balance of the Mezzanine Loan, including, without duplication, all accrued and unpaid interest on the Mezzanine Loan (other than the amount of interest that may have accrued for the one month period ending on the date of such maturity date extension), upon the effectiveness of any such maturity date extension, does not exceed \$35,000,000.00 in the aggregate (provided that, in any case, interest thereafter will be permitted to accrue and not be paid until the maturity date of the Mezzanine Loan), (v) provide for the Mezzanine Loan to be secured by any collateral other than a pledge of the direct or indirect equity interests in Mortgage Borrower, including cash flow of the pledgors of such equity interests, or any other collateral securing the Mezzanine Loan as of the date hereof, or (vi) cross-default the Mezzanine Loan with any other indebtedness. Notwithstanding the foregoing, any amounts funded by Mezzanine Lender under the Mezzanine Loan Documents as a result of (A) the making of any protective advances or other advances by Mezzanine Lender expressly permitted by the terms of the Mezzanine Loan Documents and this Agreement, or (B) interest accruals or accretions and any compounding thereof (including default interest) shall not at any time be deemed to contravene this Section 5(c). Nothing in this Agreement shall be construed to extend, or obligate Mezzanine Lender to extend, the maturity date of the Mezzanine Loan.

(d) Mezzanine Lender shall deliver to Mortgage Lender copies of any and all modifications, amendments, extensions, consolidations, spreaders, restatements, alterations, changes or revisions to any one or more of the Mezzanine Loan Documents, respectively (including, without limitation, any side letters, waivers or consents entered into, executed or delivered by Mezzanine Lender) within five (5) Business Days after any of such applicable instruments have been executed by Mezzanine Lender, as applicable.

(e) Mezzanine Lender shall consent to the amendment or modification of Mezzanine Borrower's organizational documents upon request by Mortgage Lender in order to satisfy requests made by the Rating Agencies rating any Certificates, provided, that any such amendment or modification shall not materially impair the rights of the "Starwood Manager" (as defined therein).

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6. Additional Rights and Limitations of Mezzanine Lender. For as long as the Mezzanine Loan remains outstanding:

(a) **Notices of Transfer, etc.** Mortgage Lender immediately shall notify Mezzanine Lender if Mortgage Borrower seeks or requests a release of the Lien of the Mortgage Loan or seeks or requests Mortgage Lender's consent to, or take any action in connection with or in furtherance of, a Transfer of the Property or a prepayment or refinancing of the Mortgage Loan. In the event of a request by Mortgage Borrower for a Transfer of all or substantially all of the Property, Mortgage Lender shall, if Mortgage Lender has the right to consent, obtain the prior written consent of Mezzanine Lender prior to Mortgage Lender's granting of its consent or agreement thereto, provided, that, in the event of any disagreement between Mortgage Lender and Mezzanine Lender regarding consent to any such Transfer, the right of Mezzanine Lender to consent to such Transfer shall be subject and limited to all rights of Mortgage Lender pursuant to the Mortgage Loan Documents.

(b) **Books and Records.** Upon any inspection of the books, records or Property of Mortgage Borrower by Mortgage Lender pursuant to the terms of the Mortgage Loan Documents, Mortgage Lender shall, upon request of Mezzanine Lender, take all action to provide Mezzanine Lender access for its own inspection of such books, records or Property, and the Mortgage Lender shall, at the request and on behalf of Mezzanine Lender, discuss the business, financial and other condition of Mortgage Borrower and Mezzanine Borrower, as applicable, with officers of Mortgage Borrower and Mezzanine Borrower, as applicable, and the accountants and other representatives of Mortgage Borrower and Mezzanine Borrower, as applicable.

(c) **Mortgage Borrower's Organizational Documents.** Mortgage Lender shall not require any material amendment or modification of the provisions of Mortgage Borrower's organizational documents relating to the "Starwood Manager" (as defined therein).

(d) **Financial Statements.** Mortgage Lender shall provide Mezzanine Lender with copies of each financial statement required to be delivered to Mortgage Lender pursuant to the terms of the Mortgage Loan Documents within three (3) Business Days after receipt by Mortgage Lender.

(e) **Intentionally Omitted.**

(f) **No Consent Rights of Mezzanine Lender.** Mezzanine Lender acknowledges that the Mezzanine Loan Documents do not contain any provision or requirement that Mezzanine Lender's consent or approval be obtained for any actions or determinations by Mortgage Borrower or Mezzanine Borrower in connection with the leasing of the Property or alterations to the Property.

(g) **Mezzanine Lender hereby waives any equitable right it may have to require that Mortgage Lender marshal any assets of Mortgage Borrower in favor of Mezzanine Lender, to require the separate sales of any portion of the Property or to require that the Mortgage Lender exhaust its remedies against any portion of the Property.** Mezzanine Lender agrees that, except with respect to the enforcement of its remedies under the Mezzanine Loan

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Documents permitted hereunder, prior to the satisfaction of all Mortgage Loan Liabilities it shall not acquire, by subrogation or otherwise, any lien, estate, right or other interest in any portion of the Property or any other collateral now securing the Mortgage Loan or the proceeds therefrom that is or may be prior to, or of equal priority to, the lien of any of the Mortgage Loan Documents or the liens, rights, estates and interests created thereby.

7. **Notices of Default; Cure Rights of Mezzanine Lender.** (a) Mezzanine Lender shall give Mortgage Lender notice of any Mezzanine Event of Default and, simultaneously with giving such notices to Mezzanine Borrower, copies of notices given to Mezzanine Borrower of events that with the passage of time and failure to cure, would result in the occurrence of a "Default" or "Event of Default" under the Mezzanine Loan Documents.

(b) Mortgage Lender shall give Mezzanine Lender notice of any Mortgage Event of Default and, simultaneously with giving such notices to Mortgage Borrower, copies of notices given to Mortgage Borrower of events that with the passage of time and failure to cure, would result in the occurrence of a "Default" or "Event of Default" under the Mortgage Loan Documents. In no event shall Mortgage Lender accelerate the Mortgage Loan Liabilities or commence any enforcement action under the Mortgage Loan Documents without providing prior notice thereof to Mezzanine Lender. Any right to an extended grace period granted to Mezzanine Lender pursuant to Section 7(c) below shall be limited to the first two (2) such notices given in any twelve (12) month period.

(c) If the notice delivered by Mortgage Lender to Mezzanine Lender relates to a default by Mortgage Borrower in its obligation to pay money under the Mortgage Loan Documents (a "**Monetary Default**"), Mortgage Lender agrees that Mezzanine Lender shall have the right, but not the obligation, to cure such Monetary Default within three (3) days after such notice is given pursuant to Section 12(c) below. If the notice delivered by Mortgage Lender relates to a default by Mortgage Borrower with respect to its failure to perform any of its other obligations (other than an obligation to pay money) under the Mortgage Loan Documents (a "**Non-Monetary Default**"), Mortgage Lender agrees that Mezzanine Lender shall have the right, but not the obligation, to cure such Non-Monetary Default within the cure periods set forth in the Mortgage Loan Documents. Under no circumstances shall any action taken by Mezzanine Lender to cure any default of Mortgage Borrower under the Mortgage Loan Documents provide Mezzanine Lender with any claim against Mortgage Borrower with respect to the Mortgage Loan until the Mortgage Loan is paid in full, provided, that any such cure shall in no event be deemed a waiver, limitation or reduction of any of Mezzanine Lender's rights regarding the Mezzanine Loan Collateral or remedies against Mezzanine Borrower pursuant to the Mezzanine Loan Documents and this Agreement.

8. **Right to Purchase Mortgage Loan.** If the Mortgage Loan has been and continues to be accelerated, or any proceeding to foreclose or otherwise enforce the Mortgage or other security for the Mortgage Loan has been commenced and is ongoing, upon ten (10) business days prior written notice to Mortgage Lender, Mezzanine Lender shall have the right to purchase, in whole but not in part, the Mortgage Loan for a price equal to the outstanding principal balance thereof together with all accrued interest and other amounts due thereon (including, without limitation any late charges, default interest, prepayment fees or premiums, exit fees, advances and post-petition interest), and any taxes, assessments, or insurance premiums

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and other amounts advanced by Mortgage Lender, including all costs and expenses actually incurred by Mortgage Lender in enforcing the terms of the Mortgage Loan Documents (the "**Mortgage Loan Purchase Price**"). Concurrently with payment to Mortgage Lender of the Mortgage Loan Purchase Price, Mortgage Lender will execute in favor of Mezzanine Lender or its designee assignment documentation, in form and substance reasonably acceptable to Mezzanine Lender, at the sole cost and expense of Mezzanine Lender, to assign the Mortgage Loan and its rights under the Mortgage Loan Documents and its rights in any pending foreclosure proceeding (without recourse, representations or warranties, except for representations as to the outstanding balance of the Mortgage Loan and as to Mortgage Lender's not having assigned, transferred, hypothecated or encumbered its rights in the Mortgage Loan). The right of Mezzanine Lender to purchase the Mortgage Loan shall automatically terminate upon a foreclosure sale, sale by power of sale or delivery of a deed in lieu of foreclosure or the cure of the underlying default that gave rise to the purchase option.

9. Manager Termination. If there shall be a Mortgage Event of Default that remains uncured beyond the expiration of any and all applicable notice and cure periods provided to Mezzanine Lender under this Agreement or any other event shall have occurred pursuant to which Mortgage Lender has the right to select any replacement manager, asset manager and/or leasing agent pursuant to and in accordance with the Mortgage Loan Documents, Mortgage Lender shall have the sole right to select any replacement manager, asset manager and/or leasing agent, whether or not a new manager or agent was retained by Mezzanine Lender.

10. Insurance Proceeds and Condemnation Awards. In the event of a casualty to the buildings or improvements constructed on any portion of the Property or a condemnation or taking under a power of eminent domain of all or any portion of the Property, the buildings or improvements thereon, Mortgage Lender shall have a first and prior interest in and to any payments, awards, proceeds, distributions, or consideration arising from any such event (the "**Award**"), provided, that if the amount of the Award is in excess of the Mortgage Loan Liabilities, such excess Award shall be paid to Mortgage Borrower. Notwithstanding the foregoing, in the event of a casualty or condemnation, Mortgage Lender shall release the Awards from any such event to Mortgage Borrower if and to the extent required by the terms and conditions of the Mortgage Loan Documents in order to repair and restore the Property in accordance with the terms and provisions of the Mortgage Loan Documents. Awards made available to Mortgage Borrower for the repair or restoration of the Property shall not be subject to attachment by Mezzanine Lender.

11. Termination. This Agreement shall terminate upon the earlier to occur of (a) the full and final payment of all Mortgage Loan Liabilities or the Mezzanine Loan Liabilities, (b) the transfer of the Property by foreclosure or deed in lieu of foreclosure or (c) the completion of foreclosure by Mezzanine Lender of all interests pledged as security for the Mezzanine Loan.

12. Miscellaneous.

(a) **Successors and Assigns.** This Agreement shall be binding upon Mezzanine Lender and Mortgage Lender and their respective successors and assigns, whether immediate or remote. Mortgage Lender and the Mezzanine Lender agree, and as a condition to

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assignment of the Mortgage Loan or the Mezzanine Loan their assignees shall agree, that this Agreement will be assigned to all future assignees of the Mortgage Loan or the Mezzanine Loan.

(b) No Waiver by Mortgage Lender or Mezzanine Lender. Mortgage Lender shall not be prejudiced in its rights under this Agreement by any act or failure to act by Mortgage Borrower or Mezzanine Lender, or any non-compliance of Mortgage Borrower or Mezzanine Lender with any agreement or obligation, regardless of any knowledge thereof which Mortgage Lender may have or with which Mortgage Lender may be charged; and no action of Mortgage Lender permitted hereunder shall in any way affect or impair the rights of Mortgage Lender and the obligations of Mezzanine Lender under this Agreement. No delay on the part of Mortgage Lender in the exercise of any rights or remedies shall operate as a waiver thereof, and no single or partial exercise by Mortgage Lender of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy; nor shall any modification or waiver of any of the provisions of this Agreement be binding upon Mortgage Lender except as expressly set forth in a writing duly signed and delivered on behalf of Mortgage Lender. Mezzanine Lender shall not be prejudiced in its rights under this Agreement by any act or failure to act by Mortgage Borrower or Mortgage Lender, or any non-compliance of Mortgage Borrower or Mortgage Lender with any agreement or obligation, regardless of any knowledge thereof which Mezzanine Lender may have or with which Mezzanine Lender may be charged; and no action of Mezzanine Lender permitted hereunder shall in any way affect or impair the rights of Mezzanine Lender and the obligations of Mortgage Lender under this Agreement. No delay on the part of Mezzanine Lender in the exercise of any rights or remedies shall operate as a waiver thereof, and no single or partial exercise by Mezzanine Lender of any right or remedy shall preclude other right or remedy; nor shall any modification or waiver of any of the provisions of this Agreement be binding upon Mezzanine Lender except as expressly set forth in a writing duly signed and delivered on behalf of Mezzanine Lender.

(c) Notices. All notices, demands, requests, consents, approvals or other communications (any of the foregoing, a "Notice") required, permitted, or desired to be given hereunder shall be in writing sent by telefax (with answer back acknowledged and a copy by reputable overnight courier) or by registered or certified mail, postage prepaid, return receipt requested, or delivered by hand or reputable overnight courier addressed to the party to be so notified at its address hereinafter set forth, or to such other address as such party may hereafter specify in accordance with the provisions of this Agreement. Any Notice shall be deemed to have been received: (a) three (3) days after the date such Notice is mailed, (b) on the date of sender's receipt of a machine-generated confirmation of successful transmission of telefax and after advice by telephone to recipient that a telefax notice is forthcoming, (c) on the date of delivery by hand if delivered during business hours on a Business Day (otherwise on the next Business Day), and (d) on the next Business Day if sent by an overnight commercial courier, in each case addressed to the parties as follows:

If to Mortgage Lender:	Merrill Lynch Mortgage Lending, Inc. 250 Vesey Street, 16th Floor
------------------------	--

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4 World Financial Center
 New York, New York, 10080
 Attn: Robert J. Spinna, Jr.
 Facsimile: (212) 449-7684

with a copy to: Dechert LLP
 One Market Spear Tower, Suite 1600
 San Francisco, California 94563
 Attn: Joseph Heil, Esq.
 Facsimile: (415) 262-4555

If to Mezzanine Lender: Starwood Hotels & Resorts Worldwide, Inc.
 1111 Westchester Avenue
 White Plains, New York 10604
 Attn: General Counsel
 Facsimile: (914) 640-8260

with a copy to: Squire, Sanders & Dempsey L.L.P.
 40 North Central Avenue
 Suite 2700
 Phoenix, Arizona 85004
 Attention: Richard F. Ross
 Facsimile No.: (602) 253-8129

Any party hereto may change the address at which notices hereunder are required to be given to such party by notice to the other parties in accordance herewith.

(d) Construction and Interpretation of this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without reference to principles of conflict of laws. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or be invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

(e) Amendments and Waivers. Neither this Agreement nor any terms hereof may be amended, modified or waived other than by a written agreement executed by the party against which such amendment, modification or waiver is sought to be enforced.

(f) Counterparts. This Agreement may be executed in execution counterparts by the signatories hereto and each such counterpart shall have the force and effect of an original.

(g) Mezzanine Lender shall not be afforded the rights under Section 6(a), 6(b), 6(d), 7(b), 7(c), or 8 of this Agreement if Mezzanine Lender is an Affiliate of Mortgage Borrower; provided, however, that the foregoing limitation shall not apply so long as Mezzanine

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Lender is Starwood Hotels & Resorts Worldwide, Inc. or one of its Affiliates (unless Starwood Hotels & Resorts Worldwide, Inc. or one of its Affiliates owns the Property).

13. Representation in Connection with Senior Loan. Mezzanine Lender represents and warrants that (i) the documents listed on Exhibit C attached hereto are all of the documents that evidence and secure the Mezzanine Loan and none of such documents have been amended or otherwise changed, except as set forth on Exhibit C, (ii) no default or event of default currently exists under the Mezzanine Loan and (iii) on December 9, 2004, the outstanding principal balance of the Mezzanine Loan was \$35,000,000 and the accrued but unpaid interest was \$12,417,918.59.

14. Cash Reserve Account. (a) Mortgage Lender hereby agrees that Section 48(c) of the Mortgage shall not be amended, modified or deleted without the consent of Mezzanine Lender. Any purported amendment, modification or deletion of Section 48(c) to which Mezzanine Lender has not consented shall be deemed ineffective.

(b) Mezzanine Lender shall be a third party beneficiary with respect to the provision of Section 48(c) of the Mortgage requiring disbursement of any funds remaining in the Cash Reserve Account on December 31, 2006 towards immediate repayment of any sums due and payable under the Mezzanine Loan, and Mezzanine Lender shall be entitled to specifically enforce this provision.

[NO FURTHER TEXT ON THIS PAGE]

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IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the date set forth above.

MORTGAGE LENDER:

MERRILL LYNCH MORTGAGE LENDING, INC., a Delaware corporation

By: 
Name: Robert L. Spinna, Jr.
Title: Director

MEZZANINE LENDER:

STARWOOD HOTELS & RESORTS WORLDWIDE, INC., a Maryland corporation

By: _____
Name:
Title:

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the date set forth above.

MORTGAGE LENDER:

MERRILL LYNCH MORTGAGE LENDING, INC., a Delaware corporation

By: _____
Name: Robert J. Spinna, Jr.
Title: Vice President

MEZZANINE LENDER:

STARWOOD HOTELS & RESORTS WORLDWIDE, INC., a Maryland corporation

By: _____
Name: Thomas Smith
Title: Senior Vice President

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STATE OF NEW YORK
COUNTY OF WESTCHESTER

The foregoing instrument was acknowledged before me this 20th day of July 2005, by Thomas Smith, as Senior Vice President of Starwood Hotels & Resorts Worldwide, Inc., on behalf of the corporation, as Senior Vice President. He (She) is personally known to me and did (not) take an oath.

Notary Public Melanie E. Collier
Name: _____
Serial No. _____
My Commission Expires: _____

MELANIE E.W. COLLIER
NOTARY PUBLIC STATE OF NEW YORK
NO. 01C05060039
QUALIFIED IN SARATOGA COUNTY
MY COMMISSION EXPIRES MAY 13, 2006

Property of Cook County Clerk's Office

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EXHIBIT A

Legal Description of the Property

THOSE PARCELS OF LAND IN THE CITY OF CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, LOCATED AT 320 N. DEARBORN STREET, CHICAGO, COOK COUNTY, ILLINOIS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL ONE:

THAT PART OF BLOCK 2 IN ORIGINAL TOWN OF CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, AT AND BELOW THE HORIZONTAL PLANE OF +50.00 FEET ABOVE CHICAGO CITY DATUM, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE WEST LINE OF NORTH DEARBORN STREET (ALSO BEING THE EAST LINE OF LOTS 1 AND 8 IN SAID BLOCK 2) AND THE NORTH LINE OF CHICAGO RIVER, AS OCCUPIED; THENCE WEST ALONG THE NORTH LINE OF SAID CHICAGO RIVER, AS OCCUPIED, A DISTANCE OF 187.48 FEET TO A POINT ON A LINE 134.10 FEET EAST (AS MEASURED AT RIGHT ANGLES) OF AND PARALLEL WITH THE EAST LINE OF NORTH CLARK STREET; THENCE NORTH ALONG SAID LINE (SAID LINE ALSO BEING THE EAST FACE OF AN EXISTING CONCRETE FOUNDATION WALL AND ITS NORTHERLY AND SOUTHERLY EXTENSION THEREOF), A DISTANCE OF 305.09 FEET; THENCE EAST AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, A DISTANCE OF 187.37 FEET TO A POINT ON THE WEST LINE OF SAID NORTH DEARBORN STREET; THENCE SOUTH ALONG THE WEST LINE OF SAID NORTH DEARBORN STREET, A DISTANCE OF 311.60 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL TWO:

THAT PART OF BLOCK 2 IN ORIGINAL TOWN OF CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, AT AND ABOVE THE HORIZONTAL PLANE OF +50.00 FEET ABOVE CHICAGO CITY DATUM, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE WEST LINE OF NORTH DEARBORN STREET (ALSO BEING THE EAST LINE OF LOTS 1 AND 8 IN SAID BLOCK 2) AND THE NORTH LINE OF CHICAGO RIVER, AS OCCUPIED; THENCE WEST ALONG THE NORTH LINE OF SAID CHICAGO RIVER, AS OCCUPIED, A DISTANCE OF 185.48 FEET TO A POINT ON A LINE 136.10 FEET EAST (AS MEASURED AT RIGHT ANGLES) OF AND PARALLEL WITH THE EAST LINE OF NORTH CLARK STREET; THENCE NORTH ALONG SAID LINE, A DISTANCE OF 305.16 FEET; THENCE EAST AT RIGHT ANGLES TO THE LAST DESCRIBED LINE, A DISTANCE OF 185.37 FEET TO A POINT ON THE WEST LINE OF SAID NORTH DEARBORN STREET; THENCE SOUTH ALONG THE WEST LINE OF SAID NORTH DEARBORN STREET, A DISTANCE OF 311.60 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

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PARCEL THREE:

EASEMENTS APPURTENANT TO AND FOR THE BENEFIT OF PARCELS ONE AND TWO AFORESAID FOR PURPOSES OF INGRESS AND EGRESS FOR PERSONS, VEHICLES AND MATERIALS, TO PERMIT THE CONSTRUCTION, MAINTENANCE, REPAIR, REPLACEMENT, RESTORATION OR RECONSTRUCTION OF THAT PORTION OF ANY IMPROVEMENTS DIRECTLY ABUTTING THE HEREINAFTER DESCRIBED PROPERTY; FOR PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS TO AND FROM THE LAND; TO INSTALL AND MAINTAIN CAISSONS SUPPORTING IMPROVEMENTS TO BE LOCATED ON THE LAND; PERMITTING ENCROACHMENTS, AND PERMITTING GENERAL ATTACHMENT TO THOSE IMPROVEMENTS CONSTRUCTED ON THE HEREINAFTER DESCRIBED PROPERTY WHICH LIE AT OR BELOW THE "PLAZA LEVEL", ALL AS SET FORTH IN THE EASEMENT AND OPERATING AGREEMENT DATED JANUARY 14, 1986 AND RECORDED JANUARY 21, 1986 AS DOCUMENT NUMBER 86025944 AND FILED IN THE OFFICE OF THE REGISTRAR OF TITLES AND MADE BY AND BETWEEN LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED MARCH 1, 1985 AND KNOWN AS TRUST NUMBER 109495, LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED JUNE 29, 1981 AND KNOWN AS TRUST NUMBER 104102, OXFORD PROPERTIES, INC., LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED SEPTEMBER 20, 1985 AND KNOWN AS TRUST NUMBER 110339 AND THE JDC-TISHMAN CHICAGO HOTEL COMPANY, AND AS AMENDED BY FIRST AMENDMENT TO EASEMENT AND OPERATING AGREEMENT DATED AUGUST 23, 1988 AND RECORDED ON AUGUST 24, 1988 AS DOCUMENT NUMBER 88384561 MADE BY AND BETWEEN LASALLE NATIONAL BANK AS TRUSTEE UNDER TRUST AGREEMENT NUMBER 109495, LASALLE NATIONAL BANK AS TRUSTEE UNDER TRUST AGREEMENT NUMBER 164102, LASALLE NATIONAL BANK AS TRUSTEE UNDER TRUST NUMBER 112420, QUAKER TOWER PARTNERSHIP AND BCE DEVELOPMENT PROPERTIES, INC., JDL CHICAGO HOTEL LIMITED PARTNERSHIP, ET AL.

PARCEL FOUR:

EASEMENTS APPURTENANT TO AND FOR THE BENEFIT OF PARCELS ONE AND TWO AFORESAID FOR PARKING; AND PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS TO AND FROM THE GARAGE CONSTRUCTED ON THE LAND TO CARROLL AVENUE, AS SET FORTH IN THE PARKING AGREEMENT DATED JANUARY 14, 1986 AND RECORDED JANUARY 21, 1986 AS DOCUMENT NUMBER 86025945. MADE BY AND BETWEEN LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED SEPTEMBER 20, 1985 AND KNOWN AS TRUST NUMBER 110339, THE JDC-TISHMAN CHICAGO HOTEL COMPANY, LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED MARCH 1, 1985 AND KNOWN AS TRUST NUMBER 109495, OXFORD PROPERTIES, INC. AND LASALLE NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT DATED JUNE 26, 1981 AND KNOWN AS TRUST NUMBER 104102; SAID PARKING AGREEMENT MODIFIED BY UNRECORDED LETTER AGREEMENT DATED FEBRUARY 1, 2003 BETWEEN 321 NORTH CLARK REALTY L.L.C. AND THR CHICAGO L.L.C., A DELAWARE LIMITED LIABILITY COMPANY.

PARCEL NOS.: 17-09-408-011-0000
 17-09-409-004-0000
 17-09-409-005-0000

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EXHIBIT B

Form of Non-Consolidation Opinion

An opinion in form and substance substantially similar to the opinion delivered by Edwards & Angell LLP, as of the date hereof, in connection with the making of a loan in the amount of \$84,000,000.00 from Merrill Lynch Mortgage Lending, Inc. to THR Chicago LLC.

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EXHIBIT C

Mezzanine Loan Documents

1. Pledge and Security Agreement, dated as of December 15, 2000, between THR Chicago Holding LLC, a Delaware limited liability company, and Starwood Hotels & Worldwide Resorts, Inc., a Maryland corporation.
2. Promissory Note, dated as of December 15, 2000, executed by THR Chicago Holding LLC, a Delaware limited liability company, in favor of Starwood Hotels & Worldwide Resorts, Inc., a Maryland corporation.
3. Intercreditor Agreement, dated as of the date hereof, between Merrill Lynch Mortgage Lending, Inc. a Delaware corporation, and Starwood Hotels & Worldwide Resorts, Inc., a Maryland corporation.

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