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Cook County Recorder 383.50

DEC CC 127917 LL

CAPSTAR CHICAGO COMPANY, L.L.C., as mortgagor
(Borrower)

to

SECURE FINANCIAL CORPORATION, as mortgagee
(Lender)

MORTGAGE AND
SECURITY AGREEMENT

Dated: August 3, 1998

Location: Radisson Hotel
Chicago, Illinois

County: Cook

PREPARED BY AND UPON
RECORDATION RETURN TO:

MESSRS. THACHER PROFFITT & WOOD
Two World Trade Center
New York, New York 10048

Attention: Mitchell G. Williams, Esq.

File No.: 16248-00347

Title No.: 127917



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(d) Easements: All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses,

(c) Improvements: The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (the "Improvements"):

(b) Additional Land: All additional lands, estates and development rights hereafter acquired by Borrower for use in connection with the Land and the development of the Land and all additional lands and estates therein which may from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Security Instrument:

(a) Land: The real property described in Exhibit A attached hereto and made a part hereof (the "Land"):

Section 1.1 PROPERTY MORTGAGED: Borrower does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Lender, and grant a security interest to Lender in, the following property, rights, interests and estates now owned, or hereafter acquired by Borrower (collectively, the "Property"):

Article 1 - GRANTS OF SECURITY

Article 2)

Borrower desires to secure the payment of the Debt (as defined in Article 2) and the performance of all of its obligations under the Note and the Other Obligations (as defined in

Borrower and the Additional Borrowers (defined below) by a promissory note of HUNDRED FIFTY MILLION AND 00/100 DOLLARS (\$250,000,000.00) in lawful money of the United States of America (the note together with all extensions, renewals, modifications, substitutions and amendments thereof shall collectively be referred to as the "Note"), with interest from the date thereof at the rates set forth in the Note, principal and interest to be payable in accordance with the terms and conditions provided in the Note and subject to the terms and conditions of that certain Loan Agreement dated as of the date hereof between Lender, Borrower and those certain other entities described as borrowers thereunder (collectively, the "Additional Borrowers") (the "Loan Agreement").

RECITALS:

THIS MORTGAGE AND SECURITY AGREEMENT is made as of the 3rd day of August, 1998, by CAPSTAR CHICAGO COMPANY, L.P., a Delaware limited liability company, having an address at 1010 Wisconsin Avenue, N.W., Washington, D.C. 20007, as mortgagor ("Borrower") to SECORE FINANCIAL CORPORATION, a Pennsylvania corporation, having an address at 3 Bethesda Metro Center, Suite 700, Bethesda, Maryland 20814, as mortgagee ("Lender").

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water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e) **Fixtures and Personal Property.** All machinery, equipment, fixtures (including, but not limited to, all heating, air conditioning, plumbing, lighting, communications, elevator fixtures, inventory and goods), inventory and articles of personal property and accessions thereof and renewals, replacements thereof and substitutions therefor (including, but not limited to, beds, bureaus, chiffonniers, chests, chairs, desks, lamps, mirrors, bookcases, tables, rugs, carpeting, drapes, draperies, curtains, shades, venetian blinds, screens, paintings, hangings, pictures, divans, couches, luggage carts, luggage racks, stools, sofas, chinaware, linens, pillows, blankets, glassware, silverware, food carts, cookware, dry cleaning facilities, dining room wagons, keys or other entry systems, bars, bar fixtures, liquor and other drink dispensers, icemakers, radios, television sets, intercom and paging equipment, electric and electronic equipment, dictating equipment, private telephone systems, medical equipment, potted plants, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air-conditioning systems, elevators, escalators, fittings, plants, apparatus, stoves, ranges, refrigerators, laundry machines, tools, machinery, engines, dynamos, motors, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, call systems, brackets, electrical signs, bulbs, bells, ash and fuel, conveyors, cabinets, lockers, shelving, spotlighting equipment, dishwashers, garbage disposals, washers and dryers), other customary hotel equipment and other tangible property of every kind and nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Land and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Land and the Improvements (collectively, the "Personal Property"), and the right, title and interest of Borrower in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (the "Uniform Commercial Code"), superior

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in lien to the lien of this Security Instrument and all proceeds and products of the above:

(f) Leases, Operating Agreements and Rents. All leases, subleases, rental agreements, registration cards and agreements, if any, and other agreements affecting the use, enjoyment or occupancy of the Land and the Improvements heretofore or hereafter entered into, to the extent of Borrower's interest therein, whether before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "Bankruptcy Code") including, without limitation, that certain lease (the "Operating Lease") dated as of August 3, 1998 between Borrower, as landlord, and MeriStar H&R Operating Company, L.P., as tenant ("Operating Tenant") (the "Leases"), all operating agreements, reciprocal easement agreements and/or ground leases, as applicable setting out the respective rights and obligations between Borrower and such other third parties (the "Operating Agreements"), and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, revenues, issues, registration fees, if any, and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements, all income, rents, room rates, issues, profits, revenues, deposits, accounts and other benefits from the operation of the hotel on the Land and/or the Improvements, including, without limitation, all revenues and credit card receipts collected from guest rooms, restaurants, bars, mini-bars, meeting rooms, banquet rooms and recreational facilities and otherwise, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of sale, lease, sublease, license, concession or other grant of the right of the possession, use or occupancy of all or any portion of the Land and/or Improvements, or personalty located thereon, or rendering of services by Borrower or any operator or manager of the hotel or the commercial space located in the Improvements or acquired from others including, without limitation, from the rental of any office space, retail space, commercial space, guest room or other space, halls, stores or offices, including any deposits securing reservations of such space, exhibit or sales space of every kind, license, lease, sublease and concession fees and rentals, health club membership fees, food and beverage wholesale and retail sales, service charges, vending machine sales and proceeds, if any, from business interruption or other loss of income insurance relating to the use, enjoyment or occupancy of the Land and/or the Improvements whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (the "Rents") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

(g) Condemnation Awards. All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property,

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whether from the exercise of the right of eminent domain (including but not limited to any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(h) Insurance Proceeds. All proceeds of and any unearned premiums on any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

(i) Tax Certiorari. All refunds, rebates or credits in connection with a reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction;

(j) Conversion. All proceeds of the conversion, voluntary or involuntary, of any of the foregoing including, without limitation, proceeds of insurance and condemnation awards, into cash or liquidation claims;

(k) Rights. The right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Lender in the Property;

(l) Agreements. All general intangibles, agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management, operation, design and development of the Land and any part thereof, to the extent of Borrower's interest therein, and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Borrower therein and thereunder and all certificates of occupancy, zoning variances, building, use or other permits, approvals, authorizations, licenses and consents obtained from any governmental agency in connection with the development, use, operation or management of the Property, all construction, service, engineering, consulting, management, leasing, architectural and other similar contracts concerning the design, construction, management, operation, occupancy and/or use of the Property, all architectural drawings, plans, specifications, soil tests, appraisals, engineering reports and similar materials relating to all or any portion of the Property and all payment and performance bonds or warranties or guarantees relating to the Property, all to the extent assignable;

(m) Trademarks. All tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records, tenant, or guest lists, advertising materials, telephone exchange numbers identified in such materials, and all other

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general intangibles used solely in connection with the operation of the Property and/or the Additional Properties, if any, to the extent assignable:

(n) Accounts Receivables. All right, title and interest of Borrower arising from the operation of the Land and the Improvements in and to all payments for goods or property sold or leased or for services rendered, whether or not yet earned by performance, and not evidenced by an instrument or chattel paper (hereinafter referred to as "Accounts Receivable") including, without limiting the generality of the foregoing, (i) all accounts, contract rights, book debts, and notes arising from the operation of a hotel on the Land and the Improvements or arising from the sale, lease or exchange of goods or other property and/or the performance of services, (ii) Borrower's rights to payment from any consumer credit/charge card organization or entities which sponsor and administer such cards as the American Express Card, the Visa Card and the MasterCard, (iii) Borrower's rights in, to and under all purchase orders for goods, services or other property, (iv) Borrower's rights to any goods, services or other property represented by any of the foregoing (v) monies due to or to become due to Borrower under all contracts for the sale, lease or exchange of goods or other property and/or the performance of services including the right to payment of any interest or finance charges in respect thereto (whether or not yet earned by performance on the part of Borrower) and (vi) all collateral security and guaranties of any kind given by any person or entity with respect to any of the foregoing. Accounts Receivable shall include those now existing or hereafter created, substitutions therefor, proceeds (whether cash or non-cash, movable or immovable, tangible or intangible) received upon the sale, exchange, transfer, collection or other disposition or substitution thereof and any and all of the foregoing and proceeds therefrom;

(o) Security Interests. All right, title and interest of Borrower as secured party in the Collateral (as defined in the Operating Lease) pursuant to the security interest granted by Operating Tenant to Borrower in Section 32.1 of the Operating Lease (the "Operating Lease Security Agreement"); and

(p) Other Rights. Any and all other rights of Borrower in and to the items set forth in Subsections (a) through (o) above.

Section 1.2 ASSIGNMENT OF LEASES AND RENTS. Borrower hereby absolutely and unconditionally assigns to Lender Borrower's right, title and interest in and to all current and future Leases and Rents and the Operating Lease Security Agreement; it being intended by Borrower to the fullest extent permitted by law that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of this Section 1.2, Section 3.7 and Section 11.1(h) hereof and the terms and conditions of Section 4 of the Loan Agreement, pursuant to which Borrower shall deposit or cause the Manager to deposit the Rents and Accounts Receivable (if applicable) into the Lockbox Account (as defined in the Loan Agreement) upon an Event of Default, Lender grants to Borrower a revocable license

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to collect and receive the Rents. Borrower shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, for use in the payment of such sums.

Section 1.3 SECURITY AGREEMENT. This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Security Instrument, Borrower hereby grants to Lender, as security for the Obligations (defined in Section 2.3), a security interest in the Personal Property to the full extent that the Personal Property may be subject to the Uniform Commercial Code and in the Operating Lease Security Agreement.

Section 1.4 PLEDGE OF MONIES HELD. Borrower hereby pledges to Lender any and all monies now or hereafter held by Lender, including, without limitation, any sums deposited in the Escrow Fund (as defined in Section 3.5), the Lockbox Account (as defined in the Loan Agreement), Net Proceeds (as defined in Section 4.3), condemnation awards or payments described in Section 3.6, the Personal Property Account (as defined in Section 8.3) and the Operating Lease Reserve (as defined in Section 3.14(b)) as additional security for the Obligations until expended or applied as provided in this Security Instrument.

CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Lender, and the successors and assigns of Lender, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall well and truly pay to Lender the Debt at the time and in the manner provided in the Note and this Security Instrument, shall well and truly perform the Other Obligations as set forth in this Security Instrument and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note, these presents and the estate hereby granted shall cease, terminate and be void.

Article 2 - DEBT AND OBLIGATIONS SECURED

Section 2.1 DEBT. This Security Instrument and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the following, in such order of priority as Lender may determine in its sole discretion (the "Debt"):

- (a) the payment of the indebtedness evidenced by the Note in lawful money of the United States of America;
- (b) the payment of interest, default interest, late charges and other sums, as provided in the Note, this Security Instrument or the Other Security Documents (defined below).

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- (c) the payment of Breakage Costs (as defined in the Note), if any;
- (d) the payment of all other moneys agreed or provided to be paid by Borrower in the Note, this Security Instrument or the Other Security Documents;
- (e) the payment of all sums advanced pursuant to this Security Instrument to protect and preserve the Property and the lien and the security interest created hereby; and
- (f) the payment of all sums advanced and costs and expenses incurred by Lender in connection with the Debt or any part thereof, any modification, amendment, renewal, extension, or change of or substitution for the Debt or any part thereof, or the acquisition or perfection of the security therefor, whether made or incurred at the request of Borrower or Lender.

Section 2.2 OTHER OBLIGATIONS. This Security Instrument and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the following (the "Other Obligations"):

- (a) the performance of all other obligations of Borrower contained herein;
- (b) the performance of each obligation of Borrower contained in any other agreement given by Borrower to Lender which is for the purpose of further securing the obligations secured hereby, and any renewals, extensions, substitutions, replacements, amendments, modifications and changes thereto; and
- (c) the performance of each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note, this Security Instrument or the Other Security Documents.

Section 2.3 DEBT AND OTHER OBLIGATIONS. Borrower's obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively below as the "Obligations."

Section 2.4 PAYMENTS. Unless payments are made in the required amount in immediately available funds at the place where the Note is payable, remittances in payment of all or any part of the Debt shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Lender in funds immediately available at the place where the Note is payable (or any other place as Lender, in Lender's sole discretion, may have established by delivery of written notice thereof to Borrower) and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Lender of any payment in an amount less than the amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be an Event of Default (defined below).

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Article 3 - BORROWER COVENANTS

Borrower covenants and agrees that:

Section 3.1 **PAYMENT OF DEBT.** Borrower will pay the Debt at the time and in the manner provided in the Note and in this Security Instrument.

Section 3.2 **INCORPORATION BY REFERENCE.** All the covenants, conditions and agreements contained in (a) the Note and (b) all and any of the documents other than the Note or this Security Instrument now or hereafter executed by Borrower and/or others and by or in favor of Lender, which wholly or partially secure or guaranty payment of the Note including, without limitation, the Loan Agreement and the Additional Security Instruments (defined below) (the "Other Security Documents"), are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

Section 3.3 **INSURANCE.**

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

(i) comprehensive all risk insurance on the Improvements and the Personal Property, including contingent liability from Operation of Building Laws, Demolition Costs and Increased Cost of Construction Endorsements, together with an "Ordinance or Law Coverage" or "Enforcement" endorsement if any of the Improvements or the use of the Property shall at any time constitute legal non-conforming structures or uses, in each case (A) in an amount equal to 100% of the "Full Replacement Cost," which for purposes of this Security Instrument shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation, but the amount shall in no event be less than the outstanding principal balance of the Note; (B) containing an agreed amount endorsement with respect to the Improvements and Personal Property waiving all co-insurance provisions and (C) providing for no deductible in excess of \$25,000, except in the case of windstorm insurance for which the deductible shall not exceed one percent (1%) of the "replacement value" of the Property as determined by Lender, and in the case of earthquake insurance, for which the deductible shall not exceed five percent (5%) of the "replacement value" of the Property as determined by Lender. The Full Replacement Cost shall be redetermined from time to time (but not more frequently than once in any twelve (12) calendar months) at the request of Lender by an appraiser or contractor designated and paid by Borrower and approved by Lender, or by an engineer or appraiser in the regular employ of the insurer. After the first appraisal, additional appraisals may be based on construction cost indices customarily employed in the trade. No omission on the part of Lender to request any such ascertainment shall relieve Borrower of any of its obligations under this Subsection;

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(ii) commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, including "Dram Shop" or other liquor liability coverage if alcoholic beverages are sold from or may be consumed at the Property, such insurance (A) to be on the so-called "occurrence" form with a combined single limit of not less than \$2,000,000.00; (B) to continue at not less than the aforesaid limit until required to be changed by Lender in writing by reason of changed economic conditions making such protection inadequate; and (C) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations on an "if any" basis; (3) independent contractors; (4) blanket contractual liability for all written and oral contracts; and (5) contractual liability covering the indemnities contained in Article 12 hereof to the extent the same is available;

(iii) business income insurance (A) with loss payable to Lender; (B) covering all risks required to be covered by the insurance provided for in Subsection 3.3(a)(i); (C) containing an extended period of indemnity endorsement which provides that after the physical loss to the Improvements and Personal Property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of twelve (12) months from the date that the Property is repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period; and (D) in an amount equal to 100% of the projected gross income, including all Rents and Accounts Receivable, for a period of twelve (12) months, notwithstanding the foregoing, provided the Operating Lease is in full force and effect and the Operating Tenant is not in default thereunder, and the Operating Tenant delivers evidence reasonably satisfactory to Lender that it is maintaining the business interruption insurance required under Section 13.1(a)(iv) of the Operating Lease, the insurance required under this Subsection 3.3(a)(iii) may be in an amount equal to 100% of the projected Rents under the Operating Lease and all other Rents and Account Receivable payable to Borrower for a period of twelve (12) months. The amount of such business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on Borrower's reasonable estimate of the gross income from the Property and the projected Rents under the Operating Lease, as applicable. All insurance proceeds payable to Lender pursuant to this Subsection shall be held by Lender and shall be applied to the obligations secured hereunder from time to time due and payable hereunder and under the Note; provided, however, that nothing herein contained shall be deemed to relieve Borrower of its obligations to pay the obligations secured hereunder on the respective dates of payment provided for in the Note except to the extent such amounts are actually paid out of the proceeds of such business income insurance;

(iv) at all times during which structural construction, repairs or alterations are being made with respect to the Improvements (A) owner's contingent or protective liability insurance covering claims not covered by or under

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the terms or provisions of the above mentioned commercial general liability insurance policy; and (B) the insurance provided for in Subsection 3.3(a)(i) written in a so-called builder's risk completed value form (1) on a non-reporting basis, (2) against all risks insured against pursuant to Subsection 3.3(a)(i), (3) including permission to occupy the Property, and (4) with an agreed amount endorsement waiving co-insurance provisions;

(v) workers' compensation, subject to the statutory limits of the state in which the Property is located, and employer's liability insurance with a limit of at least \$1,000,000 per accident and per disease per employee, and \$1,000,000 for disease aggregate in respect of any work or operations on or about the Property, or in connection with the Property or its operation (if applicable);

(vi) comprehensive boiler and machinery insurance, if applicable, in amounts as shall be reasonably required by Lender;

(vii) if any portion of the Improvements is at any time located in an area identified by the Secretary of Housing and Urban Development or any successor thereto as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended, or any successor law (the "Flood Insurance Acts"), flood hazard insurance in an amount equal to the lesser of (A) the principal balance of the Note, and (B) the maximum limit of coverage available for the Property under the Flood Insurance Acts;

(viii) earthquake, sinkhole and mine subsidence insurance, if required in amounts, form and substance satisfactory to Lender, provided that the insurance pursuant to this Subsection (viii) shall be on terms consistent with the all risk insurance policy required under Section 3.3(a)(i); and

(ix) such other insurance and in such amounts as Lender from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against for property similar to the Property located in or around the region in which the Property is located.

(b) All insurance provided for in Subsection 3.3(a) hereof shall be obtained under valid and enforceable policies (the "Policies" or in the singular, the "Policy"), from such insurance companies, in such forms and, from time to time after the date hereof, in such amounts as may from time to time be satisfactory to Lender, issued by financially sound and responsible insurance companies authorized to do business in the state in which the Property is located and approved by Lender. The insurance companies must have a claims paying ability of not less than AA or better assigned by Standard & Poor's, except that the Policies for liability insurance referred to in Section 3.3(a)(ii) and workman's compensation insurance referred to in Section 3.3(a)(v) may be issued by an insurance company which has a claims paying ability of not less than A assigned by Standard & Poor's, and earthquake insurance referred to in Section 3.3(a)(viii)

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may be issued by an insurance company which has a claims paying ability of not less than investment grade assigned by Standard & Poor's (each such insurer shall be referred to below as a "Qualified Insurer"). If the insurance companies have a claims paying ability of not less than A (except with respect to earthquake insurance which shall be not less than investment grade) assigned by Standard & Poor's, Borrower shall reinsure the Policies with a Qualified Insurer with a "cut-through", direct access or similar endorsement satisfactory to Lender. Not less than thirty (30) days prior to the expiration dates of the Policies theretofore furnished to Lender pursuant to Subsection 3.3(a), certified copies of the Policies marked "premium paid" or accompanied by evidence satisfactory to Lender of payment of the premiums due thereunder (the "Insurance Premiums"), shall be delivered by Borrower to Lender; provided, however, that in the case of renewal Policies, Borrower may furnish Lender with binders therefor to be followed by the original Policies when issued.

(c) Borrower shall not obtain separate insurance concurrent in form or contributing in the event of loss with that required in Subsection 3.3(a) to be furnished by, or which may be reasonably required to be furnished by, Borrower. The insurance coverage required under Subsection 3.3(a) may be effected under a blanket policy or policies covering the Property and other property and assets not constituting a part of the Property provided that (1) each such blanket policy, except in the case of liability insurance, shall specify thereon the total insurance allocated to the Property, which amount shall be not less than that required hereunder, (2) each such blanket policy shall be issued by a Qualified Insurer, (3) each such blanket policy shall otherwise comply in all respects with this Security Instrument, and (4) Lender shall be named as an additional insured and insured mortgagee under each such blanket policy to the extent required hereunder.

(d) All Policies of insurance provided for or contemplated by Subsection 3.3(a), except for the Policy referenced in Subsection 3.3(a)(v), shall name Lender and Borrower as the insured or additional insured, as their respective interests may appear, and in the case of property damage, boiler and machinery, and flood insurance, shall contain a so-called New York standard non-contributing mortgagee clause in favor of Lender providing that the loss thereunder shall be payable to Lender.

(e) All Policies of insurance provided for in Subsection 3.3(a) shall contain clauses or endorsements to the effect that:

(i) no act or negligence of Borrower, or anyone acting for Borrower, or of any tenant under any Lease or other occupant, or failure to comply with the provisions of any Policy which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Lender is concerned;

(ii) the Policy shall not be materially changed (other than to increase the coverage provided thereby) or cancelled without at least 30 days' written notice to Lender and any other party named therein as an insured; and

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(iii) each Policy shall provide that the issuers thereof shall give written notice to Lender if the Policy has not been renewed thirty (30) days prior to its expiration; and

(iv) Lender shall not be liable for any Insurance Premiums thereon or subject to any assessments thereunder.

(f) Borrower shall furnish to Lender, on or before thirty (30) days after the close of each of Borrower's fiscal years, a statement certified by Borrower or a duly authorized officer of Borrower of the amounts of insurance maintained in compliance herewith, of the risks covered by such insurance and of the insurance company or companies which carry such insurance and, if requested by Lender, verification of the adequacy of such insurance by an independent insurance broker or appraiser acceptable to Lender.

(g) If at any time Lender is not in receipt of written evidence that all insurance required hereunder is in full force and effect, Lender shall have the right, without notice to Borrower to take such action as Lender deems necessary to protect its interest in the Property, including, without limitation, the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate, and all expenses incurred by Lender in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Borrower to Lender upon demand and until paid shall be secured by this Security Instrument and shall bear interest in accordance with Article 4 of the Note.

(h) If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, Borrower shall give prompt notice of such damage to Lender and shall promptly commence and diligently prosecute the completion of the repair and restoration of the Property as nearly as possible to the condition the Property was in immediately prior to such fire or other casualty, with such alterations as may be approved by Lender (the "Restoration") and otherwise in accordance with Section 4.3 of this Security Instrument. Borrower shall pay all costs of such Restoration whether or not such costs are covered by insurance.

(i) In the event of foreclosure of this Security Instrument, or other transfer of title to the Property in extinguishment in whole or in part of the Debt all right, title and interest of Borrower in and to such policies then in force concerning the Property and all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure or Lender or other transferee in the event of such other transfer of title.

Section 3.4 PAYMENT OF TAXES, ETC.

(a) Borrower shall promptly pay all taxes, assessments, water rates, sewer rents, governmental impositions, and other charges, including without limitation vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Land, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "Taxes"), all ground

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rents, maintenance charges and similar charges, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "Other Charges"), and all charges for utility services provided to the Property as same become due and payable. Borrower will deliver to Lender, promptly upon Lender's request, evidence satisfactory to Lender that the Taxes, Other Charges and utility service charges have been so paid or are not then delinquent. Borrower shall not suffer and shall promptly cause to be paid and discharged any lien or charge whatsoever which may be or become a lien or charge against the Property. Except to the extent sums sufficient to pay all Taxes and Other Charges have been deposited with Lender in accordance with the terms of this Security Instrument, Borrower shall furnish to Lender paid receipts for the payment of the Taxes and Other Charges prior to the date the same shall become delinquent.

(b) After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Taxes, provided that (i) no Event of Default has occurred and is continuing under the Note, this Security Instrument or any of the Other Security Documents, (ii) Borrower is permitted to do so under the provisions of any other mortgage, deed of trust or deed to secure debt affecting the Property, (iii) such proceeding shall suspend the collection of the Taxes from Borrower and from the Property or Borrower shall have paid all of the Taxes under protest, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder, (v) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost, (vi) Borrower shall have deposited with Lender adequate reserves for the payment of the Taxes, together with all interest and penalties thereon unless Borrower has paid all of the Taxes under protest, and (vii) Borrower shall have furnished the security as may be required in the proceeding, or as may be requested by Lender to insure the payment of any contested Taxes, together with all interest and penalties thereon.

Section 3.5 ESCROW FUND. On the first Payment Date (as defined in the Note) after the date hereof to and including the Payment Date immediately preceding the respective dates upon which Taxes and Insurance Premiums are next due and payable (respectively, the "Initial Escrow Periods"). Borrower shall pay to Lender a monthly escrow payment calculated by dividing the respective amounts next due for Taxes and Insurance Premiums by the number of monthly interest payments to be made in the Initial Escrow Periods. On each Payment Date immediately following the respective Initial Escrow Periods and on each Payment Date thereafter, Borrower shall pay to Lender (a) one-twelfth of an amount which would be sufficient to pay the Taxes payable, or estimated by Lender to be payable, during the next ensuing twelve (12) months and (b) one-twelfth of an amount which would be sufficient to pay the Insurance Premiums due for the renewal of the coverage afforded by the Policies upon the expiration thereof (the amounts in (a) and (b) above, including all amounts escrowed during the Initial Escrow Period, shall be called the "Escrow Fund"). Borrower agrees to notify Lender immediately of any changes to the amounts, schedules and instructions for payment of any Taxes and Insurance Premiums of which it has or obtains knowledge and authorizes Lender or its agent to obtain the bills for Taxes directly from the appropriate taxing authority. The Escrow Fund and the payments of interest or principal or both, payable pursuant to the Note shall be added together and shall be paid as an aggregate

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sum by Borrower to Lender. Lender will apply the Escrow Fund to payments of Taxes and Insurance Premiums required to be made by Borrower pursuant to Sections 3.3 and 3.4 hereof. If the amount of the Escrow Fund shall exceed the amounts due for Taxes and Insurance Premiums pursuant to Sections 3.3 and 3.4 hereof, Lender shall, in its reasonable discretion, return any excess to Borrower or credit such excess against future payments to be made to the Escrow Fund. In allocating such excess, Lender may deal with the person shown on the records of Lender to be the owner of the Property. If the Escrow Fund is not sufficient to pay the items set forth in (a) and (b) above or amounts due for Taxes and Insurance Premiums during the Initial Escrow Period, Borrower shall promptly pay to Lender, upon demand, an amount which Lender shall estimate as sufficient to make up the deficiency. The Escrow Fund shall not constitute a trust fund and may be commingled with other monies held by Lender. The Escrow Fund shall be held in an interest-bearing trust account with all interest accrued to be held in such account for the benefit of Borrower.

Section 3.6 CONDEMNATION. Borrower shall promptly give Lender notice of the actual or threatened commencement of any condemnation or eminent domain proceeding and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings, and Borrower shall from time to time deliver to Lender all instruments requested by it to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings, and shall consult with Lender, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Security Instrument and the Debt shall not be reduced until any award or payment therefor shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Lender shall not be limited to the interest paid on the award by the condemning authority but shall be entitled to receive out of the award interest at the rate or rates provided herein or in the Note. If the Property or any portion thereof is taken by a condemning authority, Borrower shall promptly commence and diligently prosecute the Restoration of the Property and otherwise comply with the provisions of Section 4.3 of this Security Instrument. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the award or payment, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the award or payment, or a portion thereof sufficient to pay the Debt.

Section 3.7 LEASES AND RENTS.

(a) Borrower covenants and agrees (i) to perform punctually all obligations and agreements to be performed by it as lessor or party thereto under the Operating Lease or Material Lease (as defined in Section 3.7(g) below), if any, any Permitted Exception (as defined in Section 5.1), the Management Agreement (as defined in Section 3.13), if Borrower is a party thereto, the Franchise Agreement (as defined in Section 3.13), and any Operating Agreement, such that there will be no impairment of the value of the Property or Lender's interest under this Security Instrument, and (ii) to do all things necessary or appropriate in the ordinary course of its business

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to compel performance by each other party to each of such instruments of such other party's obligations and agreements thereunder. Except as otherwise permitted hereunder, Borrower shall not give any notice, approval or consent or exercise any rights under or in respect of any Material Lease or any of such other instruments, which action, omission, notice, approval, consent or exercise of rights would release any tenant or other party from, or reduce any tenant's or any other party's obligations or liabilities under, or would result in the termination, surrender or assignment of, or the amendment or modification of, or would impair the validity of, any Material Lease or any of such other instruments, if any of the foregoing would materially and adversely affect the Property, without the prior written consent of Lender, and any attempt to do any of the foregoing without such consent shall be of no force and effect.

(b) Borrower will promptly deliver to Lender or cause to be delivered to Lender a copy of any notice from any other party to a Permitted Exception, Management Agreement (if applicable), Franchise Agreement or Operating Agreement or any tenant under any Material Lease or the Operating Lease in any such case claiming that Borrower is materially in default in the performance or observance of any of the terms, covenants or conditions thereof to be performed or observed by Borrower and Borrower will provide in each Material Lease and Operating Lease at the Property executed after the date hereof to which Borrower is a party that any tenant delivering any such notice shall send a copy of such notice directly to Lender.

(c) Borrower shall enforce the terms, covenants and conditions of the Operating Lease. The Operating Tenant shall enforce the terms, covenants and conditions of the Management Agreement and the Operating Tenant and the Manager or the Qualified Manager, as the case may be (each as defined in Section 3.13), shall manage and operate the Property in a reasonably prudent manner and shall not enter into any Lease after the date hereof that would, evaluated alone or in conjunction with any then existing Leases, and based upon the state of facts then known to the Operating Tenant and in the exercise of the Operating Tenant's reasonable business judgment, result in any material impairment of the fair market value of the Property, as of the date such Lease is executed by Borrower or the Operating Tenant. Borrower or the Operating Tenant may enter into any Lease which is not inconsistent with the provisions of this Section and the other applicable provisions of this Security Instrument, if any, and Borrower agrees to deliver or cause to be delivered either a duplicate original executed counterpart or a certified copy of each Lease to Lender. Each Material Lease entered into after the date hereof (including the renewal or extension on or after the date hereof of any Material Lease entered into prior to the date hereof if the rent payable during such renewal or extension, or a formula to compute such rent, is not provided for in such Material Lease, such a renewal or extension a "Renewal Lease") shall (i) provide for rent and all other material items thereunder to be payable in amounts at least equal to the fair market rental value (taking into account the type and quality of the tenant), as of the date such Material Lease is executed by Borrower, of the space covered by such Material Lease or Renewal Lease for the term thereof, including any renewal options, (ii) not have a material adverse effect on the value of the Property as a whole or the ability of Borrower to perform its Obligations, or (iii) be consented to in writing by Lender.

(d) Borrower may terminate or permit the termination of any Lease (other than the Operating Lease) of space or accept surrender of all or any portion of the space demised under the

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Lease (other than the Operating Lease) or acquire any Lease or reduce the rentals reserved under or shorten the term of any Lease (other than the Operating Lease) so long as such action (taking into account the planned alternative uses of the space) does not materially adversely affect the value of the Property (it being agreed that termination of the Lease of a tenant that is in default, after any applicable notice and cure periods, shall be considered to be for the benefit of the Property) or the ability of Borrower to perform its Obligations.

(e) Neither Borrower nor Operating Tenant shall enter into any Material Lease after the date hereof that does not contain terms to the effect as set forth in Exhibit B hereto. Upon request, Lender shall execute and deliver a subordination, non-disturbance and attornment agreement or any similar instrument reasonably acceptable to Lender with respect to any Material Lease, provided that, no default shall then exist under such Material Lease and provided that no Event of Default shall then exist hereunder.

(f) Borrower shall promptly notify Lender of the giving of any notice to Operating Tenant of any default by Operating Tenant in the performance or observance of any of the terms, covenants or conditions of the Operating Lease on the part of Operating Tenant to be performed and observed and deliver to Lender a true copy of each such notice. In addition, notwithstanding anything contained herein to the contrary, Borrower shall not, without the prior written consent of Lender (which consent shall not be unreasonably withheld or delayed), (i) amend, modify or waive any provisions of the Operating Lease other than amendments, modifications, or waivers of ministerial terms that do not modify, amend or waive any material economic terms or any other material terms of the Operating Lease, (ii) exercise its right to consent to any assignment of the Operating Lease or sublet of the Property, other than as to consents under Section 21.1 of the Operating Lease which Borrower shall not unreasonably withhold; or (iii) terminate, permit the termination of, or accept surrender of all or any portion of the space demised under the Operating Lease other than (A) a termination in connection with a release of a Release Premises or a substitution of a Substitution Property, pursuant to and as defined in Sections 3 and 4, respectively, of the Loan Agreement or (B) a termination by Borrower pursuant to Section 3.9 of the Operating Lease due to Operating Tenant's failure to meet the required performance standard or (C) a termination by Borrower due to a material default by the Operating Tenant under the Operating Lease. In the event that the Operating Lease has been terminated as permitted in this Section 3.7(f), Borrower shall not enter into any new operating lease (a "Replacement Operating Lease") unless (1) the new operating tenant is a single purpose bankruptcy remote entity satisfactory to Lender in its sole discretion, (2) the Property is managed by the Manager or a Qualified Manager pursuant to the Management Agreement or a Replacement Management Agreement, (3) the terms and conditions of the new operating lease are satisfactory to Lender in all respects, and the rent payable thereunder is equal to at least 95% of the Gross Income derived from the Property, (4) the new operating lease is subordinate in all respects to the Security Instrument, without the benefit of non-disturbance, and the new operating tenant enters into a subordination agreement reasonably satisfactory to Lender, (5) the Franchise Agreement is in full force and effect, (6) Borrower delivers such other certificates, opinions (including, without limitation, an Insolvency Opinion (as defined in the Loan Agreement) with respect to the new operating tenant), documents and instruments relating to the new operating lease reasonably required by Lender or the Rating Agencies, and all corporate and other proceedings and all other

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documents (including, without limitation, all documents referred to herein and not appearing as exhibits hereto) and all legal matters in connection with the new operating lease and new operating tenant shall be satisfactory in form and substance to Lender, and (7) if a Securitization has occurred, written confirmation from the Rating Agencies that the new operating tenant and new operating lease shall not result in a withdrawal, downgrade or qualification of the then current ratings by the applicable Rating Agencies of the Securities and otherwise in form and substance satisfactory to Lender.

(g) The term "Material Lease" shall as used herein shall mean any Lease that demises in excess of 5,000 rentable square feet of retail/store space or accounts for more than five percent (5%) of the annual hotel gross room rentals for the Property.

(h) Neither Borrower nor Operating Tenant shall receive or collect, or permit the receipt or collection of, any rental or other payments under any Lease more than one (1) month in advance of the respective period in respect of which they are to accrue, except that (i) in connection with the execution and delivery of any Lease or of any amendment to any Lease, rental payments thereunder may be collected and received in advance in an amount not in excess of one (1) month's rent and a security deposit (including advance rents as or in lieu of a security deposit) may be required thereunder (provided that such deposits are maintained in accordance with Applicable Laws (defined in Section 5.10) and in accordance with the terms of this Security Instrument and the Assignment of Lease, and Rents executed in connection herewith), (ii) Borrower or Operating Tenant may receive and collect or cause to be received and collected escalation, percentage rent and other charges in accordance with the terms of each Lease and (iii) Borrower or Operating Tenant may receive and collect or cause to be received and collected more than one month's rent in connection with a tenant terminating its Lease if the termination of the Lease is permitted under this Security Instrument.

(i) Borrower shall not permit more than 15,000 rentable square feet in the aggregate, of office retail or store space to be leased or occupied by Borrower, Operating Tenant or any affiliate of Borrower or Operating Tenant.

Section 3.8 MAINTENANCE AND USE OF PROPERTY. Borrower shall cause the Property to be maintained in a good and safe condition and repair and in the condition required under the Operating Lease and, if the Property is subject to a franchise or license agreement (the "Franchise Agreement"), the Franchise Agreement. The Improvements and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of the Personal Property) without the consent of Lender. Borrower shall not make any alterations or renovations to the Property that would entitle Operating Tenant to an abatement in rent payable under the Operating Lease. Borrower shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any casualty, or become damaged, worn or dilapidated or which may be affected by any proceeding of the character referred to in Section 3.6 hereof and shall complete and pay for any structure at any time in the process of construction or repair on the Land. Borrower shall not initiate, join in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Property or any part thereof. If under applicable zoning provisions the use of all

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or any portion of the Property is or shall become a nonconforming use. Borrower will not cause or permit the nonconforming use to be discontinued or the nonconforming Improvement to be abandoned without the express written consent of Lender.

Section 3.9 WASTE. Borrower shall not commit or suffer any waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or give cause for cancellation of any Policy, or do or permit to be done thereon anything that may in any way impair the value of the Property in any material respect or the security of this Security Instrument. Borrower will not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

Section 3.10 COMPLIANCE WITH LAWS.

(a) Borrower shall, and shall cause Operating Tenant to, promptly comply in all material respects with all existing and future federal, state and local laws, orders, ordinances, governmental rules and regulations or court orders affecting the Property, or the use thereof ("Applicable Laws").

(b) Borrower shall from time to time, upon Lender's request, provide Lender with evidence reasonably satisfactory to Lender that the Property complies in all material respects with all Applicable Laws or is exempt from compliance with Applicable Laws.

(c) Notwithstanding any provisions set forth herein or in any document regarding Lender's approval of alterations of the Property, Borrower shall not, and shall not permit Operating Tenant to, alter the Property in any manner which would materially increase Borrower's responsibilities for compliance with Applicable Laws without the prior written approval of Lender except as may be pursuant to an Approved Capital Budget. Lender's approval of the plans, specifications, or working drawings for alterations of the Property shall create no responsibility or liability on behalf of Lender for their completeness, design, sufficiency or their compliance with Applicable Laws. The foregoing sentence shall apply to tenant improvements constructed by Borrower or by any of its tenants only to the extent such improvements are not customary or in the ordinary course of business. Lender may condition any such approval upon receipt of a certificate of compliance with Applicable Laws from an independent architect, engineer, or other person acceptable to Lender.

(d) Borrower shall give prompt notice to Lender of the receipt by Borrower of any notice related to a material violation of any Applicable Laws and of the commencement of any proceedings or investigations which relate to a material failure to comply with Applicable Laws.

(e) After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the Applicable Laws affecting the Property, provided that (i) no Event of Default has occurred and

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is continuing under the Note, this Security Instrument or any of the Other Security Documents; (ii) Borrower is permitted to do so under the provisions of any other mortgage, deed of trust or deed to secure debt affecting the Property; (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower or the Property is subject and shall not constitute a default thereunder; (iv) neither the Property, any part thereof or interest therein, any of the tenants or occupants thereof, nor Borrower shall be affected in any material adverse way as a result of such proceeding; (v) non-compliance with the Applicable Laws shall not impose civil or criminal liability on Borrower or Lender; (vi) Borrower shall have furnished the security as may be required in the proceeding or reasonably required by Lender to ensure compliance by Borrower with the Applicable Laws; and (vii) Borrower shall have furnished to Lender all other items reasonably requested by Lender.

(f) Borrower will not engage or permit others to engage in or knowingly permit any illegal activities at the Property.

Section 3.11. BOOKS AND RECORDS.

(a) Borrower will keep and maintain or cause to be kept and maintained on a calendar year basis proper books of record and account separate and apart from any other person or entity, in which accurate and complete entries shall be made of all dealings or transactions of or in relation to the Property, in accordance with then applicable United States generally accepted accounting principles or the Uniform System of Accounts for Hotels as approved by the American Hotel and Motel Association (as in effect from time to time) (the "Uniform System of Accounts") provided, however, that Borrower may keep and maintain or cause to be kept and maintained books of record and account on a consolidated basis with respect to the Additional Borrowers and the Additional Properties (defined in Section 23.1 below). Lender and its authorized representatives shall have the right at reasonable times and upon reasonable notice to examine the books and records of Borrower, Operating Tenant and/or Manager relating to the operation of the Property and to make such copies or extracts thereof as Lender may reasonably require.

(b) (i) Not later than fifty (50) days following the end of each calendar quarter of Borrower's operations, Borrower will deliver to Lender unaudited consolidated financial statements of Borrower prepared in accordance with the Uniform System of Accounts (together with reconciliation schedules setting forth actual cash flow of the Property) on an accrual basis, including an average daily balance rate statement for such quarter, a balance sheet as of the end of such quarter, a statement of revenues and expenses for such quarter and operating statements of the Property, detailing the revenues received for each Property and each Additional Property (defined herein) operations, including, all Rents and Accounts Receivable, the expenses incurred at Property level and the net operating income derived at each Property and each Additional Property before and after debt service (principal and interest) and major capital improvements for that quarter and containing appropriate year to date information, including a comparison for such quarter with the annual budget delivered pursuant to Subsection

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3.11(e). Such statements for each quarter shall be accompanied by a certificate of Borrower signed by a financial officer of Borrower or one of its general partners or members and certifying that, to the signer's actual knowledge, (A) such statements fairly represent the financial condition and results of operations of Borrower and the Property in accordance with the Uniform System of Accounts (subject to year end adjustments), (B) as of the date of such certificate of Borrower, no Event of Default exists or, if so, specifying each such Event of Default and the nature and status thereof and the action then being taken by Borrower or proposed to be taken to remedy such Event of Default, and (C) the Aggregate Debt Service Ratio for such calendar month.

(ii) Not later than ninety-five (95) days after the end of each calendar year of Borrower's operations, Borrower will deliver to Lender unaudited consolidated financial statements of Borrower prepared and certified by a nationally recognized, independent public accounting firm of certified public accountants, which firm shall either be a "Big Five" firm or otherwise acceptable to Lender in its sole discretion (an "Independent Accountant") in accordance with the Uniform System of Accounts (together with reconciliation schedules setting forth actual cash flow of the Property), including an average daily rate statement for such year, a balance sheet as of the end of such year and a statement of revenues and expenses for such year and operating statements, detailing the revenues received, the expenses incurred and the net operating income derived before and after debt service (principal and interest) and major capital improvements for that year and containing appropriate year to date information, including a comparison for such year with the annual budget delivered pursuant to Subsection 3.11(e). Such annual financial statements shall also be accompanied by a certificate of Borrower in the form required pursuant to Subsection 3.11(b)(i) and a current quarterly report roll which satisfies the requirements of Section 3.11(d) below for the calendar quarter immediately previous to the date of the delivery of the financial statements required by this Subsection.

(c) Not later than thirty (30) days following each calendar month beginning with October, 1998, Borrower will deliver to Lender unaudited monthly operating statements of each Property and each Additional Property, detailing the revenues received for Property operations, including Rents and Accounts Receivable, the expenses incurred at the Property level and the net operating income derived at the Property before and after debt service (principal and interest) and major capital improvements for that month and containing appropriate year to date information, including a comparison of such month with the annual budget delivered pursuant to Subsection 3.11(e) substantially in the form attached as Exhibit C. Such statements for each month shall be accompanied by a certificate of Borrower signed by a financial officer of Borrower or one of its general partners or members and certifying that, to the signer's actual knowledge, (A) such statements fairly represent the financial condition and results of operations of Borrower in

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accordance with The Uniform System of Accounts (subject to year end adjustments). (B) as of the date of such certificate of Borrower, no Event of Default exists or, if so, specifying each such Event of Default and the nature and status thereof and the action then being taken by Borrower or proposed to be taken to remedy such Event of Default, and (C) the Aggregate Debt Service Ratio for such calendar month.

(d) Not later than fifteen (15) days after the end of each calendar month of Borrower's operations, Borrower will deliver to Lender a rent roll for each Property and each Additional Property, dated as of the end of such calendar month, containing (i) a list of the original tenants and current tenant, subtenant, licensee or other occupant under each Material Lease, (ii) the gross leasable square feet leased by each tenant under a Material Lease and the location thereof, (iii) the annual fixed rent and additional rent currently payable by each tenant under a Material Lease and the date on which each payment thereof is due, (iv) the commencement and the expiration date of each of the Material Leases and the renewal terms thereof, (v) the date through which all Rent has been paid, the amount of any prepaid Rents and the amount of any delinquencies under each Material Lease, (vi) the amount of all concessions, abatements, credits and allowances to which each tenant is entitled under each Material Lease, (vii) the amount of Security Deposits (defined below) given under each Material Lease and the amount of the accrued interest thereon, (viii) all options and renewal rights that each tenant has under each Material Lease, (ix) any guaranty or other security given under any Material Lease, (x) any obligations of Borrower under the Material Lease for tenant improvements, construction and unpaid obligations for brokerage fees and commissions, and (xi) any termination rights or options contained in each Material Lease or in such form as may otherwise be reasonably required by Lender; and such rent roll shall be accompanied by a certificate of Borrower certifying that, to Borrower's knowledge, such rent roll is true, correct and complete in all material respects and stating whether Borrower, within the past calendar quarter, has issued a notice of default with respect to any Material Lease which has not been cured, and the nature of such default. Borrower may deliver the information required under clauses (v)-(xi) above on a separate schedule, certified by Borrower, as true, complete and correct in all material respects, to Borrower's knowledge. Upon request by Lender (such request to be made no more often than once each calendar quarter), Borrower shall deliver to Lender a certified copy of any Material Lease entered into during the calendar quarter to which such current report relates, which certification shall include a statement that each such Lease complies with the provisions of Section 5.9. Borrower hereby represents and warrants that the rent roll delivered to Lender as of the date hereof is true, correct and complete in all material respects. Notwithstanding the foregoing, for the office portion of the Improvements, the information required under clauses (i) through (xi) shall be provided for all Leases.

(e) For each fiscal year commencing on January 1, 1998, and for each fiscal year thereafter, Borrower shall submit to Lender for Lender's written approval the Capital Budget defined in and required pursuant to Section 3.5 of the Operating Lease, or, if the Operating Lease is no longer in effect, an annual capital budget (in either case a "Capital Budget") not later than thirty (30) days prior to the commencement of such fiscal year, in form satisfactory to Lender setting forth in reasonable detail budgeted monthly capital expenses for the Properties, including all planned capital expenditures in respect of the Properties for such fiscal year. Lender shall have the right to approve such Capital Budget and in the event that Lender objects to the proposed Capital Budget submitted

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by Borrower. Lender shall advise Borrower of such objections within fifteen (15) days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and Borrower and the Operating Tenant, if applicable, shall promptly revise such Capital Budget and resubmit the same to Lender. Lender shall advise Borrower of any objections to such revised Capital Budget within ten (10) days after receipt thereof (and deliver to Borrower a reasonably detailed description of such objections) and Borrower and the Operating Tenant, if applicable, shall promptly revise the same in accordance with the process described in this subparagraph until the Lender approves a Capital Budget. Each such Capital Budget approved by Lender in accordance with terms hereof shall hereinafter be referred to as an Approved Capital Budget. Until such time that Lender approves a proposed Approved Capital Budget, the most recently Approved Capital Budget shall apply; provided that such Approved Capital Budget shall be adjusted to reflect actual increases in real estate taxes, insurance premiums and utilities expenses. In the event that the Borrower or the Operating Tenant must incur an extraordinary operating expense or capital expense not set forth in the Annual Budget (each, an "Extraordinary Expense"), then Borrower shall promptly deliver to Lender a reasonably detailed explanation of such proposed Extraordinary Expense for the Lender's approval. Notwithstanding the foregoing, in the event that Borrower or Operating Tenant reasonably determines that any delay in receiving Lender's approval prior to incurring an Extraordinary Expense shall result in (A) immediate danger to human health or safety, (B) a material disruption in the operation of the Property or (C) a violation of Applicable Laws that requires immediate remediation, Borrower or Operating Tenant may incur such Extraordinary Expense without obtaining Lender's approval, provided that, Borrower shall thereafter promptly deliver to Lender a reasonably detailed explanation of such Extraordinary Expense:

(f) Borrower shall deliver to Lender as soon as reasonably available but in no event later than thirty (30) days after such items become available to Borrower in final form:

- (i) copies of any final engineering or environmental reports prepared for Borrower with respect to the Property;
- (ii) notice in the event of any (A) material change in a Policy or any insurance coverage, (B) material tort action against Borrower relating to the Property and not wholly covered by insurance (other than any deductible thereunder, not to exceed the maximum deductible permitted under this Security Instrument), (C) Event of Default under this Security Instrument, (D) material casualty to the Property, (E) change in the Manager, or Qualified Manager, as the case may be, or (F) taking or threatened taking;
- (iii) a copy of any notice received by Borrower from any environmental authority having jurisdiction over the Property with respect to a condition existing or alleged to exist or emanate from or at the Property; and
- (iv) if requested by Lender, a summary report listing only tenants and square footage occupied by such tenants pursuant to Material Leases.

(g) Borrower shall deliver to Lender:

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- (i) a quarterly comparison of the budgeted total income and total expenses to the actual total income and total expenses for the subject quarter with a detailed explanation of any variances of ten percent (10%) or more between budgeted and actual amounts for such quarter and a report of occupancy for the subject quarter including an average daily room rate, within fifty (50) days after the end of each fiscal quarter; and
- (ii) an annual comparison of the budgeted total income and total expenses to the actual total income and total expenses with a detailed explanation of any variances of ten percent (10%) or more between budgeted and actual amounts for such year and an annual occupancy report including an average daily room rate, within ninety-five (95) days after the close of each fiscal year of Borrower.
- (h) Borrower shall, at any and all times, within a reasonable time after written request by Lender, furnish or cause to be furnished to Lender, in such manner and in such detail as may be reasonably requested by Lender, additional reasonable information with respect to the Property.
- (i) Borrower shall cause Operating Tenant to have Manager simultaneously deliver to Lender all financial statements and reports required to be delivered to Operating Tenant by Manager pursuant to the Management Agreement.
- (j) Borrower shall promptly send to Lender, and cause the Operating Tenant to promptly send to Lender, all quality assurance reports or other reports of inspection delivered by Franchisor

Section 3.12 PAYMENT FOR LABOR AND MATERIALS. Borrower will promptly pay or cause to be paid when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property and never permit to exist in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests hereof, except for the Permitted Exceptions (defined below).

Section 3.13. MANAGEMENT AND FRANCHISE AGREEMENTS. (a) Lender acknowledges that as of the date hereof, (i) the hotel portion of the Improvements are operated under the terms and conditions of that certain management agreement dated August 3, 1998 between the Operating Tenant and MeriStar Management Company, L.L.C. (the "Hotel Manager") and (ii) the office space portion of the Improvements are operated under the terms and conditions of that certain management agreement dated August 1, 1997 between Borrower and Phillips Martin Real Estate (the "Office Manager"; the Office Manager and the Hotel Manager individually and collectively, the "Manager") (the management agreements described in clauses (i) and (ii) above individually and collectively, the "Management Agreement"), which Management Agreement has been approved by Lender and that Borrower is not a party to the Management Agreement covering the hotel portion of the Improvements. The Property will be operated at all times by the Manager

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or by a Qualified Manager (defined below) pursuant to a Management Agreement or a Replacement Management Agreement (defined below) as a first-class hotel and a first-class office building. For purposes hereof, a "Qualified Manager" shall mean a reputable and experienced professional management organization (i) which manages, together with its affiliates, (A) at least ten (10) full-service hotels, exclusive of the Property and the Additional Properties (defined below), and (ii) prior to whose employment as manager of the Property (x) such employment shall have been approved by Lender, and (y) the Borrower shall have obtained and delivered to Lender written confirmation from the Rating Agencies that the employment of such manager will not result in a downgrade, withdrawal or qualification of the ratings then assigned to the Securities. Borrower shall, or shall cause the Operating Tenant to (i) diligently perform, observe and enforce all of the terms, covenants and conditions of the Management Agreement on the part of Borrower or the Operating Tenant to be performed, observed and enforced to the end that all things shall be done which are necessary to keep unimpaired the rights of Borrower or the Operating Tenant under the Management Agreement and (ii) promptly notify Lender of the giving of any notice to Borrower or the Operating Tenant of any default by Borrower or the Operating Tenant in the performance or observance of any of the terms, covenants or conditions of the Management Agreement on the part of Borrower or the Operating Tenant to be performed and observed and deliver to Lender a true copy of each such notice. Neither Borrower nor Operating Tenant shall surrender the Management Agreement, consent to the assignment by the Manager of its interest under the Management Agreement, or terminate or cancel the Management Agreement or modify, change, supplement, alter or amend the Management Agreement, in any material respect, either orally or in writing, and Borrower hereby assigns to Lender as further security for the payment of the Debt and for the performance and observance of the terms, covenants and conditions of this Security Instrument, all the rights, privileges and prerogatives of Borrower to surrender the Management Agreement or to terminate, cancel, modify, change, supplement, alter or amend the Management Agreement in any material respect, and any such surrender of the Management Agreement or termination, cancellation, modification, change, supplement, alteration or amendment of the Management Agreement by either Borrower or the Operating Tenant without the prior consent of Lender shall be void and of no force and effect. If Borrower or the Operating Tenant shall default in the performance or observance of any material term, covenant or condition of the Management Agreement on the part of Borrower or the Operating Tenant to be performed or observed, then, without limiting the generality of the other provisions of this Security Instrument, and without waiving or releasing Borrower from any of its obligations hereunder, Lender shall have the right, but shall be under no obligation, upon prior notice to Borrower, to pay any sums and to perform any act or take any action as may be appropriate to cause all the terms, covenants and conditions of the Management Agreement on the part of Borrower or the Operating Tenant to be performed or observed, beyond any applicable notice and cure period provided for therein, to be promptly performed or observed on behalf of Borrower or the Operating Tenant, to the end that the rights of Borrower or the Operating Tenant in, to and under the Management Agreement shall be kept unimpaired and free from default. Lender and any person designated by Lender shall have, and are hereby granted, the right to enter upon the Property at any time and from time to time, upon prior notice to Borrower and during business hours or such other reasonable times only, for the purpose of taking any such action. If the Manager under the Management Agreement shall deliver to Lender a copy of any notice sent to Borrower or the Operating Tenant of default under the Management Agreement, such notice shall

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constitute full protection to Lender for any action taken or omitted to be taken by Lender in good faith, in reliance thereon. Borrower shall notify Lender if the Manager sub-contracts to a third party or an affiliate any material portion of its management responsibilities under the Management Agreement. Borrower shall, or shall cause the Operating Tenant to, from time to time, use its best efforts to obtain from the Manager under the Management Agreement such certificates of estoppel with respect to compliance by Borrower or the Operating Tenant with the terms of the Management Agreement as may be reasonably requested by Lender. Borrower shall pay to Lender within fifteen (15) days after demand, any sums expended by Lender pursuant to this paragraph together with interest at the Default Rate (hereinafter defined) (to the extent an Event of Default has occurred and is continuing) and, in all other cases, at the Applicable Interest Rate from the date paid by Lender. Such sums shall be deemed to constitute a portion of the Debt, shall be secured by the lien of this Security Instrument and the other Loan Documents.

(b) Without limitation of the foregoing, if (i) the Manager shall become insolvent, (ii) the Manager shall default under the terms of the Management Agreement or (iii) an Event of Default shall occur and be continuing, then Lender, at its option, may require Borrower, to the extent Borrower is a party to the Management Agreement, or, if Borrower is not a party to the Management Agreement, to cause the Operating Tenant, to terminate the Management Agreement and to engage or cause the Operating Tenant to engage a bona-fide, independent third party Qualified Manager approved by Lender to manage the Property. The Qualified Manager shall be engaged by Borrower or the Operating Tenant pursuant to a written management agreement that complies with the terms hereof and is otherwise reasonably satisfactory to Lender in all respects (a "Replacement Management Agreement"), and the Qualified Manager, Borrower and the Operating Tenant shall execute a Conditional Assignment of Management Agreement in the form then used by Lender.

(c) The Improvements shall be operated under the terms and conditions of that certain franchise agreement dated August 1, 1994 entered into between Chi-Town Partners L.P., as predecessor in interest to Borrower and Radisson Hotels Inc. (the "Franchisor") (hereinafter, together with any renewals or replacements thereof, being referred to as the "Franchise Agreement"). Borrower shall or shall cause the Operating Tenant to (i) pay all sums required to be paid by Borrower or the Operating Tenant under the Franchise Agreement, (ii) diligently perform, observe and enforce all of the terms, covenants and conditions of the Franchise Agreement on the part of Borrower to be performed or the Operating Tenant, observed and enforced to the end that all things shall be done which are necessary to keep unimpaired the rights of Borrower or the Operating Tenant under the Franchise Agreement, (iii) promptly notify Lender of the giving of any notice to Borrower or the Operating Tenant of any default by Borrower or the Operating Tenant in the performance or observance of any of the terms, covenants or conditions of the Franchise Agreement on the part of Borrower or the Operating Tenant to be performed and observed and deliver to Lender a true copy of each such notice, and (iv) promptly deliver to Lender a copy of each financial statement, business plan, capital expenditure plan, notice, report and estimate received by it under the Franchise Agreement. Neither Borrower nor the Operating Tenant shall, without the prior consent of the Lender, surrender the Franchise Agreement or terminate or cancel the Franchise Agreement, or materially modify, change, supplement, alter or amend the Franchise Agreement, in any respect, either orally or in writing, and Borrower hereby

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assigns to Lender as further security for the payment of the Debt and for the performance and observance of the terms, covenants and conditions of this Security Instrument, all the rights, privileges and prerogatives of Borrower to surrender the Franchise Agreement or to materially terminate, cancel, modify, change, supplement, alter or amend the Franchise Agreement in any respect, and any such surrender of the Franchise Agreement or termination, cancellation, or material modification, change, supplement, alteration or amendment of the Franchise Agreement without the prior consent of Lender, by either Borrower or the Operating Tenant, shall be void and of no force and effect. Notwithstanding foregoing, Borrower may replace the Franchisor with a Qualified Franchisor (defined below) pursuant to an franchise agreement which is otherwise in compliance with the requirements of this Section 3.13 and provided that Borrower shall have obtained and delivered to Lender written confirmation from the Rating Agencies that the employment of such franchisor will not result in a downgrade, withdrawal or qualification of the ratings then assigned to the Securities (a "Replacement Franchise Agreement"). For purposes hereof, a "Qualified Franchisor" shall mean (a) a nationally recognized franchisor under whose flag there are at least fifty (50) full-service hotels, exclusive of the Property and the Additional Properties which has been approved by Lender, (b) Wyndham full-service hotels and (c), hotels operated under the trade names "South Seas" or "Doral" if, and only for so long as, such franchisors are owned by an affiliate of Borrower. If Borrower or the Operating Tenant shall default in the performance or observance of any material term, covenant or condition of the Franchise Agreement on the part of Borrower or the Operating Tenant to be performed or observed, beyond any applicable notice and cure period provided for therein, then, without limiting the generality of the other provisions of this Security Instrument, and without waiving or releasing Borrower from any of its obligations hereunder, Lender shall have the right, but shall be under no obligation, to pay any sums and to perform any act or take any action as may be appropriate to cause all the terms, covenants and conditions of the Franchise Agreement on the part of Borrower or the Operating Tenant to be performed or observed to be promptly performed or observed on behalf of Borrower or the Operating Tenant, to the end that the rights of Borrower or the Operating Tenant in, to and under the Franchise Agreement shall be kept unimpaired and free from default. Lender and any person designated by Lender shall have, and are hereby granted, the right to enter upon the Property at any time and from time to time upon prior notice to Borrower and during business hours or such other reasonable times only, for the purpose of taking any such action. If Franchisor shall deliver to Lender a copy of any notice sent to Borrower or the Operating Tenant of default under the Franchise Agreement, such notice shall constitute full protection to Lender for any action taken or omitted to be taken by Lender in good faith, in reliance thereon. Borrower shall or shall cause the Operating Tenant to, from time to time, use its best efforts to obtain from Franchisor such certificates of estoppel with respect to compliance by Borrower or the Operating Tenant with the terms of the Franchise Agreement as may be requested by Lender. Borrower shall pay to Lender within fifteen (15) days after demand, any sums expended by Lender pursuant to this paragraph together with interest at the Default Rate (hereinafter defined) (to the extent an Event of Default has occurred and is continuing) and, in all other cases, at the Applicable Interest Rate from the date paid by Lender. Such sums shall be deemed to constitute a portion of the Debt, shall be secured by the lien of this Security Instrument and the other Loan Documents.

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Section 3.14. **OPERATING LEASE.** (a) Lender acknowledges that Borrower has leased the Property and the operation of the Property to the Operating Tenant pursuant to the Operating Lease. If Borrower shall default in the performance or observance of any material term, covenant or condition of the Operating Lease on the part of Borrower to be performed or observed, then, without limiting the generality of the other provisions of this Security Instrument, and without waiving or releasing Borrower from any of its obligations hereunder, Lender shall have the right, but shall be under no obligation, to pay any sums and to perform any act or take any action as may be appropriate to cause all the terms, covenants and conditions of the Operating Lease on the part of Borrower to be performed or observed to be promptly performed or observed on behalf of Operating Tenant, to the end that the rights of Borrower in, to and under the Operating Lease shall be kept unimpaired and free from default. Lender and any person designated by Lender shall have, and are hereby granted, the right to enter upon the Property at any time and from time to time upon prior notice to Borrower and during business hours or such other reasonable times only, for the purpose of taking any such action. If the Operating Tenant under the Operating Lease shall deliver to Lender a copy of any notice sent to Borrower of default under the Operating Lease, such notice shall constitute full protection to Lender for any action taken or omitted to be taken by Lender in good faith, in reliance thereon.

(b) If (i) Operating Tenant shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or Operating Tenant shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against Operating Tenant any case, proceeding or other action of a nature referred to in clause (i) above which (1) results in the entry of an order for relief or any such adjudication or appointment or (2) remains undismissed, undischarged or unbonded for a period of sixty (60) days; or (iii) there shall be commenced against Operating Tenant any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of any order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof; or (iv) Operating Tenant shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due, then Borrower shall, without notice or demand by Lender, no later than five (5) days after the occurrence of any of the events in clauses (i) through (v) above, pay to Lender an amount equal to the sum of (1) the projected Debt Service that will be due on for the next three succeeding Payment Dates, (2) three times the Replacement Reserve Monthly Deposit, (3) the projected monthly deposits into the Escrow Fund that would be due on the next three succeeding Payment Dates (collectively, the "Operating Lease Reserve"), to be held by Lender in a segregated account in the name of Lender as additional security for the Debt. Borrower shall have no right to withdraw any sums from the Operating Lease Reserve until the earlier to occur of: (i) termination of the Operating Lease and the delivery to Lender of an estoppel certificate from the Operating Tenant in form satisfactory to Lender stating that (A) the Operating Lease has been terminated and

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that the Operating Tenant has released the Borrower from all liability for the payment of any and all termination payments or any other payments due to the Operating Tenant pursuant to the terms of the Operating Lease and that the Borrower has no further liability or obligation in connection with said Operating Lease and (B) a replacement Operating Lease satisfactory to Lender which is in full force and effect, together with an estoppel certificate from the replacement Operating Tenant under such replacement Operating Lease reasonably satisfactory in form and substance to Lender; (ii) delivery of an estoppel certificate from the Operating Tenant in form satisfactory to Lender stating that the Operating Lease is and will remain in full force and effect, together with evidence satisfactory to Lender that the Operating Tenant is no longer subject to any of the events described in clauses (i) through (v) above and (iii) the Debt having been paid in full.

Section 3.15 INTENTIONALLY DELETED.

Section 3.16 PERFORMANCE OF OTHER AGREEMENTS. Borrower shall fulfill and perform each and every material term to be observed or performed by Borrower pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Property, or given by Borrower to Lender for the purpose of further securing an Obligation and any amendments, modifications or changes thereto.

Section 3.17 CHANGE OF NAME, IDENTITY OR STRUCTURE. Except as may be permitted under Article 8 hereof, Borrower will not change Borrower's name, identity (including its trade name or names) or corporate, partnership or other structure without notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change and, in the case of a change in Borrower's structure, without first obtaining the prior written consent of Lender.

Section 3.18 EXISTENCE. Borrower will continuously maintain its existence and its rights to do business in the state where the Property is located together with its franchises and trade names.

Section 3.19 INTENTIONALLY DELETED.

Section 3.20. MAINTENANCE OF PERSONAL PROPERTY. Except as otherwise provided in Sections 6.2(c) and 18.1 of the Operating Lease and subject to the conditions set forth in Section 8.3 hereof, Borrower shall own, lease or license Personal Property (other than the Inventory (as defined in the Operating Lease), and the Operating Tenant or Manager shall own Inventory, adequate to maintain and operate the Property as a hotel in accordance with the standards of this Agreement, the Loan Documents, the Operating Lease, the Management Agreement, Replacement Management Agreement and the Franchise Agreement. Neither Borrower, the Operating Tenant nor Manager shall lease, license, encumber or enter into any other financing arrangements with respect to any of the Personal Property or Inventory, as the case may be, other than Permitted Financing (defined below).

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Article 4 - SPECIAL COVENANTS

Borrower covenants and agrees that:

Section 4.1 PROPERTY USE. The Property shall be used only for a first-class full service hotel and a first-class office building and such other uses as may be incidental or necessary in connection with such use, and for no other use without the prior written consent of Lender, which consent may be withheld in Lender's sole and absolute discretion.

Section 4.2 SINGLE PURPOSE ENTITY. From and after the date on which a Securitization (as defined in the Loan Agreement) occurs, Borrower shall represent and warrant to, and covenant with, Lender that as of the date of such Securitization and until such time as the Debt shall be paid in full:

(a) Borrower does not own and will not own any asset or property other than (A) the Property or any Additional Property (defined in Section 23.1) and (B) incidental Personal Property necessary for the ownership or operation of the Property or any Additional Property.

(b) Borrower will not engage in any business other than the ownership, management and operation of the Property or any Additional Property and Borrower will conduct and operate its business as presently conducted and operated.

(c) Borrower will not enter into any contract or agreement with any constituent party or any affiliate of any constituent party, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any such party.

(d) Borrower has not incurred and will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Debt, except with respect to trade payables not in excess of amounts reasonably expected to be incurred in the ordinary course of its business of owning and operating the Property or any Additional Property, provided that such debt is not evidenced by a note and is paid within sixty (60) days of the date when such payment is due, and Permitted Financing.

(e) Borrower has not made or will not make any loans or advances to any third party (including any affiliate or constituent party), and Borrower shall not acquire obligations or securities of its affiliates or constituent parties.

(f) Borrower represents and warrants that it is solvent and covenants that it will remain solvent and will pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due.

(g) Borrower has done or caused to be done and will do all things necessary to observe partnership formalities and preserve its existence, and Borrower will not, nor will Borrower permit any constituent party to amend, modify or otherwise change the partnership certificate.

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partnership agreement, articles of incorporation and bylaws, trust or other organizational documents of Borrower or Borrower's general partner or managing member (or the general partner or managing member of Borrower's general partner or managing member if Borrower's general partner or managing member is a limited partnership or limited liability company) without the prior written consent of Lender. Notwithstanding the foregoing, Lender acknowledges and agrees that so long as MeriStar SPE LLC (the "SPE Member") shall hold an interest in Borrower, the terms of this clause (g) shall only relate to the Borrower and SPE Member, including MeriStar SPE Corp. (the "SPE Corp."), whose sole asset is its membership interest in the SPE Member.

(h) Borrower will maintain all of its books, records, financial statements and bank accounts separate from those of its affiliates and any constituent party (except that Lender acknowledges that Borrower and the Additional Borrowers shall be included with the Additional Borrowers in a consolidated financial statement filed with the Securities Exchange Commission, which consolidated financial statement shall indicate that Borrower and the Additional Borrowers are separate legal entities). Borrower will file its own tax returns (except that Lender acknowledges that Borrower and the Additional Borrowers shall have the right to file consolidated or combined federal, state and city tax returns, which shall provide that Borrower and the Additional Borrowers are separate legal entities and pay their respective proportionate shares of the taxes shown on such returns). Borrower shall maintain its books, records, resolutions and agreements as official records.

(i) Borrower will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any affiliate of Borrower or any constituent party of Borrower), shall correct any known misunderstanding regarding its status as a separate entity, shall conduct business in its own name, shall not identify itself or any of its affiliates as a division or part of the other and Borrower shall maintain and utilize separate stationery, invoices and checks.

(j) Borrower covenants to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations.

(k) Borrower or constituent party will not seek or effect the liquidation, dissolution, winding up, consolidation or merger, in whole or in part, of Borrower.

(l) Borrower will not commingle the funds and other assets of Borrower with those of any affiliate or constituent party or any other person or entity.

(m) Borrower has and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any affiliate or constituent party or any other person or entity.

(n) Borrower does not and will not hold itself out to be responsible for the debts or obligations of any other person other than those of Borrower pursuant to the Note, this Security Instrument, the Other Security Instruments, if applicable, or the Other Security Documents.

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(o) Borrower shall not guarantee or become obligated for the debts of any other entity or person or hold itself out to be responsible for the debts of another person or entity, other than with respect to the loan evidenced by the Note.;

(p) Borrower shall not share any common logo with or hold itself out as or be considered as a department or division of (i) any general partner, principal, member or affiliate of Borrower, (ii) any affiliate of a general partner, principal or member of Borrower, or (iii) any other person or entity.

(q) Borrower shall not fail to allocate fairly and reasonably any overhead expenses that are shared with an affiliate, including paying for office space and services performed by any employee of an affiliate.

(r) Borrower shall not pledge its assets for the benefit of any other person or entity, other than with respect to the loan evidenced by the Note.

(s) Borrower shall not fail to maintain a sufficient number of employees in light of its contemplated business operations.

(t) If Borrower is a limited partnership, each general partner is a corporation, limited partnership or limited liability company whose sole asset is its interest in Borrower and each general partner will at all times comply, and will cause Borrower to comply, with each of the representations, warranties, and covenants contained in this Section 4.2 as if such representation, warranty or covenant was made directly by such general partner. If Borrower is a limited liability company, its managing member is a corporation, limited partnership or limited liability company whose sole asset is its interest in Borrower and the managing member will at times comply, and will cause Borrower to comply, with each of the representations, warranties, and covenants contained in this Section 4.2 as if such representation, warranty or covenant was made directly by such managing member. If the general partner or managing member of Borrower is a limited partnership or limited liability company, each general partner or managing member thereof is a corporation, limited partnership or limited liability company whose sole asset is its interest in such general partner or managing member of Borrower and each general partner or managing member thereof will at all times comply, and will cause the general partner or managing member of Borrower to comply, with each of the representations, warranties and covenants contained in this Section 4.2 as if such representation, warranty or covenant was made directly by such general partner or managing member (such general partner or managing member, together with such general partner referred to in the first sentence of this paragraph and such managing member referred to in the second sentence of this paragraph hereinafter collectively referred to as the "Controlling Party"). Notwithstanding anything to the contrary set forth above, neither MeriStar Hospitality Corporation (the "REIT Corp.") nor MeriStar Hospitality Operating Partnership, L.P. (the "REIT OP") shall be deemed to be a Controlling Party for any purpose under this Security Instrument, or subject to the provisions of the foregoing sentence. Notwithstanding the foregoing, Lender acknowledges and agrees that the limited liability company which executed this Security Instrument as mortgagor as of the date hereof is a limited liability company having two (2) members, except that only SPE Member as the non-managing member shall be a "single asset"

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entity whose sole assets are its interests in the Borrower and the Additional Borrowers and which will at all times comply, and will cause Borrower to comply, with each of the representations, warranties, and covenants contained in this Section 4.2 as if such representation, warranty or covenant was made directly by SPE Member. In addition Lender acknowledges and agrees that, the SPE Member has two (2) members, except that only SPE Corp. as the non-managing member thereof shall be a "single asset" entity whose sole asset is its interest in the SPE Member and which will at all times comply, and will cause the SPE Member to comply, with each of the representations, warranties, and covenants contained in this Section 4.2 as if such representation, warranty or covenant was made directly by SPE Corp. For the purposes of this Security Instrument, the SPE Member and SPE Corp. shall each be deemed to be a Controlling Party.

(u) Borrower shall at all times cause there to be at least one duly appointed member of the board of directors (an "Independent Director") of each general partner or managing member of Borrower (or of each general partner or managing member of any such general partner or managing member that is a limited partnership or limited liability company) reasonably satisfactory to Lender who shall not have been at the time of such individual's appointment, and may not have been at any time during the preceding five (5) years (i) a shareholder of, or an officer, director, partner or employee of, Borrower or any of its respective shareholders, subsidiaries or affiliates, (ii) a customer of, or supplier to, Borrower or any of their respective shareholders, subsidiaries or affiliates, (iii) a person or entity controlling or under common control with any such shareholder, partner supplier or customer, or (iv) a member of the immediate family of any such shareholder, officer, director, partner, employee, supplier or customer of any other director of Borrower. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise. Notwithstanding the foregoing, Lender acknowledges that the a duly appointed member of the board of directors of SPE Corp. shall be deemed an Independent Director for the purposes of this Section 4.2(u) and shall satisfy the requirements hereof.

(v) Borrower shall not file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, or make an assignment for the benefit of creditors;

(w) Borrower shall not cause or permit any Controlling Party or the REIT OP to take any of the following actions which, under the terms of any certificate of incorporation, by-laws or any voting trust agreement with respect to any common stock, shall require a vote of the board of directors of the general partner or managing member of Borrower, unless at the time of such action there shall be at least one member of such board of directors of SPE Corp. who is an Independent Director:

(A) File or consent to the filing of any bankruptcy, insolvency or reorganization case or proceeding; institute any proceedings under any applicable insolvency law or otherwise seek any relief under any laws relating to the relief from debts or the protection of debtors generally;

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(B) Seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for such Borrower or a substantial portion of its properties;

(C) Make any assignment for the benefit of such Borrower's creditors;

(D) Amend the organizational documentation of Borrower or of any Controlling Party in any manner that does not comply with each of the representations, warranties and covenants contained in this Section 4.2 without the consent of Lender, or, after the Securitization, without (1) confirmation from each of the Rating Agencies rating the Securities that such amendment would not result in the qualification, withdrawal or downgrade of the initial ratings assigned in connection with the Securitization and (2) approval of such amendment by Lender;
or

(E) Take any action in furtherance of any of the foregoing.

Section 4.3 **RESTORATION.** The following provisions shall apply in connection with the Restoration of the Property:

(a) If the Net Proceeds (defined below) shall be less than or equal to the lesser of (i) \$2,500,000 or (ii) ten percent (10%) of the Allocated Loan Amount (as defined in the Loan Agreement) for the Property (the "Threshold Amount") and the costs of completing the Restoration shall be less than or equal to the Threshold Amount, the Net Proceeds will be disbursed by Lender to Borrower upon receipt, provided that all of the conditions set forth in Subsection 4.3(b)(i) are met and Borrower delivers to Lender a written undertaking to expeditiously commence and to satisfactorily complete with due diligence the Restoration in accordance with the terms of the Security Instrument.

(b) If the Net Proceeds are equal to or greater than the Threshold Amount or the costs of completing the Restoration is equal to or greater than the Threshold Amount, Lender shall make the Net Proceeds available for the Restoration in accordance with the provisions of this Subsection 4.3(b). The term "Net Proceeds" for purposes of this Section 4.3 shall mean: (y) the net amount of all insurance proceeds received by Lender pursuant to Subsections 3.3(a)(i), (iv), (vi), (vii), (viii) and, as applicable, (ix) of this Security Instrument as a result of such damage or destruction, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting same ("Insurance Proceeds"), or (z) the net amount of all awards and payments received by Lender with respect to a taking referenced in Section 3.6 of this Security Instrument, after deduction of its reasonable costs and expenses (including, but not limited to, reasonable counsel fees), if any, in collecting same ("Condemnation Proceeds"), whichever the case may be.

(i) The Net Proceeds shall be made available to Borrower for the Restoration provided that each of the following conditions are met:

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(A) no Event of Default shall have occurred and be continuing under the Note, this Security Instrument or any of the Other Security Documents;

(B) (1) in the event the Net Proceeds are Insurance Proceeds, less than fifty percent (50%) of the total floor area of the Improvements has been damaged, destroyed or rendered unusable as a result of such fire or other casualty or (2) in the event the Net Proceeds are Condemnation Proceeds, less than twenty-five percent (25%) of the land constituting the Property is taken;

(C) The Operating Lease in effect as of the date of the occurrence of such fire or other casualty or taking, whichever the case may be, shall remain in full force and effect during the Restoration and shall not otherwise terminate as a direct result of the fire, other casualty or the Restoration or shall be replaced by a Replacement Operating Lease in a manner consistent with Sections 3.7(f) and 9.1 (r) hereof;

(D) Borrower shall commence the Restoration as soon as reasonably practicable (but in no event later than sixty (60) days after such damage or destruction occurs) and shall diligently pursue the same to satisfactory completion.

(E) Lender shall be satisfied that any operating deficits which will be incurred with respect to the Property as a result of the occurrence of any such fire or other casualty will be covered out of (1) the Net Proceeds, (2) the insurance coverage referred to in Subsection 3.3(a)(iii), or (3) by other funds of Borrower;

(F) Lender shall be satisfied that, upon the completion of the Restoration, the gross cash flow and the net cash flow of the Property will be restored to a level sufficient to cover all carrying costs and operating expenses of the Property, including, without limitation, and to maintain a Aggregate Debt Service Coverage Ratio (as defined in the Loan Agreement) of at least 1.51 to 1;

(G) Borrower furnishes Lender with a certificate certifying that the Restoration will be completed on or before the earliest to occur of (1) the earliest date required for such completion under the terms of any Operating Agreements or the Operating Lease, (2) the expiration of business income insurance for the Property required to be restored under Section 3.3(a)(iii), (3) three (3) months prior to the Maturity Date (as defined in the Note), (4) the date required pursuant to the Franchise Agreement or the Replacement Franchise Agreement, as applicable or (5) such time as may be required under Applicable Laws in order to repair and

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restore the Property to the condition it was in immediately prior to such fire or other casualty or to as nearly as possible the condition it was in immediately prior to such taking, as applicable;

(H) the Property and the use thereof after the Restoration will be materially in compliance with and permitted under all applicable zoning laws, ordinances, rules and regulations;

(I) the Restoration shall be done and completed by Borrower in an expeditious and diligent fashion and in material compliance with all Applicable Laws (including, without limitation, all applicable zoning laws, rules, regulations and ordinances, and all applicable Environmental Laws and the terms and conditions of the Franchise Agreement or Replacement Franchise Agreement, as applicable;

(J) the Management Agreement or Replacement Management Agreement in effect as of the date of the occurrence of such fire or other casualty or taking, whichever the case may be, shall (1) remain in full force and effect during the Restoration and shall not otherwise terminate as a result of the fire, other casualty or the Restoration or (2) if terminated, shall have been replaced with a Replacement Management Agreement with a Qualified Manager, each as approved by Lender in accordance with Section 3.13 hereof, prior to the opening or reopening of the Property or any portion thereof for business with the public; and

(K) the Franchise Agreement in effect as of the date of the occurrence of such fire or other casualty or taking, whichever the case may be, shall remain in full force and effect during the Restoration and shall not otherwise terminate as a result of the fire, other casualty or the Restoration or shall have been replaced by a Replacement Franchise Agreement in a manner consistent with Sections 3.13(c) and 9.9 (n) hereof.

(ii) The Net Proceeds shall be held by Lender in Eligible Investments (defined below) as directed by Borrower consistent with the projected completion of the Restoration and, until disbursed in accordance with the provisions of this Subsection 4.3(b), shall constitute additional security for the Obligations. All interest on such Net Proceeds shall accrue for the benefit of Borrower. The Net Proceeds shall be disbursed by Lender to, or as directed by, Borrower from time to time during the course of the Restoration, upon receipt of evidence satisfactory to Lender that (A) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with the Restoration have been paid for in full, and (B) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Property arising out of the Restoration which have not either been fully

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bonded to the satisfaction of Lender and discharged of record or in the alternative fully insured to the satisfaction of Lender by the title company insuring the lien of this Security Instrument.

(iii) All plans and specifications required in connection with the Restoration shall be subject to prior review and acceptance in all respects by Lender, exercised in Lender's reasonable discretion, and by an independent consulting engineer selected by Lender (the "Casualty Consultant"). Lender shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with the Restoration. The identity of the contractors, subcontractors and materialmen engaged in the Restoration, as well as the contracts under which they have been engaged, shall be subject to prior review and acceptance by Lender exercised in Lender's reasonable discretion and the Casualty Consultant. All costs and expenses actually and reasonably incurred by Lender in connection with making the Net Proceeds available for the Restoration including, without limitation, reasonable counsel fees and disbursements and the Casualty Consultant's fees, shall be paid by Borrower.

(iv) In no event shall Lender be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the costs actually incurred from time to time for work in place as part of the Restoration, as certified by the Casualty Consultant, minus the Casualty Retainage. The term "Casualty Retainage" as used in this Subsection 4.3(b) shall mean an amount equal to 10% of the costs actually incurred for work in place as part of the Restoration, as certified by the Casualty Consultant, until such time as the Casualty Consultant certifies to Lender that Net Proceeds representing 50% of the required Restoration have been disbursed. There shall be no Casualty Retainage with respect to costs actually incurred by Borrower for work in place in completing the last 50% of the required Restoration. The Casualty Retainage shall in no event, and notwithstanding anything to the contrary set forth above in this Subsection 4.3(b), be less than the amount actually held back by Borrower from contractors, subcontractors and materialmen engaged in the Restoration. The Casualty Retainage shall not be released until the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Subsection 4.3(b) and that all approvals necessary for the re-occupancy and use of the Property have been obtained from all appropriate governmental and quasi-governmental authorities, and Lender receives evidence satisfactory to Lender that the costs of the Restoration have been paid in full or will be paid in full out of the Casualty Retainage, provided, however, that Lender will release the portion of the Casualty Retainage being held with respect to any contractor, subcontractor or materialman engaged in the Restoration as of the date upon which the Casualty Consultant certifies to Lender that the contractor, subcontractor or materialman has satisfactorily completed all work and has supplied all materials in accordance with the provisions of the contractor's, subcontractor's or materialman's contract, and the contractor, subcontractor or materialman delivers the lien waivers and evidence of payment in

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full of all sums due to the contractor, subcontractor or materialman as may be reasonably requested by Lender or by the title company insuring the lien of this Security Instrument. If required by Lender, the release of any such portion of the Casualty Retainage shall be approved by the surety company, if any, which has issued a payment or performance bond with respect to the contractor, subcontractor or materialman.

(v) Lender shall not be obligated to make disbursements of the Net Proceeds more frequently than once every calendar month.

(vi) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the opinion of Lender, be sufficient to pay in full the balance of the costs which are estimated by the Casualty Consultant to be incurred in connection with the completion of the Restoration, Borrower shall deposit the deficiency (the "Net Proceeds Deficiency") with Lender before any further disbursement of the Net Proceeds shall be made. The Net Proceeds Deficiency deposited with Lender shall be held by Lender and shall be disbursed for costs actually incurred in connection with the Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this Subsection 4.3(b) shall constitute additional security for the Obligations.

(vii) The excess, if any, of the Net Proceeds and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Lender after the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Subsection 4.3(b), and the receipt by Lender of evidence satisfactory to Lender that all costs incurred in connection with the Restoration have been paid in full, shall be remitted by Lender to Borrower, provided no Event of Default shall have occurred and shall be continuing under the Note, this Security Instrument or any of the Other Security Documents.

(c) All Net Proceeds not required (i) to be made available for the Restoration or (ii) to be returned to Borrower as excess Net Proceeds pursuant to Subsection 4.3(b)(vii) may be retained and applied by Lender toward the payment of the Debt whether or not then due and payable in such order, priority and proportions as Lender in its discretion shall deem proper or, at the discretion of Lender, the same may be paid, either in whole or in part, to Borrower for such purposes as Lender shall designate, in its discretion. If Lender shall receive and retain Net Proceeds, the lien of this Security Instrument shall be reduced only by the amount thereof received and retained by Lender and actually applied by Lender in reduction of the Debt.

Section 4.4 ERISA

(a) Borrower covenants and agrees that it shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Note, this Security Instrument and the Other Security

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Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

(b) Borrower further covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of the Security Instrument, as requested by Lender in its sole discretion, that (i) Borrower is not an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(3) of ERISA; (ii) Borrower is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (iii) one or more of the following circumstances is true:

(A) Equity interests in Borrower are publicly offered securities, within the meaning of 29 C.F.R. § 2510.3-101(b)(2);

(B) Less than 25 percent of each outstanding class of equity interests in Borrower are held by "benefit plan investors" within the meaning of 29 C.F.R. § 2510.3-101(f)(2); or

(C) Borrower qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R. § 2510.3-101(c) or (e) or an investment company registered under The Investment Company Act of 1940.

Article 5 - REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Lender that:

Section 5.1 WARRANTY OF TITLE. Borrower has good title to the Property and has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the same and that Borrower possesses an unencumbered fee simple absolute estate in the Land and the Improvements and that it owns the Property free and clear of all liens, encumbrances and charges whatsoever except for those exceptions (the "Permitted Exceptions") shown in the title insurance policy insuring the lien of this Security Instrument (the "Title Policy"). Borrower shall forever warrant, defend and preserve the title and the validity and priority of the lien of this Security Instrument and shall forever warrant and defend the same to Lender against the claims of all persons whomsoever.

Section 5.2 AUTHORITY. Borrower (and the undersigned representative of Borrower, if any) has full power, authority and legal right to execute this Security Instrument, and to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the Property pursuant to the terms hereof and to keep and observe all of the terms of this Security Instrument on Borrower's part to be performed.

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Section 5.3. **LEGAL STATUS AND AUTHORITY.** Borrower (a) is duly organized, validly existing and in good standing under the laws of its state of organization or incorporation; (b) is duly qualified to transact business and is in good standing in the State where the Property is located; and (c) has all necessary approvals, governmental and otherwise, and full power and authority to own the Property and carry on its business as now conducted and proposed to be conducted. Borrower now has and shall continue to have the full right, power and authority to own and lease the Property, to encumber the Property as provided herein and to perform all of the other obligations to be performed by Borrower under the Note, this Security Instrument and the Other Security Documents.

Section 5.4 **VALIDITY OF DOCUMENTS.** (a) The execution, delivery and performance of the Note, this Security Instrument and the Other Security Documents and the borrowing evidenced by the Note (i) are within the power and authority of Borrower; (ii) have been authorized by all requisite organizational action; (iii) have received all necessary approvals and consents, corporate, governmental or otherwise; (iv) will not violate, conflict with, result in a breach of or constitute (with notice or lapse of time, or both) a material default under any provision of law, any order or judgment of any court or governmental authority, the articles of incorporation, by-laws, partnership or trust agreement, articles of organization, operating agreement, or other governing instrument of Borrower, or any indenture, agreement or other instrument to which Borrower is a party or by which it or any of its assets or the Property is or may be bound or affected; (v) will not result in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of its assets, except the lien and security interest created hereby; and (vi) will not require any authorization or license from, or any filing with, any governmental or other body (except for the recording of this Security Instrument in appropriate land records in the State where the Property is located and except for Uniform Commercial Code filings relating to the security interest created hereby); and (b) the Note, this Security Instrument and the Other Security Documents constitute the legal, valid and binding obligations of Borrower.

Section 5.5 **LITIGATION.** There is no action, suit or proceeding, judicial, administrative or otherwise (including any condemnation or similar proceeding), pending or, to the best of Borrower's knowledge, threatened or contemplated against, or affecting, Borrower or the Property, which action, suit or proceeding would materially and adversely effect Borrower or the Property, and is not covered adequately by insurance.

Section 5.6 **STATUS OF PROPERTY.**

(a) No portion of the Improvements is located in an area identified by the Secretary of Housing and Urban Development or any successor thereto as an area having special flood hazards pursuant to the Flood Insurance Acts or, if any portion of the Improvements is located within such area, Borrower has obtained and will maintain the insurance prescribed in Section 3.3 hereof.

(b) Borrower has obtained all necessary certificates, licenses and other approvals, governmental and otherwise, necessary for the operation of the Property and the conduct of its business and all required zoning, building code, land use, environmental

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and other similar permits or approvals, all of which are in full force and effect as of the date hereof and not subject to revocation, suspension, forfeiture or modification.

(c) The Property and the present and contemplated use and occupancy thereof comply in all material respects with all applicable zoning ordinances, building codes, land use and Environmental Laws (hereinafter defined) and other similar laws.

(d) The Property is served by all utilities required for the current or contemplated use thereof. Except as disclosed in the Title Policy, all utility service is provided by public utilities and the Property has accepted or is equipped to accept such utility service.

(e) All public roads and streets necessary for service of and access to the Property for the current or contemplated use thereof have been completed, are serviceable and all-weather and are physically and legally open for use by the public.

(f) The Property is served by public water and sewer systems.

(g) The Property is free from damage caused by fire or other casualty.

(h) All costs and expenses of any and all labor, materials, supplies and equipment used in the construction of the Improvements have been paid in full.

(i) Except as permitted pursuant to Section 3.20, Borrower has paid in full for, and is the owner of, all furnishings, fixtures and equipment (other than tenants' property) used in connection with the operation of the Property, free and clear of any and all security interests, liens or encumbrances, except the lien and security interest created hereby.

(j) All liquid and solid waste disposal, septic and sewer systems located on the Property are in a good and safe condition and repair and in compliance in all material respects with all Applicable Laws.

(k) Except as described on the survey delivered in connection with the funding of the Note, all the Improvements lie within the boundaries of the Land.

Section 5.7 **NO FOREIGN PERSON.** Borrower is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended and the related Treasury Department regulations, including temporary regulations.

Section 5.8 **SEPARATE TAX LOT.** The Property is assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements not constituting a part of such lot or lots, and no other land or improvements is assessed and taxed together with the Property or any portion thereof.

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Section 5.9 **LEASES.** (a) Borrower or the Operating Tenant, as the case may be, is the sole owner of the entire lessor's interest in the Leases; (b) the Leases are valid and enforceable, except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization or similar laws affecting the rights of creditors generally or (ii) general principles of equity; (c) the material economic terms of all alterations, modifications and amendments to the Leases are reflected in the certified occupancy statement delivered to and approved by Lender; (d) none of the Rents reserved in the Leases have been assigned or otherwise pledged or hypothecated (other than to Lender); (e) except as may otherwise be permitted herein, none of the Rents have been collected for more than one (1) month in advance; (f) the premises demised under the Material Leases and the Operating Lease have been completed and the tenants under the Leases have accepted the same and have taken possession of the same on a rent-paying basis; (g) there currently exist no offsets or defenses to the payment of any portion of the Rents; (h) no Lease contains an option to purchase, right of first refusal to purchase, or any other similar provision; (i) each Material Lease and the Operating Lease is subordinate to this Security Instrument, either pursuant to its terms or a recorded subordination agreement; (j) no person or entity has any possessory interest in, or right to occupy, other than on a transient basis, the Property except under and pursuant to a Lease.

Section 5.10 **ERISA COMPLIANCE.** (a) As of the date hereof and throughout the term of this Security Instrument, (i) Borrower is not and will not be an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, and (ii) the assets of Borrower do not and will not constitute "plan assets" of one or more such plans for purposes of Title I of ERISA; and

(b) As of the date hereof and throughout the term of this Security Instrument (i) Borrower is not and will not be a "governmental plan" within the meaning of Section 3(3) of ERISA and (ii) transactions by or with Borrower are not and will not be subject to state statutes applicable to Borrower regulating investments of and fiduciary obligations with respect to governmental plans.

Section 5.11 **FINANCIAL CONDITION.** (a) (i) Borrower is solvent, and no bankruptcy, reorganization, insolvency or similar proceeding under any state or federal law with respect to Borrower has been initiated, and (ii) Borrower has received reasonably equivalent value for the granting of this Security Instrument.

(b) No petition in bankruptcy has ever been filed by or against Borrower or any related entity, or any principal, general partner or member thereof, in the last seven (7) years, and neither Borrower nor any related entity, or any principal, general partner or member thereof, in the last seven (7) years has ever made any assignment for the benefit of creditors or taken advantage of any insolvency act or any act for the benefit of debtors.

Section 5.12 **BUSINESS PURPOSES.** The loan evidenced by the Note secured by the Security Instrument and the Other Security Documents (the "Loan") is solely for the business purpose of Borrower, and is not for personal, family, household, or agricultural purposes.

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Section 5.13 **TAXES**. Borrower has filed all federal, state, county, municipal, and city income and other tax returns required to have been filed by them and have paid all taxes and related liabilities which have become due pursuant to such returns or pursuant to any assessments received by them. Borrower does not know of any basis for any additional assessment in respect of any such taxes and related liabilities for prior years.

Section 5.14 **MAILING ADDRESS**. Borrower's mailing address, as set forth in the opening paragraph hereof or as changed in accordance with the provisions hereof, is true and correct.

Section 5.15 **NO CHANGE IN FACTS OR CIRCUMSTANCES**. All information in the application for the Loan submitted to Lender (the "Loan Application") and in all financing statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan Application or in satisfaction of the terms thereof, are accurate, complete and correct in all material respects as of the respective dates thereof. To the best of Borrower's knowledge there has been no adverse change in any condition, fact, circumstance or event that would make any such information inaccurate, incomplete or otherwise misleading in any material respect.

Section 5.16 **DISCLOSURE**. Borrower has disclosed to Lender all material facts known to Borrower and has not failed to disclose any material fact known to Borrower that could cause any representation or warranty made herein to be materially misleading.

Section 5.17 **INTENTIONALLY DELLETED**.

Section 5.18 **ILLEGAL ACTIVITY**. No portion of the Property has been or will be purchased, improved, equipped or furnished with proceeds of any illegal activity and to the best of Borrower's knowledge, there are no illegal activities or activities relating to any controlled substance at the Property.

Section 5.19 **CONTRACTS**. All contracts, agreements, consents, waivers, documents and writings of every kind or character, including, without limitation, the Management Agreement, if any, at any time to which Borrower is a party to be delivered to Lender pursuant to any of the provisions of this Security Instrument are valid and enforceable against Borrower and, to the best knowledge of Borrower, are enforceable against all other parties thereto, and, to Borrower's actual knowledge, in all respects are what they purport to be and, to the best knowledge of Borrower, to the extent that any such writing shall impose any obligation or duty on the party thereto or constitute a waiver of any rights which any such party might otherwise have, said writing shall be valid and enforceable against said party in accordance with its terms, except as such enforcement may be limited by (i) applicable bankruptcy, insolvency, reorganization or similar laws affecting the rights of creditors generally or (ii) general principles of equity.

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Section 5.20. INVESTMENT COMPANY ACT. Borrower is not (a) an "investment company" or a company "controlled" by an "investment company", within the meaning of the Investment Company Act of 1940, as amended, (b) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 1935, as amended, or (c) subject to any other federal or state law or regulation that purports to restrict or regulate its ability to borrow money.

Section 5.21. MANAGEMENT AGREEMENT. The Management Agreement is in full force and effect, all fees and other sums due thereunder have been paid in full to date, and neither Borrower nor to the best of Borrower's knowledge after due inquiry, Manager is in default thereunder.

Section 5.22. PERSONAL PROPERTY. Borrower owns, leases or licenses adequate Personal Property (other than Inventory) and Operating Tenant owns adequate Inventory to maintain and operate the Property as a hotel in accordance with the standards of this Security Instrument, the Operating Lease, the Management Agreement and, if applicable, the Franchise Agreement. The Personal Property is not subject to any liens, leases or financing arrangements other than Permitted Exceptions. The Personal Property (other than Inventory) is leased to the Operating Tenant pursuant to the related Operating Lease.

Section 5.23. THE FRANCHISE AGREEMENT. The Franchise Agreement is in full force and effect, all franchise fees, reservation fees, royalties and other sums due thereunder have been paid in full to date, and neither Borrower or Franchisor is in default thereunder.

Section 5.24. LICENSES, ETC. To the best of the Borrower's knowledge, Borrower, Operating Tenant and Manager have, for the Property, obtained and hold in full force and effect, all material franchises, trademarks, tradenames, copyrights, licenses, permits, certificates, authorizations, qualifications, accreditations, easements, rights of way and other rights, consents and approvals which are necessary for the operation of the Property and its business as presently conducted, including without limitation, liquor licenses, as applicable ("Licenses").

Article 6 - OBLIGATIONS AND RELIANCES

Section 6.1. RELATIONSHIP OF BORROWER AND LENDER. The relationship between Borrower and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Borrower, and no term or condition of any of the Note, this Security Instrument and the Other Security Documents shall be construed so as to deem the relationship between Borrower and Lender to be other than that of debtor and creditor.

Section 6.2. NO RELIANCE ON LENDER. The members, general partners, principals and (if Borrower is a trust) beneficial owners of Borrower are experienced in the ownership and operation of properties similar to the Property, and Borrower and Lender are

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relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Borrower is not relying on Lender's expertise, business acumen or advice in connection with the Property.

Section 6.3 **NO LENDER OBLIGATIONS.** (a) Notwithstanding the provisions of Subsections 1.1(f) and (l) or Section 1.2, Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender pursuant to this Security Instrument, the Note or the Other Security Documents, including without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Lender.

Section 6.4 **RELIANCE.** Borrower recognizes and acknowledges that in accepting the Note, this Security Instrument and the Other Security Documents, Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Article 5 and Article 11 without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender, that such reliance existed on the part of Lender prior to the date hereof; that the warranties and representations are a material inducement to Lender in accepting the Note, this Security Instrument and the Other Security Documents; and that Lender would not be willing to make the Loan and accept this Security Instrument in the absence of the warranties and representations as set forth in Article 5 and Article 11.

Article 7 - FURTHER ASSURANCES

Section 7.1 **RECORDING OF SECURITY INSTRUMENT, ETC.** Borrower forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the Other Security Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument or further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Lender in, the Property. Borrower will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Security Instrument, the Other Security Documents, any note or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any mortgage supplemental hereto, any security instrument with respect to

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Section 7.4 ESTOPPEL CERTIFICATES.

(a) After request by Lender, but no more frequently than two (2) times in any calendar year, Borrower, within ten (10) days, shall furnish Lender or any proposed assignee with a statement, duly acknowledged and certified, setting forth (i) the amount of the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the rate of interest of the Note, (iv) the terms of payment and maturity date of the Note, (v) the date installments of interest and/or principal were last paid, (vi) that, except as provided in such statement, there are no defaults or events which with the passage of time or the giving of notice or both, would constitute an event of default under the Note or the Security Instrument, (vii) that the Note and this Security Instrument are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification, (viii) whether any offsets or defenses exist against the obligations secured hereby and, if any are alleged to exist, a detailed description thereof, (ix) that the Operating Lease and all Material Leases are in full force and effect and (provided the Property is not a residential multifamily property) have not been modified (or if modified, setting forth all modifications), (x) the date to which the Rents thereunder have been paid pursuant to the Operating Lease and the Material Leases, (xi) whether or not, to the best knowledge of Borrower, any of the lessees under the Operating Lease and the Material Leases are in default under such Leases, and, if any of the lessees are in default, setting forth the specific nature of all such defaults, (xii) the amount of security deposits held by Borrower under the Operating Lease or any Material Lease and that such amounts are consistent with the amounts required under such Lease, and (xiii) as to any other matters reasonably requested by Lender and reasonably related to the Material Leases or the Operating Lease, the obligations secured hereby, the Property or this Security Instrument.

(b) Borrower shall use its best efforts to deliver to Lender, promptly upon request, duly executed estoppel certificates from any one or more lessees under Material Leases and the Operating Tenant as required by Lender but no more frequently than two (2) times per calendar year for each such lessee or Operating Tenant, as the case may be (provided, however, that for as long as (i) an Event of Default shall have occurred and be continuing or (ii) the Debt Service Coverage Ratio for the Property is less than 1.25 to 1.00, there shall be no limit on the frequency of Lender's requests) attesting to such facts regarding the Lease as Lender may require pursuant to the applicable provisions of Section 7.4(a) hereof and attestations that each Lease covered thereby is in full force and effect with no defaults thereunder on the part of the lessee hereunder or, to the knowledge of the lessee thereunder or any other party, that none of the Rents have been paid more than one month in advance, and that the lessee claims no defense or offset against the full and timely performance of its obligations under the Lease.

(c) Borrower shall, or cause the Operating Tenant to, promptly upon request of Lender, deliver an estoppel certificate from Manager stating that (i) the Management Agreement, the Replacement Management Agreement or the Franchise Agreement is in full force and effect and has not been modified, amended or assigned, (ii) neither Manager or Qualified Manager or Franchisor, as applicable, nor, to Manager's or Qualified Manager's or Franchisor's knowledge, as applicable, neither Operating Tenant or Borrower is in default under any of the terms, covenants or provisions of the Management Agreement or Replacement Management Agreement

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the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

Section 7.2 FURTHER ACTS, ETC. Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the Property and rights hereby mortgaged, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Applicable Laws. Borrower, on demand, will execute and deliver and hereby authorizes Lender, following ten (10) days' notice to Borrower, to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Lender in the Property. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including without limitation such rights and remedies available to Lender pursuant to this Section 7.2.

Section 7.3 CHANGES IN TAX, DEBT CREDIT AND DOCUMENTARY STAMP LAWS.

(a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Borrower will pay the tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of tax by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then Lender shall have the option, exercisable by written notice of not less than ninety (90) days to declare the Debt immediately due and payable.

(b) Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction shall be required by law, Lender shall have the option, exercisable by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

(c) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note, this Security Instrument, or any of the Other Security Documents or impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any.

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or Franchise Agreement, as applicable, and Manager or Qualified Manager or Franchisor, as applicable, knows of no event which, but for the passage of time or the giving of notice or both, would constitute an event of default under the Management Agreement or Replacement Management Agreement or Franchise Agreement, as applicable, (iii) neither Manager or Qualified Manager or Franchisor, as applicable, nor, to Manager's or Qualified Manager's or Franchisor's knowledge, as applicable, neither Operating Tenant or Borrower has commenced any action or given or received any notice for the purpose of terminating the Management Agreement or the Replacement Management Agreement or the Franchise Agreement, as applicable, and (iv) all sums due and payable to Manager or Qualified Manager or Franchisor, as applicable, under the Management Agreement or Replacement Management Agreement or the Franchise Agreement, as applicable, have been paid in full.

Section 7.5 FLOOD INSURANCE. After Lender's request, Borrower shall deliver evidence satisfactory to Lender that no portion of the Improvements is situated in a federally designated "special flood hazard area" or if it is, that Borrower has obtained insurance meeting the requirements of Section 3.3(a)(vii).

Section 7.6 SPLITTING OF SECURITY INSTRUMENT. Upon the request of Borrower, this Security Instrument and the Note shall, at any time until the same shall be fully paid and satisfied, at the sole election of Lender and at Borrower's sole cost and expense, be split or divided into two or more notes and two or more security instruments, each of which shall cover all or a portion of the Property to be more particularly described therein. To that end, Borrower shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered by the then owner of the Property, to Lender and/or its designee or designees substitute notes and security instruments in such principal amounts, aggregating not more than the then unpaid principal amount secured by this Security Instrument, and containing terms, provisions and clauses similar to those contained herein and in the Note, and such other documents and instruments as may be reasonably required by Lender to effect such severance.

Section 7.7 REPLACEMENT DOCUMENTS. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note or any Other Security Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or Other Security Document, Borrower will issue, in lieu thereof, a replacement Note or Other Security Document, dated the date of such lost, stolen, destroyed or mutilated Note or Other Security Document in the same principal amount thereof and otherwise of like tenor. All reasonable expenses incurred by Borrower in connection with this Section 7.7 shall be borne by Lender.

Article 8 - DUE ON SALE/ENCUMBRANCE

Section 8.1 NO SALE/ENCUMBRANCE. Borrower agrees that Borrower shall not, without the prior written consent of Lender, sell, convey, mortgage, grant, bargain, encumber, pledge, assign, or otherwise transfer the Property or any part thereof or permit the Property or any part thereof to be sold, conveyed, mortgaged, granted, bargained, encumbered, pledged,

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assigned, or otherwise transferred, except that Borrower may lease space in the Improvements to tenants in accordance with the provisions of Section 3.7.

Section 8.2 SALE/ENCUMBRANCE DEFINED. A sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Property within the meaning of this Article 8 shall be deemed to include, but not limited to, (a) an installment sales agreement wherein Borrower agrees to sell the Property or any part thereof for a price to be paid in installments; (b) an agreement by Borrower leasing all or a substantial part of the Property (other than the Operating Lease) for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any Rents; (c) if Borrower or any general or limited partner or member or any Controlling Party of Borrower is a corporation, the voluntary or involuntary sale, conveyance, transfer or pledge of such corporation's stock (or the stock of any corporation directly or indirectly controlling such corporation by operation of law or otherwise) or the creation or issuance of new stock by which an aggregate of more than 10% of such corporation's stock shall be vested in a party or parties who are not now stockholders, unless the stock in such corporation is registered with and publicly traded on a nationally recognized exchange located in the United States of America; (d) if Borrower or any Controlling Party of Borrower is a limited or general partnership or limited liability partnership or joint venture, the change, removal or resignation of a general partner or managing partner or limited liability partner, or the transfer or pledge of the partnership interest of any general partner or managing partner or limited liability partner, in Borrower or any Controlling Party or any profits or proceeds relating to such partnership interest or the voluntary or involuntary sale, conveyance, transfer or pledge of limited partnership interests in Borrower or any Controlling Party or the creation or issuance of new limited partnership interests in Borrower or any Controlling Party; (e) if Borrower or any Controlling Party is a limited liability company, the change, removal or resignation of a member, or the transfer of the membership interest of any member, in Borrower or any Controlling Party or any profits or proceeds relating to such membership interest or the voluntary or involuntary sale, conveyance, transfer or pledge of such membership interests or the creation or issuance of new membership interests in Borrower or any Controlling Party, and (f) if Borrower is not wholly owned and controlled directly or indirectly, by the REIT OP and/or the REIT Corp. Notwithstanding the foregoing, the following transfer shall not be deemed to be a sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer within the meaning of this Article 8: a transfer by devise or descent or by operation of law upon the death of a member, partner or stockholder of Borrower or any general or limited partner or member thereof.

Section 8.3 PERSONAL PROPERTY. (a) Notwithstanding the foregoing, Lender's consent shall not be required for the leasing of television sets, telephone equipment, audio-visual equipment, or computer systems ("Equipment"), provided Lender has received prior written notification of Borrower's intent to lease such Equipment, and provided, further, that (i) any such lease is subject to commercially prudent terms and conditions, (ii) the Equipment leased is readily replaceable without material interference or interruption to the operation of the Property as required pursuant to the provisions of this Security Instrument, and (iii) the aggregate annual lease payments for Equipment located on or used in connection with the Property is less than \$35,000.00.

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(b) Notwithstanding the foregoing, Borrower shall have the right to transfer Personal Property to the Operating Tenant pursuant to Sections 6.2(c) and 18.1 of the Operating Lease provided that (i) Borrower delivers to Lender a certification by an Independent Accountant that the ratio (expressed as a percentage) of (x) the adjusted basis for Federal income tax purposes of that portion of the Property consisting of personal property, to (y) the adjusted basis for such purposes of the Property, exceeds fifteen percent (15%), (ii) if a Securitization has occurred, Borrower delivered an opinion of the related Borrower's counsel reasonably satisfactory to Lender stating, among other things, that the tax qualification and status of the REMIC will not be adversely affected or impaired as a result of the transfer of the Personal Property and the pledge and assignment of the FF&E Note and the cash purchase price to the Lender, (iii) the purchase price and value of the Personal Property transferred shall be the minimum amount necessary to comply with the ratio described in clause (i) above, (iv) the Operating Tenant shall confirm that the Personal Property transferred to it is subject to the security interest granted to Borrower in Section 32.1 of the Operating Lease and shall take such actions as may be necessary under Section 32.1 of the Operating Lease to perfect such security interest; (v) if the Operating Tenant executes and delivers a FF&E Note (as defined in the Operating Lease), Operating Tenant shall also execute and deliver to Borrower a security agreement reasonably satisfactory to Borrower and Lender granting a security interest in the Personal Property securing the FF&E Note and shall take such actions as may be necessary to perfect such security interest, (vi) Borrower shall assign and pledge (A) any FF&E Note and related security agreement and security interest to Lender as additional security for the Debt and (B) deposit all sums, if any, received in payment of the purchase price for the Personal Property to an escrow account (the "Personal Property Account") held by Lender, which account shall be pledged and assigned to Lender as additional security for the Debt; in each case, Borrower shall take all action as may be necessary to effect and perfect such assignment and security interest; (vii) in the event that there is any reduction in rent payable under the Operating Lease as a result of the transfer of Personal Property pursuant to this Section 8.3, the total aggregate amount of such reduction throughout the remaining term of the Operating Lease shall not exceed the aggregate amount of cash deposited in the Personal Property Account together with the regularly scheduled payments (exclusive of any balloon payment) under any FF&E Note that will be due during the remaining term of the Operating Lease.

Section 8.4 EASEMENTS. If Borrower is required, pursuant to the terms of the Operating Lease to grant any easements or similar encumbrances, Borrower shall have the right without obtaining Lender's consent, to grant such easement or encumbrance provided that (i) no Event of Default has occurred and is continuing; (ii) such easement or encumbrance is a customary utility or similar easement or encumbrance necessary or desirable for the operation of the Property as a hotel; and (iii) such easement or encumbrance is subordinate to this Security Instrument in all respects, and does not interfere with the use or operation of the Property as a first class hotel and does not materially reduce the value of the Property provided that if requested by the beneficiary of such easement, Lender shall not unreasonably withhold its consent to subordinating the Lien of this security instrument to such easement.

Section 8.5 LENDER'S RIGHTS. Lender reserves the right to condition the consent required under Article 8 upon a modification of the terms hereof (which such modification shall not modify or amend the material economic terms hereof) and on assumption of the Note, this

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