

secured by the Loan Documents, other than income, franchise and doing business taxes imposed on Lender. If there shall be enacted any law (a) deducting the Loan from the value of the Property for the purpose of taxation, (b) affecting any Lien on the Property, or (c) changing existing laws of taxation of mortgages, deeds of trust, security deeds, or debts secured by real property, or changing the manner of collecting any such taxes, Borrower shall promptly pay to Lender, on demand, all taxes, costs and charges for which Lender is or may be liable as a result thereof; provided, however, that if such payment would be prohibited by law or would render the Loan usurious, then instead of collecting such payment, Lender may declare all amounts owing under the Loan Documents to be immediately due and payable.

**4.1.23 Intentionally omitted.**

**4.1.24 REA.** Borrower hereby covenants and agrees with Lender with respect to the applicable REA as follows:

(a) Borrower shall pay all charges and other sums to be paid by Borrower pursuant to the terms of the REA as the same shall become due and payable and prior to the expiration of any applicable grace period therein provided. After prior notice to Lender, Borrower, at its own cost and 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 charges required to be paid by Borrower pursuant to the REA; provided that (i) no Default or Event of Default has occurred and remains outstanding; (ii) Borrower is permitted to do so under the provisions of any mortgage or deed of trust superior in lien to the Security Instrument; (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of the REA and any other instrument to which Borrower is subject or by which the Property is bound and shall not constitute a default thereunder and such proceeding shall be conducted in accordance with all applicable Legal Requirements; (iv) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost; (v) the REA will not be in danger of being terminated; (vi) Borrower shall promptly upon final determination thereof pay the amount of any such charges, together with all interest and penalties which may be payable in connection therewith; (vii) such proceeding shall suspend the collection of such charges from Borrower and the Property; (viii) Borrower shall furnish such cash or other security as may be required in the proceeding or as may be required by Lender to ensure the payment of any such charges, together with all interest and penalties thereon; and (ix) such contest by Borrower is not in violation of the Leases. Lender may pay over, assign or transfer any such security or part thereof to the claimant entitled thereto at any time when, in the reasonable judgment of Lender, the entitlement of such claimant is established or the Property (or any part thereof or interest therein) shall be in danger of being sold, forfeited, terminated, canceled or lost or there shall be any danger of the Lien of the Security Instrument being primed by any related Lien.

(b) Borrower shall perform and observe all of the terms, covenants and conditions required to be performed and observed by Borrower pursuant to terms of the REA.

(c) Borrower shall take all actions as may be necessary from time to time to preserve and maintain the REA in accordance with all applicable Legal Requirements.

(d) Borrower shall enforce, in a commercially reasonable manner, the terms, covenants and conditions to be performed and observed by the parties to the REA (other than Borrower).

(e) Borrower shall promptly furnish to Lender any notice of default or other communication delivered in connection with the REA by any party to the REA or any third party (other than routine correspondences and invoices).

(f) If Lender or its nominee, designee, successor, or assignee acquires title and/or rights of Borrower under the REA by reason of foreclosure of the Security Instrument, deed in lieu of foreclosure or otherwise, Lender or such other party shall (i) succeed to all of the rights of and benefits accruing to Borrower under the REA, and (ii) be entitled to exercise all of the rights and benefits accruing to Borrower under the REA. At such time as Lender shall request, Borrower agrees to execute and deliver to Lender such documents as Lender and its counsel may require in order to ensure that the provisions of this Section 4.1.24(f) will be validly and legally enforceable and effective against Borrower and all parties claiming by, through, under or against Borrower.

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

**Section 4.2 Borrower Negative Covenants.** Borrower covenants and agrees with Lender that:

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

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

any Organizational Document of such SPC Party or any provision thereof, in each case without obtaining the prior consent of Lender.

**4.2.3 Change in Business.** Borrower shall not (a) enter into any line of business other than the ownership, management and operation of the Property, (b) make any material change in the scope or nature of its business objectives, purposes or operations, or (c) undertake or participate in activities other than the continuance of its present business.

**4.2.4 Debt Cancellation.** Borrower shall not cancel or otherwise forgive or release any claim or debt (other than termination of Leases in accordance herewith) owed to Borrower by any Person, except for adequate consideration and in the ordinary course of Borrower's business.

**4.2.5 Affiliate Transactions.** Borrower shall not enter into, or be a party to, any transaction with any Affiliate of Borrower or any partner, member, or shareholder, as applicable, of Borrower or any Affiliate of Borrower except in the ordinary course of business and on terms and conditions that are fully disclosed to Lender in advance and that are intrinsically fair, commercially reasonable and no less favorable to Borrower or such Affiliate, partner, member or shareholder than those that would be available on an arm's-length basis with an unrelated third party.

**4.2.6 Zoning.** Borrower shall not initiate or consent to any zoning reclassification of any portion of the Property or seek any variance under any existing zoning ordinance or use or permit the use of any portion of the Property in any manner that could result in such use becoming a non conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, without the prior consent of Lender.

**4.2.7 Assets.** Borrower shall not purchase or own any asset or property other than the Property and any asset or property necessary for or incidental to the operation of the Property.

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

**4.2.9 Principal Place of Business.** Borrower shall not change its principal place of business from the address set forth on the first page of this Agreement without first giving Lender thirty (30) days' prior notice.

**4.2.10 ERISA.**

(a) Borrower shall not engage in any transaction which would cause any obligation, or any action taken or to be taken, hereunder or under the other Loan Documents (or the exercise by Lender of any of its rights under this Agreement or the other Loan 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 shall deliver to Lender such certifications or other evidence from time to time throughout the Term, as requested by Lender in its sole discretion, that (i) Borrower is not an “employee benefit plan” as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a “governmental plan” within the meaning of Section 3(32) of ERISA; (ii) Borrower is not subject to any state statute regulating investments of, or fiduciary obligations with respect to, governmental plans; and (iii) one (1) or more of the following circumstances is true:

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

(B) Less than twenty-five percent (25%) of each outstanding class of equity interests in Borrower is held by “benefit plan investors” within the meaning of 29 C.F.R. §2510.3-101(f)(2); 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).

**4.2.11 Material Agreements.** Borrower shall not, without Lender’s prior consent: (a) enter into, surrender or terminate any Material Agreement or Operating Agreement to which Borrower is a party or to which Borrower or the Property is subject (unless the other party thereto is in material default and the termination of such agreement would be commercially reasonable), (b) increase or consent to the increase of the amount of any charges under any Material Agreement or Operating Agreement to which Borrower is a party or to which Borrower or the Property is subject, except as provided therein or on an arm’s-length basis and commercially reasonable terms; or (c) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under any Material Agreement or Operating Agreement to which Borrower is a party or to which Borrower or the Property is subject in any material respect, except on an arm’s-length basis and commercially reasonable terms.

**4.2.12 Change of Name, Identity or Structure.** Borrower will not cause or permit any change to be made to its name, identity (including its trade name or names) or corporate, partnership or other organizational structure without notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change and without first obtaining the prior consent of Lender. Borrower shall execute and deliver to Lender, prior to or contemporaneously with the effective date of any such change, any financing statement or amendment to financing statement required by Lender to establish or maintain the validity, perfection and priority of the security interests granted by the Loan Documents. At Lender’s request, Borrower shall execute a certificate in form satisfactory to Lender listing each trade name under which Borrower operates or intends to operate the Property, and representing and warranting that Borrower does business under no other trade name with respect to the Property.

**4.2.13 Special Purpose.** Without in any way limiting the provisions of this Article 4, Borrower shall not take or permit any action that would result in Borrower or any SPC Party not being in compliance with the representations, warranties and covenants set forth in Section 3.1.24.

**4.2.14 Prohibited Person.** At all times throughout the Term, including after giving effect to any Transfers permitted pursuant to the Loan Documents, (a) none of the funds or other assets of Borrower or Guarantor shall constitute property of, or shall be beneficially owned, directly or indirectly, by any Prohibited Person, with the result that the investment in Borrower or Guarantor, as applicable (whether directly or indirectly), would be prohibited by law, or the Loan made by Lender would be in violation of law, (b) no Prohibited Person shall have any interest of any nature whatsoever in Borrower or Guarantor, as applicable, with the result that the investment in Borrower or Guarantor, as applicable (whether directly or indirectly), would be prohibited by law or the Loan would be in violation of law, and (c) none of the funds of Borrower or Guarantor, as applicable, shall be derived from any unlawful activity with the result that the investment in Borrower or Guarantor, as applicable (whether directly or indirectly), would be prohibited by law or the Loan would be in violation of law.

**4.2.15 Intentionally Omitted.**

**4.2.16 REA.**

(a) Borrower shall not, without Lender's prior consent, modify, amend or supplement, or consent to or suffer any modification, amendment, or supplementation of the applicable REA.

(b) Borrower shall not, without Lender's prior consent, otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under the applicable REA.

(c) Borrower shall not take (and hereby assigns to Lender any right it may have to take) any action to surrender, terminate, cancel, or accept any surrender, termination or cancellation of the applicable REA.

(d) Borrower shall not assign (other than to Lender) or encumber (other than in favor of Lender as security for the Obligations) any of its rights under the applicable REA.

**4.2.17 Intentionally omitted.**

**ARTICLE 5 - INSURANCE, CASUALTY AND CONDEMNATION**

**Section 5.1 Insurance.**

**5.1.1 Insurance Policies.**

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

(i) comprehensive all risk insurance (including wind and named storms) on the Improvements and the personal property at the Property (A) in an amount equal to one hundred percent (100%) of the "full replacement cost" of the Property, which for purposes of this Agreement shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation; (B) containing an agreed

amount endorsement with respect to the Improvements and personal property at the Property waiving all co-insurance provisions; (C) providing for no deductible in excess of Ten Thousand and No/100 Dollars (\$10,000) for all such insurance coverage; and (D) containing "law and ordinance" coverage if any of the Improvements or the use of the Property shall at any time constitute a legal non-conforming structure or use. In addition, Borrower shall obtain: (1) if any portion of the Improvements is currently or at any time in the future located in a federally designated "special flood hazard area," flood hazard insurance in an amount equal to the maximum amount of such insurance available under 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, plus such excess amount as Lender shall require; and (2) if the Property is located in an area with a high degree of seismic activity, earthquake insurance in amounts and in form and substance satisfactory to Lender, provided that the insurance pursuant to clauses (1) and (2) hereof shall be on terms consistent with the comprehensive all risk insurance policy required under this Section 5.1.1(a)(i).

(ii) broad form commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, such insurance (A) to be on the so-called "occurrence" form with an occurrence limit of not less than One Million and No/100 Dollars (\$1,000,000) and an aggregate limit of not less than Two Million and No/100 Dollars (\$2,000,000); (B) to continue at not less than the aforesaid limit until required to be changed by Lender by reason of changed economic conditions making such protection inadequate; and (C) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations on an "if any" basis; (3) independent contractors; (4) blanket contractual liability for all legal contracts; and (5) contractual liability covering the indemnities contained in Article 9 of the Security Instrument to the extent the same is available;

(iii) business income insurance (A) with loss payable to Lender; (B) covering all risks required to be covered by insurance pursuant to Sections 5.1.1(a)(i), (iv), (vi), (xi) and (xii) for a period commencing at the time of loss for such length of time as it takes to repair or replace with the exercise of due diligence and dispatch; (C) in an amount equal to one hundred percent (100%) of the projected gross income from the Property for a period from the date of loss to a date (assuming total destruction) which is twelve months from the date that the Property is repaired or replaced and operations are resumed; and (D) containing an extended period of indemnity endorsement which provides that after the physical loss to the Improvements and the Personal Property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of six 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. 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 for the succeeding twenty-four (24) month period. All proceeds payable to Lender pursuant to this Section 5.1.1(a)(iii) shall be held by Lender and shall be applied to the obligations secured by the Loan Documents 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 obligation to pay the Debt at the time and in the manner provided for in this

Agreement, the Note and the other Loan Documents except to the extent such amounts are actually paid out of the proceeds of such business income insurance;

(iv) at all times during which structural construction, repairs or alterations are being made with respect to the Improvements, and only if the property and liability coverage forms do not otherwise apply, (A) commercial general liability and umbrella liability insurance covering claims related to construction, repair and alteration at the Property not covered by or under the terms or provisions of the commercial general liability insurance and umbrella liability insurance policies required under this Section 5.1.1; and (B) the insurance provided for in Section 5.1.1(a)(i) above written in a so-called builder's risk completed value form in amounts and with deductibles, terms and conditions required by Lender (1) on a non-reporting basis, (2) covering all risks required to be insured against pursuant to Sections 5.1.1(a)(i), (iii), (vi), (xi) and (xii), (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 One Million and No/100 Dollars (\$1,000,000) per accident and per disease per employee, and One Million and No/100 Dollars (\$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 in amounts required by Lender and on terms consistent with the insurance required under Section 5.1.1(a)(i) above (if applicable);

(vii) umbrella liability insurance in addition to primary coverage in an amount not less than \$10,000,000.00 per occurrence on terms consistent with the insurance required under Section 5.1.1(a)(ii) and (viii);

(viii) motor vehicle liability coverage for all owned and non-owned vehicles, including rented and leased vehicles, containing minimum limits per occurrence of One Million and No/100 Dollars (\$1,000,000) (if applicable);

(ix) liquor liability insurance or other liability insurance required in connection with the sale of alcoholic beverages (if applicable);

(x) insurance against employee dishonesty in an amount required by Lender and with a deductible not greater than Ten Thousand and No/100 Dollars (\$10,000) (if applicable);

(xi) with respect to commercial property, general liability, business income, and umbrella liability insurance required under this Section 5.1.1(a) (including, if applicable, insurance required under Section 5.1.1(a)(iv) above), insurance for loss resulting from perils and acts of terrorism in amounts and with terms and conditions applicable to commercial property, general liability, business income, and umbrella liability insurance required under this Section 5.1.1(a). The policy or endorsement providing for such insurance shall be in form and substance satisfactory to Lender and shall satisfy Rating Agency criteria for securitized loans; and

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

(b) All insurance provided for in Section 5.1.1(a) shall be obtained under valid and enforceable policies (each individually, a "Policy" and collectively, the "Policies") and, to the extent not specified above, shall be subject to the approval of Lender as to insurers, amounts, deductibles, loss payees and insureds. Not less than fifteen (15) days prior to the expiration dates of the Policies theretofore furnished to Lender, certificates of insurance evidencing the Policies (and, upon Lender's request, certified copies of such Policies) accompanied by evidence satisfactory to Lender of payment of the premiums then due thereunder (the "Insurance Premiums") shall be delivered by Borrower to Lender.

(c) Any blanket insurance Policy shall be subject to Lender's approval, which approval shall be conditioned upon, among other things, evidence satisfactory to Lender that such Policy provides the same protection as would a separate Policy insuring only the Property in compliance with the provisions of Section 5.1.1(a).

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

(e) All Policies of insurance provided for in Section 5.1.1(a), except for the Policies referenced in Section 5.1.1(a)(v) and (a)(viii), 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 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 canceled or permitted to lapse without at least thirty (30) days' written notice to Lender and any other party named therein as an additional insured and shall not be materially changed (other than to increase the coverage provided thereby) without such a thirty (30) days' written notice;



(iii) Lender shall not be liable for any Insurance Premiums thereon or subject to any assessments thereunder; and

(iv) the issuers thereof shall give written notice to Lender if the Policies have not been renewed fifteen (15) days prior to its expiration.

(f) 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 costs and expenses (including any Insurance Premiums) incurred by Lender in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Borrower to Lender upon demand with interest at the Default Rate from the date such costs and expenses were incurred to and including the date the reimbursement payment is received by Lender. All such indebtedness shall be secured by the Security Instrument.

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

**5.1.2 Insurance Company.** The Policies shall be issued by financially sound and responsible insurance companies authorized to do business in the State and having a claims paying ability rating of "A" or "A2" or better (and the equivalent thereof) by at least two (2) of the Rating Agencies rating the Securities (one (1) of which shall be S&P if they are rating the Securities and one (1) of which will be Moody's if they are rating the Securities and rate the applicable insurance companies), or if only one (1) Rating Agency is rating the Securities, then only by such Rating Agency.

## **Section 5.2 Casualty and Condemnation.**

**5.2.1 Casualty.** If the Property shall sustain a Casualty, Borrower shall give prompt notice of such Casualty to Lender and shall promptly commence and diligently prosecute to completion the Restoration of the Property in accordance with Section 5.3 hereof. Borrower shall pay all costs and expenses of such Restoration whether or not such costs and expenses are covered by insurance. Lender may, but shall not be obligated to, make proof of loss if not made promptly by Borrower. In the event of a Casualty where the loss and the applicable Net Proceeds are less than the Restoration Threshold, Borrower may settle and adjust such claim; provided that (a) no Event of Default has occurred and remains outstanding and (b) such adjustment is carried out in a commercially reasonable and timely manner. In the event of a Casualty where the loss or the applicable Net Proceeds is equal to or greater than the Restoration Threshold or if an Event of Default has occurred and remains outstanding, Borrower may settle and adjust such claim only with the prior consent of Lender (which consent shall not be unreasonably withheld or delayed) and Lender shall have the opportunity to participate, at Borrower's cost and expense, in any such adjustments. Notwithstanding any Casualty, Borrower

shall continue to pay the Debt at the time and in the manner provided for in this Agreement, the Note and the other Loan Documents.

**5.2.2 Condemnation.** Borrower shall give Lender prompt notice of any actual or threatened Condemnation by any Governmental Authority of all or any part of the Property and shall deliver to Lender a copy of any and all notices or papers served in connection with such Condemnation or related proceedings. Borrower may settle and compromise any Condemnation only with the prior consent of Lender (which consent shall not be unreasonably withheld or delayed) and Lender shall have the opportunity to participate, at Borrower's cost and expense, in any applicable litigation or proceeding and settlement discussions in respect thereof and Borrower shall from time to time deliver to Lender all instruments requested by Lender to permit such participation. Borrower shall, at its cost and expense, diligently prosecute any such litigations or proceedings, and shall consult with Lender, its attorneys and experts, and cooperate with them in the carrying on or defense of any such litigations or proceedings. Lender is hereby irrevocably appointed as Borrower's attorney-in-fact, coupled with an interest, with exclusive power to collect, receive and retain any Award and to make any compromise or settlement in connection with any Condemnation. Notwithstanding any Condemnation, Borrower shall continue to pay the Debt at the time and in the manner provided for in this Agreement, the Note and the other Loan Documents. Lender shall not be limited to the interest paid on the Award by any Governmental Authority but shall be entitled to receive interest at the rate or rates provided herein or in the Note. If any portion of the Property is taken by any Governmental Authority, Borrower shall promptly commence and diligently prosecute to completion the Restoration of the Property and otherwise comply with the provisions of Section 5.3 hereof. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the Award, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive the Award or a portion thereof sufficient to pay the Debt in full.

**5.2.3 Casualty Proceeds.** Notwithstanding the last sentence of Section 5.1.1(a)(iii) above, and provided that no Event of Default has occurred and remains outstanding, proceeds received by Lender on account of business or rental interruption or other loss of income insurance specified in Section 5.1.1(a)(iii) above with respect to any Casualty shall be deposited by Lender into the Cash Management Account (in installments from time to time, if applicable) to the extent such proceeds (or a portion thereof) reflects a replacement for lost Rents for the relevant period, as determined by Lender in good faith. All other such proceeds shall be held by Lender and disbursed in accordance with Section 5.3 hereof.

### **Section 5.3 Delivery of Net Proceeds.**

**5.3.1 Minor Casualty or Condemnation.** If a Casualty or Condemnation has occurred to the Property and the Net Proceeds shall be less than the Restoration Threshold and the costs and expenses to complete the Restoration shall be less than the Restoration Threshold, the Net Proceeds will be disbursed by Lender to Borrower upon receipt; provided that, subject to Section 5.3.2(i) hereof, all of the conditions set forth in Section 5.3.2(a) hereof are met and Borrower delivers a written undertaking to commence and complete the Restoration in an expeditious and diligent fashion and in accordance with all applicable Legal Requirements. If any Net Proceeds are received by Borrower and may be retained by Borrower pursuant to the terms hereof, such Net Proceeds shall, until completion of the Restoration, be held by Borrower in trust for Lender

and shall be segregated from other funds of Borrower to be used to pay for the costs and expenses of Restoration in accordance with the terms hereof.

**5.3.2 Major Casualty or Condemnation.**

(a) If a Casualty or Condemnation has occurred to the Property and the Net Proceeds are equal to or greater than the Restoration Threshold or the costs and expenses to complete the Restoration are equal to or greater than the Restoration Threshold, Lender shall make the Net Proceeds available for the Restoration, provided that each of the following conditions is satisfied:

(i) no Event of Default shall have occurred and remain outstanding;

(ii) (A) in the event the Net Proceeds are Insurance Proceeds, less than twenty-five percent (25%) of the total floor area of the Improvements at the Property has been damaged, destroyed or rendered unusable as a result of such Casualty or (B) in the event the Net Proceeds are an Award, less than ten percent (10%) of the land constituting the Property is taken, and such land is located along the perimeter or periphery of the Property, and no portion of the Improvements is the subject of the Condemnation;

(iii) intentionally omitted;

(iv) intentionally omitted;

(v) Leases requiring payment of annual rent equal to not less than eighty percent (80%) of the Gross Income from Operations from the Property received by Borrower during the twelve (12) month period immediately preceding the Casualty or Condemnation and all Leases shall remain in full force and effect during and after the completion of the Restoration without abatement of rent beyond the time required for Restoration, notwithstanding the occurrence of such Casualty or Condemnation;

(vi) Borrower shall commence the Restoration as soon as reasonably practicable (but in no event later than sixty (60) days after the occurrence of such Casualty or Condemnation) and shall diligently pursue the same to satisfactory completion;

(vii) Lender shall be satisfied that any operating deficits and all scheduled payments under this Agreement and the other Loan Documents (including scheduled payments of principal and interest) will be paid during the period required for Restoration from (A) the Net Proceeds, (B) the Insurance Proceeds of the business or rental interruption or other loss of income insurance specified in Section 5.1.1(a)(iii) hereof or (C) other funds of Borrower;

(viii) Lender shall be satisfied that the Restoration will be completed on or before the earliest to occur of (A) the date that is six (6) months prior to the Maturity Date, (B) intentionally omitted, (C) the earliest date required for such completion under the terms of any Lease, (D) intentionally omitted, (E) the date, if any, required under the applicable Legal Requirements for such completion, or (F) 6 months prior to the expiration of the insurance coverage specified in Section 5.1.1(a)(iii) hereof;

(ix) the Property and the use thereof after the Restoration will be in compliance with and permitted under all applicable Legal Requirements;

(x) the Restoration shall be done and completed by Borrower in an expeditious and diligent fashion and in compliance with all applicable Legal Requirements;

(xi) such Casualty or Condemnation, as applicable, does not result in the loss of access to the Property or the Improvements;

(xii) the Management Agreement and the Franchise Agreement shall remain in full force and effect, notwithstanding the occurrence of such Casualty or Condemnation;

(xiii) intentionally omitted;

(xiv) all Operating Agreements shall remain in full force and effect, notwithstanding the occurrence of such Casualty or Condemnation;

(xv) after giving effect to such Restoration, the pro forma Debt Service Coverage Ratio for the twelve (12) full calendar months immediately following such Restoration shall not be less than the greater of (A) the Debt Service Coverage Ratio for the twelve (12) full calendar months immediately preceding the Closing Date, and (B) the Debt Service Coverage Ratio for the twelve (12) full calendar months immediately preceding such Casualty or Condemnation;

(xvi) after giving effect to such Restoration, the pro forma Debt Yield for the twelve (12) full calendar months immediately following such Restoration shall not be less than the greater of (A) the Debt Yield for the twelve (12) full calendar months immediately preceding the Closing Date, and (B) the Debt Yield for the twelve (12) full calendar months immediately preceding such Casualty or Condemnation;

(xvii) Lender shall be satisfied that, upon the completion of the Restoration, the Loan-to-Value Ratio shall not be greater than the lesser of (A) the Loan-to-Value Ratio as of the Closing Date, and (B) the Loan-to-Value Ratio immediately prior to such Casualty or Condemnation;

(xviii) Borrower shall deliver, or cause to be delivered, to Lender a signed, detailed budget approved in writing by Borrower's architect or engineer stating all of the costs and expenses of completing the Restoration, which budget shall be acceptable to Lender; and

(xix) the Net Proceeds, together with any cash or cash equivalent deposited by Borrower with Lender, are sufficient, in Lender's reasonable judgment, to pay for all costs and expenses of the Restoration in full.

(b) The Net Proceeds shall be paid directly to Lender and held by Lender in an interest-bearing account and, until disbursed in accordance with the provisions of this Section 5.3.2, shall constitute additional security for the Obligations. The Net Proceeds (including all interest earned thereon) 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 (i) all requirements set forth in Section 5.3.2(a) have been satisfied, (ii) 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 (iii) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Property arising out of the Restoration which have not either been fully bonded by a surety company acceptable to Lender and the Rating Agencies to the satisfaction of Lender and discharged of record or, in the alternative, fully insured to the satisfaction of Lender by the title insurance company issuing the Title Insurance Policy.

(c) All plans and specifications in connection with the Restoration shall be subject to the prior approval of Lender and an independent architect or engineer selected by Lender (the "**Casualty Consultant**"). The plans and specifications shall require that the Restoration be completed in a first-class workmanlike manner at least equivalent to the quality and character of the original work in the Improvements so that, upon completion thereof, the Property shall be at least equal in value and general utility to the Property prior to the Casualty or Condemnation, as applicable (it being understood, however, that (i) Borrower shall not be obligated to restore the Property to the precise condition of the Property prior to such Casualty or Condemnation, as applicable, and (ii) in the case of a partial Condemnation, the Restoration shall be done to the extent reasonably practicable after taking into account the consequences of such partial Condemnation; provided that the Property shall be restored, to the extent reasonably practicable, to be of at least equal value and of substantially the same character as prior to the Casualty or Condemnation, as applicable). Borrower shall restore all Improvements such that when they are fully restored and/or repaired, such Improvements and their contemplated use fully comply with all applicable Legal Requirements. The identity of the contractors, subcontractors and materialmen engaged in the Restoration, as well as the contracts under which they have been engaged, shall be subject to the prior approval of Lender and the Casualty Consultant. All costs and expenses incurred by Lender in connection with recovering, holding and disbursing the Net Proceeds for the Restoration (including, without limitation, reasonable attorneys' fees and expenses and the Casualty Consultant's fees and disbursements) shall be paid by Borrower.

(d) In no event shall Lender be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the costs and expenses actually incurred from time to time for work in place as part of the Restoration, as certified by the Casualty Consultant, less the Casualty Retainage. The term "**Casualty Retainage**" shall mean, as to each contractor, subcontractor or materialman engaged in the Restoration, an amount equal to ten percent (10%) of the costs and expenses actually incurred for work in place as part of the Restoration, as certified by the Casualty Consultant, until the Restoration has been completed. The Casualty Retainage shall in no event, and notwithstanding anything to the contrary set forth above in this Section 5.3.2(d), be less than the amount actually held back by Borrower from contractors, subcontractors and materialmen engaged in the Restoration. The Casualty Retainage shall not be released until the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Section 5.3.2 and that all approvals necessary for the re-occupancy and use of the Property have been obtained from all applicable Governmental Authorities, and Lender receives evidence satisfactory to Lender that the costs and expenses of the Restoration have been paid in full or will be paid in full out of the Casualty Retainage; provided, however, that Lender will release the portion of the Casualty Retainage being held with respect to any contractor, subcontractor or materialman engaged in the Restoration as of the date upon which (i)

the Casualty Consultant certifies to Lender that such contractor, subcontractor or materialman has satisfactorily completed all work and has supplied all materials in accordance with the provisions of the contractor's, subcontractor's or materialman's contract, (ii) such contractor, subcontractor or materialman delivers lien waivers and evidence of payment in full of all sums due to such contractor, subcontractor or materialman as may be reasonably requested by Lender or by the title insurance company issuing the Title Insurance Policy, and (iii) Lender receives an endorsement to the Title Insurance Policy insuring the continued priority of the Lien of the Security Instrument and evidence of payment of any premium payable in connection with such endorsement. If required by Lender, the release of any such portion of the Casualty Retainage shall be approved by the surety company, if any, which has issued a payment or performance bond with respect to the applicable contractor, subcontractor or materialman.

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

(f) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the opinion of Lender in consultation with the Casualty Consultant, be sufficient to pay in full the balance of the costs and expenses 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 and expenses actually incurred in connection with the Restoration on the same terms and conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this Section 5.3.2 shall constitute additional security for the Obligations.

(g) The excess, if any, of the Net Proceeds and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Lender after (i) the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Section 5.3.2 and (ii) the receipt by Lender of evidence satisfactory to Lender that all costs and expenses incurred in connection with the Restoration have been paid in full shall be remitted by Lender to Borrower, provided that no Event of Default has occurred and remains outstanding; provided, however, that, in the case of a Condemnation, the amount returned to Borrower in accordance with this Section 5.3.2(g) shall not exceed the amount of the Net Proceeds Deficiency deposited by Borrower with the balance being applied to the Debt in the manner provided for in Section 5.3.2(h) hereof.

(h) All Net Proceeds not required (i) to be made available for the Restoration or (ii) to be returned to Borrower as excess Net Proceeds pursuant to Section 5.3.2(g) hereof may be retained and applied by Lender toward the payment of the Debt, whether or not then due and payable, in such order, proportion and priority as Lender in its sole 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 approve in its sole discretion.

(i) Notwithstanding anything to the contrary contained herein or in any other Loan Document, if the Loan is included in a REMIC Trust and, immediately following a release of any portion of the Lien of the Security Instrument following a Casualty or Condemnation (but taking into account any proposed Restoration of the remaining Property), the ratio of the unpaid

principal balance of the Loan to the value of the remaining Property is greater than 125% (such value to be determined, in Lender's sole discretion, by any commercially reasonable method permitted to a REMIC Trust, based solely on real property and excluding any personal property and going concern value, if any), the principal balance of the Loan must be paid down by an amount equal to the least of the following amounts: (i) the Net Proceeds, (ii) the fair market value of the released property at the time of the release, or (iii) an amount such that the loan-to-value ratio of the Loan (as so determined by Lender) does not increase after the release, unless Lender receives an opinion of counsel that if such amount is not paid, the applicable Securitization will not fail to maintain its status as a REMIC Trust as a result of the related release of such portion of the Lien of the Security Instrument. If and to the extent the preceding sentence applies, only such amount of the Net Proceeds, if any, in excess of the amount required to pay down the principal balance of the Loan may be released for purposes of Restoration or released to Borrower as otherwise expressly provided in this Section 5.3.

## **ARTICLE 6 - RESERVE FUNDS AND CASH MANAGEMENT**

### **Section 6.1 Required Repair Funds.**

**6.1.1 Deposit of Required Repair Funds.** Borrower shall perform the repairs at the Property as more particularly set forth on Schedule II hereto (such repairs, collectively, the "Required Repairs"), and shall complete each of the Required Repairs on or before the respective deadline as set forth on Schedule II. On the Closing Date, Borrower shall deposit with Lender the sum of Zero Dollars (\$0.00), an amount equal to one hundred and twenty-five percent (125%) of the estimated cost to perform the Required Repairs as set forth on Schedule II. Amounts deposited pursuant to this Section 6.1.1 are referred to herein as the "Required Repair Funds" and the account in which such amounts are held by Lender shall hereinafter be referred to as the "Required Repair Account."

### **6.1.2 Release of Required Repair Funds.**

(a) With respect to any Required Repair which has been completed, Lender shall disburse to Borrower the Required Repair Funds upon satisfaction by Borrower of each of the following conditions: (i) Borrower shall submit a request for payment to Lender at least thirty (30) days prior to the date on which Borrower requests such payment be made and specifies the Required Repairs to be paid, (ii) on the date such request is received by Lender and on the date such payment is to be made, no Default or Event of Default shall have occurred and remain outstanding, (iii) Lender shall have received an Officer's Certificate (A) stating that all Required Repairs to be funded by the requested disbursement have been completed in a good and workmanlike manner and in accordance with all applicable Legal Requirements, such certificate to be accompanied by a copy of any license, permit or other approval required by any Governmental Authority in connection with such Required Repairs, (B) identifying each Person that supplied materials or labor in connection with the Required Repairs to be funded by the requested disbursement, (C) stating that each such Person has been paid in full or will be paid in full upon such disbursement, such certificate to be accompanied by lien waivers or other evidence of payment satisfactory to Lender, and (D) stating that the Required Repairs to be funded by the requested disbursement have not been the subject of a previous disbursement, (iv) at Lender's option, a title search for the Property indicating that the Property is free from all

liens, claims and other encumbrances not previously approved by Lender, and (v) Lender shall have received such other evidence as Lender shall reasonably request that the Required Repairs to be funded by the requested disbursement have been completed and are paid for or will be paid for in full upon such disbursement to Borrower. Lender shall not be required to disburse Required Repair Funds more frequently than once each calendar month, and each disbursement of Required Repair Funds must be in an amount not less than the Minimum Disbursement Amount (or a lesser amount if the total remaining balance of Required Repair Funds is less than the Minimum Disbursement Amount, in which case only one disbursement of the amount remaining in the Required Repair Account shall be made).

(b) Nothing in this Section 6.1 shall (i) make Lender responsible for making or completing any Required Repairs; (ii) obligate Lender to commence or proceed with any Required Repairs; (iii) require Lender to expend funds in addition to the Required Repair Funds to complete any Required Repairs; or (iv) obligate Lender to demand from Borrower additional sums to perform or complete any Required Repairs.

(c) If a disbursement of Required Repair Funds will exceed Twenty Five Thousand and No/100 Dollars (\$25,000), Lender may require an inspection of the Property prior to such disbursement in order to verify completion of the Required Repairs for which reimbursement is sought. Lender may require that such inspection be conducted by an independent professional selected by Lender and may require a certificate of completion by an independent professional acceptable to Lender prior to such disbursement of Required Repair Funds.

(d) Borrower shall permit Lender and its agents and representatives (including, without limitation, Lender's engineer or architect) or third parties to enter onto the Property during normal business hours (subject to the rights of Tenants under their Leases) to inspect the progress of any Required Repairs and all materials being used in connection therewith and to examine all plans, specifications and shop drawings relating to such Required Repairs. Borrower shall cause all contractors, subcontractors and materialmen to cooperate with Lender and its agents and representatives or such other Persons described above in connection with the inspections, if any, required by Lender in accordance with this Section 6.1.2.

(e) All Required Repairs and all materials, equipment, fixtures, or any other item comprising a part of any Required Repair shall be constructed, installed or completed, as applicable, free and clear of all liens, claims and other encumbrances not previously approved by Lender.

(f) All Required Repairs shall comply with all applicable Legal Requirements of all Governmental Authorities having jurisdiction over the Property and all applicable insurance requirements (including, without limitation, applicable building codes, special use permits, environmental regulations, and requirements of insurance underwriters).

(g) In addition to any insurance required under the Loan Documents, Borrower shall provide or cause to be provided builder's risk insurance, workers' compensation insurance, public liability insurance and other insurance to the extent required by the applicable Legal Requirements in connection with any Required Repair. All such policies shall be in form and amount reasonably satisfactory to Lender. All such policies which can be endorsed with a non-



contributing mortgagee clause (or its equivalent) making loss thereunder payable to Lender and its successors and/or assigns shall be so endorsed. At Lender's request, certified copies of such policies shall be delivered to Lender.

(h) All costs and expenses incurred by Lender in connection with holding and disbursing the Required Repair Funds (including, without limitation, the costs and expenses of the inspections, if any, required hereunder) shall be paid by Borrower.

**6.1.3 Failure to Perform Required Repairs.** It shall be an Event of Default if (a) Borrower does not complete the Required Repairs by the required deadline for each Required Repair as set forth on Schedule II, (b) Borrower does not satisfy each condition set forth in Section 6.1.2(a) hereof or (c) fails to comply with any other provision of this Section 6.1 and such failure is not cured within thirty (30) days after notice from Lender. Upon the occurrence of an Event of Default, Lender may, at its option, use the Required Repair Funds (or any portion thereof) to perform or complete any Required Repairs. Such right to withdraw and apply the Required Repair Funds shall be in addition to all other rights and remedies provided to Lender under this Agreement and the other Loan Documents.

## **Section 6.2 Tax Funds.**

**6.2.1 Deposits of Tax Funds.** On the Closing Date, Borrower shall deposit with Lender an amount equal to \$14,033.69 and, on each Monthly Payment Date, Borrower shall deposit with Lender an amount equal to one-twelfth (1/12) of the Taxes (the "**Monthly Tax Deposit**") that Lender estimates will be payable during the next ensuing twelve (12) months in order to accumulate sufficient funds to pay all such Taxes at least thirty (30) days prior to their respective due dates. Amounts deposited pursuant to this Section 6.2.1 are referred to herein as the "**Tax Funds**" and the account in which such amounts are held by Lender shall hereinafter be referred to as the "**Tax Account.**" If at any time Lender reasonably determines that the Tax Funds will not be sufficient to pay the Taxes at least thirty (30) days prior to the respective due dates, Lender shall notify Borrower of such determination and the monthly deposits for Taxes shall be increased by the amount that Lender estimates is sufficient to make up the deficiency at least thirty (30) days prior to the respective due dates for the Taxes; provided that if Borrower receives notice of any such deficiency after the date that is thirty (30) days prior to the date that Taxes are due, Borrower will deposit such amount within one (1) Business Day after its receipt of such notice.

### **6.2.2 Release of Tax Funds.**

(a) Lender will apply the Tax Funds to payments of Taxes required to be made by Borrower pursuant to Section 4.1.2 hereof and under the Security Instrument. Borrower shall furnish Lender with all bills, statements and estimates for Taxes at least thirty (30) days prior to the date on which such Taxes first become payable. In making any payment relating to Taxes, Lender may do so according to any bill, statement or estimate procured from the public office (with respect to Taxes) without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amount of the Tax Funds shall exceed the amounts due for Taxes, Lender shall, in its sole discretion, return any excess to Borrower or credit such excess against future payments to be

made to the Tax Funds. Any Tax Funds remaining after the Debt has been paid in full shall be returned to Borrower.

(b) All costs and expenses incurred by Lender in connection with holding and disbursing the Tax Funds (including, without limitation, the costs and expenses of the inspections, if any, required hereunder) shall be paid by Borrower.

### **Section 6.3 Insurance Funds.**

**6.3.1 Deposits of Insurance Funds.** On the Closing Date, Borrower shall deposit with Lender an amount equal to \$16,174.38 and, on each Monthly Payment Date, Borrower shall deposit with Lender an amount equal to one-twelfth (1/12) of the Insurance Premiums (the "**Monthly Insurance Deposit**") that Lender estimates will be payable for the renewal of the coverages afforded by the Policies upon the expiration thereof in order to accumulate sufficient funds to pay all such Insurance Premiums at least thirty (30) days prior to the expiration of the Policies. Amounts deposited pursuant to this Section 6.3.1 are referred to herein as the "**Insurance Funds**" and the account in which such amounts are held by Lender shall hereinafter be referred to as the "**Insurance Account**." If at any time Lender reasonably determines that the Insurance Funds will not be sufficient to pay the Insurance Premiums at least thirty (30) days prior to the expiration of the Policies, Lender shall notify Borrower of such determination and the monthly deposits for Insurance Premiums shall be increased by the amount that Lender estimates is sufficient to make up the deficiency at least thirty (30) days prior to expiration of the Policies; provided that if Borrower receives notice of any such deficiency after the date that is thirty (30) days prior to expiration of the Policies, Borrower will deposit such amount within one (1) Business Day after its receipt of such notice.

### **6.3.2 Release of Insurance Funds.**

(a) Lender will apply the Insurance Funds to payments of Insurance Premiums for the Policies required to be maintained by Borrower pursuant to Section 5.1.1 hereof. Borrower shall furnish Lender with all bills, invoices and statements for Insurance Premiums at least thirty (30) days prior to the date on which such Insurance Premiums first become payable. In making any payment relating to Insurance Premiums, Lender may do so according to any bill, invoice or statement procured from the insurance company or its agent, without inquiry into the accuracy of such bill, invoice or statement. If the amount of the Insurance Funds shall exceed the amounts due for Insurance Premiums, Lender shall, in its sole discretion, return any excess to Borrower or credit such excess against future payments to be made to the Insurance Funds. Any Insurance Funds remaining after the Debt has been paid in full shall be returned to Borrower.

(b) All costs and expenses incurred by Lender in connection with holding and disbursing the Insurance Funds (including, without limitation, the costs and expenses of the inspections, if any, required hereunder) shall be paid by Borrower.

### **Section 6.4 Capital Expenditure Funds.**

**6.4.1 Deposits of Capital Expenditure Funds.** On the Closing Date, Borrower shall deposit with Lender an amount equal to \$0.00 and, on each Monthly Payment Date, Borrower shall deposit with Lender an amount equal to one-twelfth (1/12<sup>th</sup>) of four percent (4%) of Gross

Income from Operations during the calendar year immediately preceding the calendar year in which such Monthly Payment Date occurs (the “**Monthly Capital Expenditure Deposit**”), for annual Capital Expenditures set forth in the Approved Annual Budget or otherwise approved by Lender, which approval shall not be unreasonably withheld or delayed. Amounts deposited pursuant to this Section 6.4.1 are referred to herein as the “**Capital Expenditure Funds**” and the account in which such amounts are held by Lender shall hereinafter be referred to as the “**Capital Expenditure Account**.” Lender may reassess its estimate of the amount necessary for Capital Expenditures from time to time and may require Borrower to increase the monthly deposits required pursuant to this Section 6.4.1 upon thirty (30) days’ notice to Borrower if Lender determines in its reasonable discretion that an increase is necessary for proper maintenance and operation of the Property.

**6.4.2 Release of Capital Expenditure Funds.**

(a) Lender shall disburse Capital Expenditure Funds only for Capital Expenditures.

(b) Lender shall disburse to Borrower the Capital Expenditure Funds upon satisfaction by Borrower of each of the following conditions: (i) Borrower shall submit a request for payment to Lender at least thirty (30) days prior to the date on which Borrower requests such payment be made and specifies the Capital Expenditures to be paid, (ii) on the date such request is received by Lender and on the date such payment is to be made, no Default or Event of Default shall have occurred and remain outstanding, (iii) Lender shall have received an Officer’s Certificate (A) stating that all items to be funded by the requested disbursement are Capital Expenditures, (B) stating that all Capital Expenditures to be funded by the requested disbursement have been completed in a good and workmanlike manner and in accordance with all applicable Legal Requirements, such certificate to be accompanied by a copy of any license, permit or other approval required by any Governmental Authority in connection with such Capital Expenditures, (C) identifying each Person that supplied materials or labor in connection with the Capital Expenditures to be funded by the requested disbursement, (D) stating that each such Person has been paid in full or will be paid in full upon such disbursement, such certificate to be accompanied by lien waivers or other evidence of payment satisfactory to Lender, and (E) stating that the Capital Expenditures to be funded by the requested disbursement have not been the subject of a previous disbursement, (iv) at Lender’s option, a title search for the Property indicating that the Property is free from all liens, claims and other encumbrances not previously approved by Lender, and (v) Lender shall have received such other evidence as Lender shall reasonably request that the Capital Expenditures to be funded by the requested disbursement have been completed and are paid for or will be paid for in full upon such disbursement to Borrower. Lender shall not be required to disburse Capital Expenditure Funds more frequently than once each calendar month, and each disbursement of Capital Expenditure Funds must be in an amount not less than the Minimum Disbursement Amount (or a lesser amount if the total remaining balance of Capital Expenditure Funds is less than the Minimum Disbursement Amount, in which case only one disbursement of the amount remaining in the Capital Expenditure Account shall be made).

(c) Nothing in this Section 6.4 shall (i) make Lender responsible for making or completing any Capital Expenditure Work; (ii) obligate Lender to commence or proceed with any Capital Expenditure Work; (iii) require Lender to expend funds in addition to the Capital

Expenditure Funds to complete any Capital Expenditure Work; or (iv) obligate Lender to demand from Borrower additional sums to perform or complete any Capital Expenditure Work.

(d) If a disbursement of Capital Expenditure Funds will exceed Twenty Five Thousand and No/100 Dollars (\$25,000), Lender may require an inspection of the Property prior to such disbursement in order to verify completion of the Capital Expenditure Work for which reimbursement is sought. Lender may require that such inspection be conducted by an independent professional selected by Lender and may require a certificate of completion by an independent professional acceptable to Lender prior to such disbursement of Capital Expenditure Funds.

(e) Borrower shall permit Lender and its agents and representatives (including, without limitation, Lender's engineer or architect) or third parties to enter onto the Property during normal business hours (subject to the rights of Tenants under their Leases) to inspect the progress of any Capital Expenditure Work and all materials being used in connection therewith and to examine all plans, specifications and shop drawings relating to such Capital Expenditure Work. Borrower shall cause all contractors, subcontractors and materialmen to cooperate with Lender and its agents and representatives or such other Persons described above in connection with the inspections, if any, required by Lender in accordance with this Section 6.4.2.

(f) All Capital Expenditure Works and all materials, equipment, fixtures, or any other item comprising a part of any Capital Expenditure Work shall be constructed, installed or completed, as applicable, free and clear of all liens, claims and other encumbrances not previously approved by Lender.

(g) All Capital Expenditure Works shall comply with all applicable Legal Requirements of all Governmental Authorities having jurisdiction over the Property and all applicable insurance requirements (including, without limitation, applicable building codes, special use permits, environmental regulations, and requirements of insurance underwriters).

(h) In addition to any insurance required under the Loan Documents, Borrower shall provide or cause to be provided builder's risk insurance, workers' compensation insurance, public liability insurance and other insurance to the extent required by the applicable Legal Requirements in connection with any Capital Expenditure Work. All such policies shall be in form and amount reasonably satisfactory to Lender. All such policies which can be endorsed with a non-contributing mortgagee clause (or its equivalent) making loss thereunder payable to Lender and its successors and/or assigns shall be so endorsed. At Lender's request, certified copies of such policies shall be delivered to Lender.

(i) Any Capital Expenditure Funds remaining after the Debt has been paid in full shall be returned to Borrower.

(j) All costs and expenses incurred by Lender in connection with holding and disbursing the Capital Expenditure Funds (including, without limitation, the costs and expenses of the inspections, if any, required hereunder) shall be paid by Borrower.

**6.4.3 Failure to Perform Capital Expenditure Works.** It shall be an Event of Default if Borrower fails to comply with any provision of this Section 6.4 and such failure is not cured

within thirty (30) days after notice from Lender. Upon the occurrence of an Event of Default, Lender may, at its option, use the Capital Expenditure Funds (or any portion thereof) to perform or complete any Capital Expenditure Work as provided in Section 6.4.2 hereof or any other repair or replacement to the Property. Such right to withdraw and apply the Capital Expenditure Funds shall be in addition to all other rights and remedies provided to Lender under this Agreement and the other Loan Documents.

**Section 6.5 Seasonality Reserve.**

**6.5.1 Deposits of Seasonality Funds.**

On the Closing Date, Borrower shall deposit with Lender an amount equal to \$135,000.00, and on each Monthly Payment Date in August, September and October thereafter, Borrower shall deposit with Lender, in addition to all other amounts due under this Agreement, an amount equal to the Monthly Seasonality Reserve Deposit. In addition to the foregoing, during a Cash Sweep Period caused solely by a Seasonality Reserve Trigger Event, all Excess Cash Flow shall be deposited into the Seasonality Reserve Account. Amounts deposited pursuant to this Section 6.5.1 are referred to herein as the “**Seasonality Reserve Funds**” and the account to which such amounts are held shall hereinafter be referred to as the “**Seasonality Reserve Account**”. Notwithstanding the preceding provisions of this Section 6.5.1, Borrower shall not be required to deposit into the Seasonality Reserve Account an amount that would cause the balance in the Seasonality Reserve Account to exceed the Seasonality Reserve Cap and, accordingly, to the extent a deposit would result in the aggregate amount of Seasonality Reserve Funds in the Seasonality Reserve Account to exceed the Seasonality Reserve Cap, such deposit shall be decreased by an amount equal to such excess.

**6.5.2. Release of Seasonality Funds.**

The Seasonality Reserve Funds will be available for use by Borrower, during the months of December, January and February only (the “**Seasonal Months**”), in the event that a Cash Shortfall occurs. Provided that Borrower delivers to Lender evidence satisfactory to Lender demonstrating that a Cash Shortfall has occurred during the Seasonal Months, Borrower may direct Lender by written notice delivered prior to the Applicable Monthly Payment Date to apply available funds from the Seasonality Reserve Account to the payment of the Debt Service and the required monthly deposits into the Reserve Funds due on a Monthly Payment Date in an amount equal to the Cash Shortfall. In addition, upon the earlier of (a) a Seasonality Reserve Release Event, or (b) the Debt has been paid in full, any amounts in the Seasonality Reserve Account shall be returned to Borrower, and Borrower shall thereafter not be required to make additional deposits to the Seasonality Reserve. All costs and expenses incurred by Lender in connection with holding and disbursing the Seasonality Reserve Funds shall be paid by Borrower.

**Section 6.6 Intentionally Omitted.**

**Section 6.7 Excess Cash Flow Funds.**

**6.7.1 Deposits of Excess Cash Flow Funds.** During a Cash Sweep Event Period, Borrower shall deposit with Lender all Excess Cash Flow, which sums shall be held by Lender as additional security for the Loan; provided, however, that during a Cash Sweep Event Period caused by an Event of Default, all Excess Cash Flow deposited with Lender may be (i) held by Lender as additional security for the Loan, or (ii) applied by Lender, in its sole discretion, toward payment of the Obligations. Amounts so deposited shall hereinafter be referred to as the “**Excess Cash Flow Funds**” and the account in which such amounts are held by Lender shall hereinafter be referred to as the “**Excess Cash Flow Account.**”

**6.7.2 Release of Excess Cash Flow Funds.**

(a) Upon the termination of a Cash Sweep Event Period and provided that no other Cash Sweep Event shall have occurred and remain outstanding, all funds on deposit in the Excess Cash Flow Account shall be deposited into the Cash Management Account and applied in accordance with this Agreement and the Cash Management Agreement.

(b) All costs and expenses incurred by Lender in connection with holding and disbursing the Excess Cash Flow Funds shall be paid by Borrower.

**Section 6.8 Reserve Funds.**

**6.8.1 Security Interest.** Borrower hereby pledges to Lender, and grants a security interest in, any and all monies now or hereafter deposited in the Reserve Funds as additional security for the performance of the Obligations. Until expended or applied as provided in this Agreement, the Reserve Funds shall constitute additional security for the performance of the Obligations. Lender shall have no obligation to release any of the Reserve Funds while any Default or Event of Default has occurred and remains outstanding. Notwithstanding anything to the contrary contained herein or in any other Loan Document, upon the occurrence of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in the Reserve Funds to the payment of the Debt in any order, proportion and priority as Lender may determine in its sole and absolute discretion. Borrower shall not further pledge, assign or grant any security interest in any Reserve Fund or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto.

**6.8.2 Investments; Income Taxes.** The Reserve Funds shall be held in Lender’s name and may be commingled with Lender’s own funds at financial institutions selected by Lender in its sole discretion. The Reserve Funds shall be held in an Eligible Account and may be invested in Permitted Investments as directed by Lender. Lender shall not be liable for any loss sustained on the investment of any funds constituting the Reserve Funds. Borrower shall deposit with Lender an amount equal to the actual losses sustained on the investment of any funds constituting the Reserve Funds in Permitted Investments within one (1) Business Day of Lender’s notice. All interest on a Reserve Fund shall not be added to or become a part thereof and shall be the sole property of and shall be paid to Lender.

**6.8.3 Indemnity.** Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations

and costs and expenses (including reasonable attorneys' fees and expenses) arising from or in any way connected with the Reserve Funds or the performance of the obligations for which the Reserve Funds were established. Borrower shall assign to Lender all rights and claims Borrower may have against all Persons supplying labor, materials or other services which are to be paid or reimbursed from or secured by the Reserve Funds; provided, however, that Lender may not pursue any such right or claim unless an Event of Default has occurred and remains outstanding.

## **ARTICLE 7 - PROPERTY MANAGEMENT**

**Section 7.1 Management Agreement and Franchise Agreement.** Borrower shall cause the Property to be operated in accordance with the Management Agreement and the Franchise Agreement. Borrower shall (a) diligently perform and observe all of the terms, covenants and conditions of the Management Agreement and the Franchise Agreement on the part of Borrower to be performed and observed, (b) promptly notify Lender of any default under the Management Agreement and the Franchise Agreement of which it is aware, (c) promptly deliver to Lender a copy of each financial statement, business plan, capital expenditures plan, report and estimate received by it under the Management Agreement or the Franchise Agreement and (d) promptly enforce the performance and observance of all of the terms, covenants and conditions required to be performed and/or observed by Manager under the Management Agreement and Franchisor under the Franchise Agreement, in a commercially reasonable manner. If Borrower shall default in the performance or observance of any term, covenant or condition of the Management Agreement or the Franchise Agreement on the part of Borrower to be performed or observed, then, without limiting Lender's other rights or remedies under this Agreement or the other Loan Documents, and without waiving or releasing Borrower from any of its obligations hereunder, under the other Loan Documents or under the Management Agreement or the Franchise Agreement, Lender shall have the right, but shall be under no obligation, to pay any sums and to perform any act as may be appropriate to cause the terms, covenants and conditions of the Management Agreement and the Franchise Agreement on the part of Borrower to be performed or observed in all material respects.

### **Section 7.2 Prohibition Against Termination or Modification.**

(a) Borrower shall not, without prior consent of Lender, (i) surrender, terminate, cancel, modify, renew, amend, or extend the Management Agreement; provided that Borrower may, without Lender's consent, replace Manager with a Qualified Manager pursuant to a Replacement Management Agreement, (ii) surrender, terminate, cancel, modify, renew, amend, or extend the Franchise Agreement; provided, that Borrower may, without Lender's consent, replace Franchisor with a Qualified Franchisor pursuant to a Replacement Franchise Agreement, (iii) reduce or consent to the reduction of the term of the Management Agreement or the Franchise Agreement, (iv) increase or consent to the increase of the amount of any fees or other charges under the Management Agreement or the Franchise Agreement, or (v) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under, the Management Agreement or the Franchise Agreement in any material respect. In connection with the replacement of Manager with a Qualified Manager or Franchisor with a Qualified Franchisor, Borrower shall (A) execute and cause Qualified Manager to execute an assignment of management agreement and subordination of management fees in the form then used by Lender,

and (B) execute and cause Qualified Franchisor to execute an assignment of franchise agreement and subordination of franchise fees in the form then used by Lender, as applicable.

(b) In the event that a Management Agreement expires or is terminated (without limiting any obligation of Borrower to obtain Lender's consent to any termination or modification of the Management Agreement in accordance with the terms and provisions of this Agreement), Borrower shall promptly enter into a Replacement Management Agreement with a Qualified Manager. In the event that the Franchise Agreement expires or is terminated (without limiting any obligation of Borrower to obtain Lender's consent to any termination or modification of the Franchise Agreement in accordance with the terms and provisions of this Agreement), Borrower shall promptly enter into a Replacement Franchise Agreement with a Qualified Franchisor.

(c) Upon the occurrence and during the continuation of an Event of Default, Borrower shall not exercise any rights, make any decisions, grant any approvals or otherwise take any action under the Management Agreement or the Franchise Agreement without the prior consent of Lender, which consent may be granted, conditioned or withheld in Lender's sole discretion.

**Section 7.3 Replacement of Manager.** Lender shall have the right to require Borrower to replace Manager with a Qualified Manager which is not an Affiliate of, but is chosen by, Borrower upon the occurrence of any one or more of the following events: (a) at any time following the occurrence of an Event of Default, (b) if Manager shall be in default under the Management Agreement beyond any applicable notice and cure period, (c) if Manager shall become insolvent or a debtor in any Bankruptcy Action, (d) if at any time Manager has engaged in gross negligence, fraud, willful misconduct or misappropriation of funds, and/or (e) if at any time the Debt Service Coverage Ratio (based upon the trailing twelve (12) month period immediately preceding the date of such determination is less than 1.10 to 1.0.

**Section 7.4 Matters Concerning Manager.** Without limiting the generality of the terms set forth in Section 7.3 above, if (a) the Debt has been accelerated pursuant to Section 10.1(b) hereof, (b) Manager shall become insolvent or a debtor in any Bankruptcy Action or (c) an event of default occurs under a Management Agreement, Borrower shall, at Lender's request, terminate the Management Agreement and replace Manager with a Qualified Manager pursuant to a Replacement Management Agreement, it being understood and agreed that the management fee for such Qualified Manager shall not exceed then prevailing market rates.

**Section 7.5 Matters Concerning Franchisor.** If (a) the Debt has been accelerated pursuant to Section 10.1(b) hereof, (b) Franchisor shall become insolvent or a debtor in any Bankruptcy Action or (c) an event of default occurs under the Franchise Agreement, Borrower shall, at Lender's request, terminate the Franchise Agreement and replace Franchisor with a Qualified Franchisor pursuant to a Replacement Franchise Agreement, it being understood and agreed that the franchise fee for such Qualified Franchisor shall not exceed then prevailing market rates.

## ARTICLE 8 - TRANSFERS



**Section 8.1 Transfer or Encumbrance of Property.**

(a) Without the prior consent of Lender, neither Borrower nor any Restricted Party shall do any of the following (each, a "Transfer"): sell, transfer, convey, assign, mortgage, pledge, encumber, alienate, grant a Lien on, grant any option with respect to or grant any other interest in the Property, any part thereof or any interest therein (including any legal, beneficial or economic interest in Borrower or any Restricted Party), directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record, other than Permitted Transfers.

(b) A Transfer shall include (i) an installment sales agreement wherein Borrower agrees to sell the Property, any part thereof or any interest therein for a price to be paid in installments; (ii) an agreement by Borrower leasing all or a substantial part of the Property 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, the Borrower's right, title and interest in and to any Leases or any Rents; (iii) if Borrower or any Restricted Party is a corporation, the voluntary or involuntary sale, conveyance or transfer 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 such that such corporation's stock shall be vested in a party or parties who are not now stockholders or any change in the control of such corporation; (iv) if Borrower or any Restricted Party is a limited or general partnership, joint venture or limited liability company, the change, removal, resignation or addition of a general partner, managing partner, limited partner, joint venturer or member, the voluntary or involuntary transfer of the partnership interest of any general partner, managing partner or limited partner, the creation or issuance of new limited partnership interests, the voluntary or involuntary transfer of the interest of any joint venturer or member or the creation or issuance of new non-managing member interests; and (v) if Borrower or any Restricted Party is a trust or nominee trust, the voluntary or involuntary transfer of the legal or beneficial interest in such trust or nominee trust or the creation or issuance of new legal or beneficial interests.

(c) Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder or under the other Loan Documents in order to declare the Debt immediately due and payable upon a Transfer (other than a Permitted Transfer) without Lender's prior consent. This provision shall apply to every Transfer regardless of whether voluntary or not, and whether or not Lender has consented to any previous Transfer.

(d) Lender's consent to one Transfer shall not be deemed to be a waiver of Lender's right to require such consent to any future occurrence of same. Any Transfer made in contravention of this Section 8.1 shall be null and void and of no force and effect.

(e) Borrower agrees to bear and shall pay or reimburse Lender on demand for all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and expenses, title search costs and title insurance endorsement premiums) incurred by Lender in connection with the review, approval and/or documentation of any proposed Transfer. If required by Lender, Borrower shall deposit with Lender an amount equal to Lender's anticipated costs and expenses in evaluating any proposed Transfer.

(f) No consent to any assumption of the Loan shall occur on or before the first (1<sup>st</sup>) anniversary of the first (1<sup>st</sup>) Monthly Payment Date. Thereafter, Lender's consent to a Transfer of the Property and the assumption of the Loan shall not be unreasonably withheld after consideration of all relevant factors and provided that the following conditions are satisfied:

(i) Lender shall have received a notice from Borrower requesting Lender's consent to such Transfer not less than sixty (60) days prior to the proposed date of such Transfer;

(ii) No Default or Event of Default shall have occurred and remain outstanding;

(iii) The proposed transferee ("**Transferee**") shall be a corporation, partnership or limited liability company that qualifies as a single purpose, bankruptcy remote entity under criteria established by the Rating Agencies (including, without limitation, criteria applicable to Transferee's SPE Constituent Entities);

(iv) The Organizational Documents of Transferee and Transferee's SPE Constituent Entities shall be reasonably satisfactory to Lender;

(v) Neither any Transferee's Sponsor, Transferee nor any other Person owned or controlled, directly or indirectly, by Transferee's Sponsors shall have been a party to any Bankruptcy Action or taken advantage of any Bankruptcy Law or any law for the benefit of debtors within seven (7) years prior to the date of the proposed Transfer;

(vi) Neither any Transferee's Sponsor, Transferee nor any other Person owned or controlled, directly or indirectly, by Transferee's Sponsors shall have defaulted under its obligations with respect to any Indebtedness in a manner which is not reasonably acceptable to Lender;

(vii) There shall be no material litigation or regulatory action pending or threatened against any Transferee's Sponsor, Transferee or any other Person owned or controlled, directly or indirectly, by Transferee's Sponsors which is not reasonably acceptable to Lender;

(viii) Transferee and Transferee's Sponsors shall, as of the date of such Transfer, have an aggregate net worth and liquidity reasonably satisfactory to Lender;

(ix) Transferee and Transferee's Sponsors (together with Transferee's proposed property manager) shall be experienced owners and operators of properties similar in location, size, class, use, operation and value as the Property, as evidenced by financial statements and other information reasonably satisfactory to Lender (it being understood and agreed that Lender reserves the right to approve Transferee without approving its proposed property manager);

(x) If the Management Agreement will be terminated as a result of such Transfer, the Property shall be managed by a Qualified Manager in accordance with a Replacement Management Agreement;

(xi) If the Franchise Agreement will be terminated as a result of such Transfer, the Property shall be operated in accordance with a Replacement Franchise Agreement;

(xii) Transferee and Transferee's SPE Constituent Entities shall have delivered all agreements, certificates and opinions reasonably required by Lender (including, if applicable, an amendment to Section 3.1.24 hereof to incorporate necessary changes based on differences in the organizational structures of Borrower and Transferee);

(xiii) No Default or Event of Default shall occur as a result of such Transfer;

(xiv) Transferee shall have assumed all obligations of Borrower under the Loan Documents pursuant to an assumption agreement in form and substance reasonably satisfactory to Lender;

(xv) (xv) Borrower shall have delivered, at its sole cost and expense, an endorsement to the Title Insurance Policy, as modified by the assumption agreement, as a valid first lien on the Property and naming Transferee as owner of the Property, which endorsement shall insure that, as of the date of the recording of the assumption agreement, the Property shall not be subject to any Liens other than those contained in the Title Insurance Policy issued on the date hereof and the Permitted Encumbrances;

(xvi) Prior to any release of Guarantor, one (1) or more substitute guarantors reasonably acceptable to Lender shall (A) have assumed all obligations of Guarantor under the Guaranty and the Environmental Indemnity or (B) have executed a replacement guaranty and a replacement environmental indemnity in form and substance reasonably satisfactory to Lender;

(xvii) Borrower or Transferee, at its sole cost and expense, shall have delivered a new bankruptcy non-consolidation opinion reflecting such Transfer reasonably acceptable to Lender and acceptable to the Rating Agencies;

(xviii) If required by Lender, Borrower shall have delivered a Rating Agency Confirmation as to such Transfer and Transferee;

(xix) Borrower shall have paid to Lender an assumption fee equal to one percent (1%) of the Outstanding Principal Balance; and

(xx) Borrower shall have paid all reasonable out-of-pocket costs and expenses incurred in connection with such Transfer (including reasonable fees and disbursements of Lender's counsel and fees, costs and expenses of the Rating Agencies).

(g) As used in this Section 8.1, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise and the terms "controlled" and "controlling" shall have correlative meanings.

**Section 8.2 Permitted Transfers of Interests in Borrower.** Notwithstanding anything to the contrary contained in Section 8.1 hereof, Lender's consent shall not be required in connection with one or a series of Transfers, of not more than forty-nine percent (49%) in the aggregate of the direct or indirect ownership interests in any Restricted Party; provided that the following conditions are satisfied: (a) no Default or Event of Default shall have occurred and remain outstanding or shall occur solely as a result of such Transfer, (b) such Transfer shall not

(i) cause the transferee, together with its Affiliates, to acquire control of any Restricted Party, (ii) result in any Restricted Party no longer being controlled by Guarantor, or (iii) cause the transferee, together with its Affiliates, to increase its direct or indirect interest in any Restricted Party to an amount which exceeds forty-nine percent (49%) in the aggregate, (c) to the extent the transferee owns twenty percent (20%) or more of the direct or indirect interests in any Restricted Party immediately following such Transfer (provided that such Transferee did not own 20% or more of the direct or indirect ownership interests in such Restricted Party as of the Closing Date), Borrower shall deliver, at Borrower's sole cost and expense, customary searches (credit, judgment, lien, bankruptcy, etc.) reasonably acceptable to Lender with respect to such transferee and its Affiliates as Lender may reasonably require, (d) after giving effect to such Transfer, Guarantor shall continue to own, directly or indirectly, at least fifty-one percent (51%) of all legal, beneficial and economic interests in each Restricted Party, (e) the Property shall continue to be managed by Manager or Qualified Manager, (f) Borrower shall give Lender notice of such Transfer request, together with copies of all instruments effecting such Transfer and copies of any Organizational Documents that Lender shall require, not less than thirty (30) days prior to the proposed date of such Transfer, and (g) the legal and financial structure of Borrower and its stockholders, partners or members, as applicable, and the single purpose nature and bankruptcy remoteness of Borrower and its stockholders, partners or members, as applicable, after such Transfer, shall satisfy Lender's then current applicable underwriting criteria and requirements. As used in this Section 8.2, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise and the terms "controlled" and "controlling" shall have correlative meanings.

## ARTICLE 9 - SALE AND SECURITIZATION OF MORTGAGE

### Section 9.1 Sale of Mortgage and Securitization.

(a) Lender shall have the right (i) to sell or otherwise transfer the Loan as a whole loan or sell or otherwise transfer any portion thereof or any interest therein, (ii) to sell participation interests in the Loan or (iii) to securitize the Loan or any portion thereof or any interest therein in one or more private or public securitizations. (The transactions referred to in clauses (i), (ii) and (iii) are each hereinafter referred to as a "**Secondary Market Transaction**" and the transaction referred to in clause (iii) shall hereinafter be referred to as a "Securitization." Any certificates, notes or other securities issued in connection with a Securitization are hereinafter referred to as "**Securities**.")

(b) If requested by Lender, Borrower shall assist Lender in satisfying the market standards to which Lender customarily adheres or which may be required in the marketplace, by the Rating Agencies or by any Legal Requirements in connection with any Secondary Market Transactions (including any Exchange Act Filings or any report that is required to be made "available" to holders of the Securities under Regulation AB or applicable Legal Requirements), including, without limitation, to:

(i) (A) provide updated financial and other information with respect to the Property, the business operated at the Property, Borrower, Guarantor, any Affiliate of Borrower or Guarantor and Manager (including, without limitation, the information set forth on Schedule V

hereto), (B) provide updated budgets and rent rolls (including itemized percentage of floor area occupied and percentage of aggregate base rent for each Tenant) relating to the Property and (C) provide updated appraisals, market studies, environmental audits, reviews and reports (Phase I's and, if appropriate, Phase II's), property condition reports and other due diligence investigations of the Property (the information required under clauses (A), (B) and (C) shall hereinafter be referred to collectively as the "**Updated Information**"), together with appropriate verification of the Updated Information through letters of auditors, certificates of third party providers or opinions of counsel acceptable to Lender and the Rating Agencies;

(ii) provide opinions of counsel, which may be relied upon by Lender, the NRSROs and their respective counsel, agents and representatives, as to bankruptcy non-consolidation, fraudulent conveyance, and "true sale" or any other opinion customary in Secondary Market Transactions or required by the Rating Agencies with respect to the Property, Borrower, Guarantor and any Affiliate of Borrower or Guarantor, which counsel and opinions shall be satisfactory to Lender and the Rating Agencies;

(iii) provide, and cause to be provided, updated representations and warranties made in the Loan Documents and make, and cause to be made, such additional representations and warranties as may be requested by Lender or the Rating Agencies and consistent with the facts covered by such representations and warranties as they exist on the date thereof;

(iv) execute, and cause to be executed, such amendments, replacements or other modifications to Borrower's Organizational Documents or the Loan Documents as may be requested by Lender or the Rating Agencies to effect the Secondary Market Transactions; provided, however, that Borrower shall not be required to amend, restate or otherwise modify any Loan Document if such amendment, restatement or other modification would (A) increase the initial weighted average interest rate or change the amortization of principal set forth herein or in the Note (except that the weighted average interest rate or the amortization of principal may subsequently change due to involuntary prepayments or if an Event of Default shall occur) or (B) amend or otherwise modify any other material economic term of the Loan; and

(v) attend management meetings, provide access to the Property and conduct tours of the Property; and

(vi) provide, and cause to be provided, certificates or other evidence of reliance satisfactory to Lender and the Rating Agencies with respect to any information or third party reports obtained in connection with the origination of the Loan or any Updated Information from Borrower, Guarantor, any Affiliate of Borrower or Guarantor, Manager and any accountants, appraisers, engineers, environmental assessment experts and other experts or third party providers of such information, reports or Updated Information.

(c) If, at the time one or more Disclosure Documents are being prepared for or in connection with a Securitization, Lender expects that Borrower alone or Borrower and one or more Affiliates of Borrower (including any guarantor or other Person that is directly or indirectly committed by contract or otherwise to make payments on all or a part of the Loan) collectively, or the Property alone or the Property and Related Properties collectively, will be a Significant Obligor, Borrower shall furnish to Lender upon request the following financial information:

(i) if Lender expects that the principal amount of the Loan together with any Related Loans, as of the cut-off date for such Securitization, may equal or exceed ten percent (10%) (but less than twenty percent (20%)) of the aggregate principal amount of all mortgage loans included or expected to be included in the Securitization, net operating income for the Property and the Related Properties for the most recent Fiscal Year and interim period as required under Item 1112(b)(1) of Regulation AB (or, if the Loan is not treated as a non-recourse loan under Instruction 3 for Item 1101(k) of Regulation AB, selected financial data meeting the requirements and covering the time periods specified in Item 301 of Regulation S-K and Item 1112(b)(1) of Regulation AB), or

(ii) if Lender expects that the principal amount of the Loan together with any Related Loans, as of the cut-off date for such Securitization, may equal or exceed twenty percent (20%) of the aggregate principal amount of all mortgage loans included or expected to be included in the Securitization, the financial statements required under Item 1112(b)(2) of Regulation AB (which includes, but may not be limited to, a balance sheet with respect to the entity that Lender determines to be a Significant Obligor for the two most recent Fiscal Years and applicable interim periods, meeting the requirements of Rule 3-01 of Regulation S-X, and statements of income and statements of cash flows with respect to the Property for the three most recent Fiscal Years and applicable interim periods, meeting the requirements of Rule 3-02 of Regulation S-X (or if Lender determines that the Property is the Significant Obligor and the Property (other than properties that are hotels, nursing homes, or other properties that would be deemed to constitute a business and not real estate under Regulation S-X or other legal requirements) was acquired from an unaffiliated third party and the other conditions set forth in Rule 3-14 of Regulation S-X have been met, the financial statements required by Rule 3-14 of Regulation S-X)).

(d) Further, if requested by Lender, Borrower shall, promptly upon Lender's request, furnish to Lender financial data or financial statements meeting the requirements of Item 1112(b)(1) or (2) of Regulation AB, as specified by Lender, for any tenant of the Property if, in connection with a Securitization, Lender expects there to be, as of the cut-off date for such Securitization, a concentration with respect to such tenant or group of Affiliated tenants within all of the mortgage loans included or expected to be included in the Securitization such that such tenant or group of Affiliated tenants would constitute a Significant Obligor. Borrower shall furnish to Lender, on an ongoing basis, financial data or financial statements with respect to such tenants meeting the requirements of Item 1112(b)(1) or (2) of Regulation AB, as specified by Lender, but only for so long as such entity or entities are a Significant Obligor and either (i) Exchange Act Filings in connection with or relating to the Securitization are required to be made under applicable Legal Requirements or (ii) comparable information is required to otherwise be "available" to holders of the Securities under Regulation AB or applicable Legal Requirements.

(e) If Lender determines that Borrower alone or Borrower and one or more Affiliates of any Borrower collectively, or the Property alone or the Property and Related Properties collectively, are a Significant Obligor, then Borrower shall furnish to Lender, on an ongoing basis, selected financial data or financial statements meeting the requirements of Item 1112(b)(1) or (2) of Regulation AB, as specified by Lender, but only for so long as such entity or entities are a Significant Obligor and either (i) Exchange Act Filings are required to be made under applicable Legal Requirements or (ii) comparable information is required to otherwise be "available" to holders of the Securities under Regulation AB or applicable Legal Requirements.

(f) Any financial data or financial statements provided pursuant to this Section 9.1 shall be furnished to Lender within the following time periods:

(i) with respect to information requested in connection with the preparation of Disclosure Documents for a Securitization, within ten (10) Business Days after notice from Lender; and

(ii) with respect to ongoing information required under Sections 9.1(d) and (e) above, (A) not later than thirty (30) days after the end of each fiscal quarter of Borrower and (B) not later than seventy-five (75) days after the end of each Fiscal Year of Borrower.

(g) All financial data and financial statements provided by Borrower hereunder pursuant to Sections 9.1(c), (d), (e) and (f) hereof shall be prepared in accordance with GAAP, and shall meet the requirements of Regulation S-K or Regulation S-X, as applicable, Regulation AB, and any and all other applicable Legal Requirements. All financial statements relating to a Fiscal Year shall be audited by independent accountants of Borrower acceptable to Lender in accordance with generally accepted auditing standards, Regulation S-X or Regulation S-K, as applicable, Regulation AB, and all other applicable Legal Requirements, shall be accompanied by the manually executed report of the independent accountants thereon, which report shall meet the requirements of Regulation S-K or Regulation S-X, as applicable, Regulation AB, and all other applicable Legal Requirements, and shall be further accompanied by a manually executed consent of the independent accountants, in form and substance acceptable to Lender, to the inclusion of such financial statements in any Disclosure Document, any Exchange Act Filing or any report that is required to be made "available" to holders of the Securities under Regulation AB or applicable Legal Requirements and to the use of the name of such independent accountants and the reference to such independent accountants as "experts" in any Disclosure Document, any Exchange Act Filing or any report that is required to be made "available" to holders of the Securities under Regulation AB or applicable Legal Requirements, all of which shall be provided at the same time as the related financial statements are required to be provided. All other financial data and financial statements (audited or unaudited) provided by Borrower shall be accompanied by an Officer's Certificate which shall state that such financial data and financial statements meet the requirements set forth in the first sentence of this paragraph.

(h) In the event Lender determines, in connection with a Securitization, that financial statements and financial data required in order to comply with Regulation AB or any amendment, modification or replacement thereto or any other Legal Requirements are other than as provided herein, then notwithstanding the foregoing provisions of this Section 9.1, Lender may request, and Borrower shall promptly provide, such other financial statements and financial data as Lender determines to be necessary or appropriate for such compliance.

(i) Without limiting the generality of Section 9.1(h) above, if requested by Lender, Borrower shall promptly provide Lender with any financial statements or financial, statistical, operating or other information as Lender shall determine to be required pursuant to Regulation AB or any amendment, modification or replacement thereto or any other Legal Requirements in connection with any Disclosure Document, any Exchange Act Filing or any report that is required to be made "available" to holders of the Securities under Regulation AB or applicable Legal Requirements or as shall otherwise be reasonably requested by Lender.

(j) Borrower agrees that Lender may disclose any information relating to Borrower, its Affiliates, the Property or any aspect of the Loan (including information provided by or on behalf of Borrower or any of its Affiliates to Lender) to the parties requesting such information and, if applicable, the NRSROs in connection with any Secondary Market Transaction. Borrower also understands that the findings and conclusions of any third-party due diligence report obtained by Lender or other Securitization Indemnified Parties may be made publicly available if required, and in the manner prescribed, by Section 15E(s)(4)(A) of the Exchange Act, any rules promulgated thereunder or any other applicable Legal Requirements.

(k) In connection with Lender's efforts to effect any Secondary Market Transaction, all reasonable third party costs and expenses incurred by Borrower and Guarantor on or prior to the closing of such Secondary Market Transaction pursuant to this Section 9.1 (including, without limitation, the fees and expenses of the Rating Agencies) shall be reimbursed by Lender.

### **Section 9.2 Securitization Indemnification.**

(a) Borrower understands that information provided to Lender by Borrower or its agents, counsel and representatives may be included in Disclosure Documents in connection with a Securitization and may also be included in filings with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended (the "**Securities Act**"), or the Securities and Exchange Act of 1934, as amended (the "**Exchange Act**"), and may be made available to investors or prospective investors in the Securities, the NRSROs and other advisory and service providers relating to a Securitization. In the event that any Disclosure Document is required to be revised prior to the sale of all Securities in connection with a Securitization, Borrower will cooperate with Lender (or, if applicable, the holder of the applicable interest in the Loan) in updating the Disclosure Document by providing all current information necessary to keep the Disclosure Document accurate and complete in all material respects.

(b) Borrower hereby agrees to indemnify Lender, UBSRESI, any Affiliate of UBSRESI that has filed any registration statement relating to the Securitization or has acted as the issuer, the sponsor or depositor in connection with a Securitization, any Affiliate of UBSRESI that acts as an underwriter, placement agent or initial purchaser of the Securities issued in connection with a Securitization, any other issuers, depositors, underwriters, placement agents or initial purchasers of the Securities issued in connection with a Securitization, and each of their respective directors, officers, partners, employees, representatives, agents and Affiliates, and each Person that controls any such Person within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the "**Securitization Indemnified Parties**") for any liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs and expenses (collectively, the "**Securitization Indemnification Liabilities**") to which any Securitization Indemnified Party may become subject insofar as the Securitization Indemnification Liabilities arise out of or are based upon (i) any untrue statement or alleged untrue statement of any material fact contained in the information provided to Lender by Borrower, any Affiliate of Borrower or any of their respective agents, counsel or representatives, (ii) the omission or alleged omission to state therein a material fact required to be stated in such information or necessary in order to make the statements in such information, in light of the circumstances under which they were made, not misleading, and (iii) a breach of the representations and warranties made by Borrower in Section 3.1.34 of this Agreement. Borrower



also agrees to reimburse each Securitization Indemnified Party for any legal or other costs and expenses reasonably incurred by such Securitization Indemnified Party in connection with investigating or defending the Securitization Indemnification Liabilities. Borrower's liability under this paragraph will be limited to any such liability, obligation, loss, damage, penalty, action, judgment, suit, claim, cost or expense that arises out of or is based upon an untrue statement or omission made therein in reliance upon and in conformity with information furnished by or on behalf of Borrower in connection with the preparation of the Disclosure Documents or in connection with the underwriting or closing of the Loan (including, without limitation, financial statements of Borrower, operating statements and rent rolls with respect to the Property). This indemnity provision will be in addition to any obligation or liability which Borrower may otherwise have.

(c) In connection with Exchange Act Filings and information therein or other reports containing comparable information that are required to be made "available" to holders of the Securities under Regulation AB or applicable Legal Requirements, as it relates to the Property, Borrower, Guarantor, any Affiliate of Borrower or Guarantor, Manager or any other aspect of the Loan, Borrower agrees to (i) indemnify the Securitization Indemnified Parties for Securitization Indemnification Liabilities to which any Securitization Indemnified Party may become subject insofar as the Securitization Indemnification Liabilities arise out of, or are based upon, an untrue statement or omission made in reliance upon, and in conformity with, information furnished to Lender by or on behalf of Borrower in connection with the preparation of the Disclosure Document, in connection with the underwriting or closing of the Loan or any of the reports, statements or other information furnished by or on behalf of Borrower pursuant to the terms of this Agreement, including financial statements of Borrower, operating statements and rent rolls with respect to the Property, and (ii) reimburse each Securitization Indemnified Party for any legal or other costs and expenses reasonably incurred by such Securitization Indemnified Party in connection with defending or investigating the Securitization Indemnification Liabilities.

(d) Promptly after receipt by a Securitization Indemnified Party of notice of any claim or the commencement of any action or suit, such Securitization Indemnified Party shall, if a claim for indemnification in respect thereof is to be made against Borrower, notify Borrower in writing of the claim or the commencement of such action or suit; provided, however, that the failure to notify Borrower shall not relieve Borrower from any liability which it may have under the indemnification provisions of this Section 9.2 except to the extent that it has been materially prejudiced by such failure and, provided further that the failure to notify Borrower shall not relieve Borrower from any liability which it may have to any Securitization Indemnified Party otherwise than under the provisions of this Section 9.2. If any such claim, action or suit shall be brought against any Securitization Indemnified Party, and it shall notify Borrower thereof, Borrower shall be entitled to participate therein and, to the extent that it wishes, assume the defense thereof with counsel reasonably satisfactory to such Securitization Indemnified Party. After notice from Borrower to the applicable Securitization Indemnified Party of Borrower's election to assume the defense of such claim, action or suit, Borrower shall not be liable to such Securitization Indemnified Party for any legal or other costs and expenses subsequently incurred by such Securitization Indemnified Party in connection with the defense thereof except as provided in the following sentence; provided, however, if the defendants in any such action or suit include both Borrower, on the one hand, and one or more Securitization Indemnified Parties on the other hand, and a Securitization Indemnified Party shall have reasonably concluded that

there are legal defenses available to it and/or other Securitization Indemnified Parties that are different or in addition to those available to Borrower, the Securitization Indemnified Party or Parties shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action or suit on behalf of such Securitization Indemnified Party or Parties. The Securitization Indemnified Party shall instruct its counsel to maintain reasonably detailed billing records for fees and disbursements for which such Securitization Indemnified Party is seeking or intends to seek reimbursement hereunder and shall submit copies of such detailed billing records to substantiate that such counsel's fees and disbursements are related solely to the defense of a claim for which Borrower is required hereunder to indemnify such Securitization Indemnified Party. Borrower shall not be liable for the costs and expenses of more than one (1) such separate counsel unless a Securitization Indemnified Party shall have reasonably concluded that there may be legal defenses available to it that are different from or additional to those available to another Securitization Indemnified Party.

(c) Without the prior written consent of the applicable Securitization Indemnified Party (which consent shall not be unreasonably withheld or delayed), Borrower shall not settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding in respect of which indemnification may be sought hereunder (whether or not any Securitization Indemnified Party is an actual or potential party to such claim, action, suit or proceeding) unless Borrower shall have given the applicable Securitization Indemnified Party reasonable prior notice thereof and shall have obtained an unconditional release of each Securitization Indemnified Party from all Securitization Indemnification Liabilities arising out of or relating to such claim, action, suit or proceeding. As long as Borrower has complied with its obligations to defend and indemnify hereunder, Borrower shall not be liable for any settlement made by any Securitization Indemnified Party without the consent of Borrower (which consent shall not be unreasonably withheld or delayed).

(f) Borrower agrees that if any indemnification or reimbursement sought pursuant to this Section 9.2 is finally judicially determined to be unavailable for any reason or is insufficient to hold any Securitization Indemnified Party harmless (with respect only to the Securitization Indemnification Liabilities that are the subject of this Section 9.2), then Borrower, on the one hand, and such Securitization Indemnified Party, on the other hand, shall contribute to the Securitization Indemnification Liabilities for which such indemnification or reimbursement is held unavailable or is insufficient: (i) in such proportion as is appropriate to reflect the relative benefits to Borrower, on the one hand, and such Securitization Indemnified Party, on the other hand, from the transactions to which such indemnification or reimbursement relates; or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative faults of Borrower, on the one hand, and all Securitization Indemnified Parties, on the other hand, as well as any other equitable considerations. Notwithstanding the provisions of this Section 9.2, (A) no Person found liable for a fraudulent misrepresentation shall be entitled to contribution from any other Person who is not also found liable for such fraudulent misrepresentation, and (B) Borrower agrees that in no event shall the amount to be contributed by the Securitization Indemnified Parties collectively pursuant to this Section 9.2(f) exceed the amount of the fees actually received by the Securitization Indemnified Parties in connection with the closing of the Loan.

(g) Borrower agrees that the indemnification, contribution and reimbursement obligations set forth in this Section 9.2 shall apply whether or not any Securitization Indemnified Party is a formal party to any claim, action, suit or proceeding. Borrower further agrees that the Securitization Indemnified Parties are intended third party beneficiaries under this Section 9.2.

(h) The liabilities and obligations of Borrower and the Securitization Indemnified Parties under this Section 9.2 shall survive the termination of this Agreement and the satisfaction and discharge of the Debt.

## ARTICLE 10 - DEFAULTS

### Section 10.1 Event of Default.

(a) Each of the following events shall constitute an event of default hereunder (an "Event of Default"):

(i) (A) if any monthly Debt Service, any monthly deposit of Reserve Funds or the payment due on the Maturity Date is not paid when due or (B) if any other portion of the Debt is not paid when due; provided that, with respect to this clause (B), such non-payment continues for five (5) days following notice to Borrower that the same is due and payable;

(ii) if any of the Taxes or Other Charges are not paid when due;

(iii) if the Policies are not kept in full force and effect;

(iv) if Borrower commits, permits or suffers a Transfer in violation of the provisions of this Agreement or Article 6 of the Security Instrument;

(v) if any certification, representation or warranty made by Borrower herein or in any other Loan Document, or in any report, certificate, financial statement or other instrument, agreement or document furnished to Lender shall have been false or misleading in any material respect as of the date such certification, representation or warranty was made;

(vi) (A) if Borrower or any SPC Party shall make an assignment for the benefit of creditors or (B) upon the declaration by Lender that the same constitutes an Event of Default (which declaration may be made by Lender in its sole and absolute discretion), if Guarantor shall make an assignment for the benefit of creditors;

(vii) (A) if Borrower or any SPC Party fails or admits its inability to pay debts generally as they become due or (B) upon the declaration by Lender that the same constitutes an Event of Default (which declaration may be made by Lender in its sole and absolute discretion), if Guarantor fails or admits its inability to pay debts generally as they become due;

(viii) (A) if a receiver, liquidator or trustee shall be appointed for Borrower or any SPC Party or if Borrower or any SPC Party shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Borrower or any SPC Party, or if any proceeding for the dissolution or liquidation of Borrower or

any SPC Party shall be instituted; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Borrower or any SPC Party, upon the same not being discharged, stayed or dismissed within thirty (30) days, or (B) upon the declaration by Lender that the same constitutes an Event of Default (which declaration may be made by Lender in its sole and absolute discretion), if a receiver, liquidator or trustee shall be appointed for Guarantor or if Guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Guarantor, or if any proceeding for the dissolution or liquidation of Guarantor shall be instituted; provided, however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Guarantor, upon the same not being discharged, stayed or dismissed within thirty (30) days or if an order for relief is entered

(ix) if Borrower or Guarantor attempts to assign its rights under this Agreement or any of the other Loan Documents or any interest herein or therein in contravention of the Loan Documents;

(x) if Borrower shall be in default beyond any applicable cure periods under any agreement (other than the Loan Documents) creating a Lien on the Property or any part thereof;

(xi) with respect to any term, covenant or provision set forth herein which specifically contains a notice requirement or grace period, if Borrower shall be in default under such term, covenant or condition after the giving of such notice or the expiration of such grace period;

(xii) if Borrower shall continue to be in Default under any of the terms, covenants or provisions set forth in Section 9.1, Section 11.29 or Section 11.30 hereof, or fails to cooperate with Lender in connection with a Secondary Market Transaction in accordance with the terms, covenants and provisions set forth in Section 9.1 hereof, for three (3) days after notice to Borrower from Lender;

(xiii) if any of the assumptions contained in any Insolvency Opinion is or shall become untrue in any material respect;

(xiv) if Borrower breaches any representation, warranty or covenant contained in Section 3.1.24 hereof;

(xv) intentionally omitted;

(xvi) intentionally omitted;

(xvii) A) if a breach or default by Borrower under any condition or obligation contained in any Operating Agreement is not cured within any applicable cure period provided therein, (B) if there occurs any event or condition that gives any party to any Operating Agreement (other than Borrower) the right to terminate or cancel such Operating Agreement and such event or condition is not cured within any applicable cure period under such Operating Agreement, or (C) if any Operating Agreement is terminated or cancelled without Lender's prior consent, the termination or cancellation of which could result in a Material Adverse Effect as reasonably determined by Lender, or (D) if any of the terms, covenants or conditions of any Operating

Agreement shall in any manner be modified, changed, supplemented, altered, or amended without Lender's prior consent, which modification, change, supplementation, alteration or amendment, in each case, could result in a Material Adverse Effect as reasonably determined by Lender;

(xviii) if a material default has occurred and continues beyond any applicable cure period under a Management Agreement and such default permits Manager thereunder to terminate or cancel the Management Agreement;

(xix) if a material default has occurred and continues beyond any applicable cure period under a Franchise Agreement and such default permits Franchisor to terminate or cancel the Franchise Agreement;

(xx) if Borrower ceases to do business as a hotel at the Property or terminates such business for any reason whatsoever (other than temporary cessation in connection with any continuous and diligent renovation or restoration of the Property following a Casualty or Condemnation);

(xxi) if Borrower shall continue to be in Default under any of the other terms, covenants or conditions of this Agreement not specified in clauses (i) to (xx) above, for ten (10) days after notice to Borrower from Lender, in the case of any Default which can be cured by the payment of a sum of money, or for thirty (30) days after notice from Lender in the case of any other Default; provided, however, that if such non monetary Default is susceptible of cure but cannot reasonably be cured within such thirty (30) day period and provided further that Borrower shall have commenced to cure such Default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for such time as is reasonably necessary for Borrower in the exercise of due diligence to cure such Default, such additional period not to exceed sixty (60) days; or

(xxii) if there shall be Default under any of the other Loan Documents beyond any applicable cure periods contained in such Loan Documents, whether as to Borrower, Guarantor or the Property, or if any other such event shall occur or condition shall exist, if the effect of such event or condition is to accelerate the maturity of any portion of the Debt or to permit Lender to accelerate the maturity of all or any portion of the Debt.

(b) Upon the occurrence of an Event of Default (other than an Event of Default described in Section 10.1(a)(vi), (vii) or (viii) above) and at any time thereafter, Lender may, in addition to any other rights or remedies available to it pursuant to this Agreement and the other Loan Documents or at law or in equity, take such action, without notice or demand, that Lender deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, without limitation, declaring the Debt to be immediately due and payable, and Lender may enforce or avail itself of any or all rights or remedies provided in the Loan Documents against Borrower and the Property, including, without limitation, all rights or remedies available at law or in equity; and upon any Event of Default described in Section 10.1(a)(vi), (vii) or (viii) above, the Debt shall immediately and automatically become due and payable, without notice or demand, and Borrower hereby expressly waives any such notice or demand, anything contained herein or in any other Loan Document to the contrary notwithstanding.

## Section 10.2 Remedies.

(a) Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Agreement or any of the other Loan Documents executed and delivered by, or applicable to, Borrower or at law or in equity may be exercised by Lender at any time and from time to time, whether or not all or any portion of the Debt shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or initiated or taken other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to all or any part of the Property. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole and absolute discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, Borrower agrees that, if an Event of Default has occurred and remains outstanding, (i) Lender is not subject to any "one action" or "election of remedies" law or rule, and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its rights and remedies against the Property and the Security Instrument has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Obligations or the Debt has been paid in full.

(b) With respect to Borrower and the Property, nothing contained herein or in any other Loan Document shall be construed as requiring Lender to resort to the Property for the satisfaction of any of the Debt in any order, proportion or priority, and Lender may seek satisfaction out of the Property, or any part thereof, in its sole and absolute discretion in respect of the Debt. In addition, Lender shall have the right from time to time to partially foreclose the Security Instrument in any manner and for any amounts secured by the Security Instrument then due and payable as determined by Lender in its sole and absolute discretion including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose the Security Instrument to recover such delinquent payments or (ii) in the event Lender elects to accelerate less than the entire Outstanding Principal Balance, Lender may foreclose the Security Instrument to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by the Security Instrument as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to the Security Instrument to secure payment of sums secured by the Security Instrument and not previously recovered.

(c) Upon the occurrence of an Event of Default (but without limiting Lender's rights under Section 9.1, Section 11.29 or Section 11.30 hereof), Lender shall have the right from time to time to sever the Note and the other Loan Documents into one or more separate notes, mortgages and other security documents (collectively, the "**Severed Loan Documents**") in such denominations and priority as Lender shall determine in its sole and absolute discretion for purposes of evidencing and enforcing its rights and remedies provided hereunder. Borrower shall execute and deliver to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender shall request in order to effect the

severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender. Borrower hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect the aforesaid severance, Borrower ratifying all that its said attorney shall do by virtue thereof; provided, however, Lender shall not make or execute any such documents under such power until three (3) days after notice has been given to Borrower by Lender of Lender's intent to exercise its rights under such power. Borrower shall be obligated to pay any costs or expenses incurred in connection with the preparation, execution, recording or filing of the Severed Loan Documents and other matters and documentation in connection therewith. The Severed Loan Documents shall not contain any representations, warranties or covenants not contained in the Loan Documents and any such representations and warranties contained in the Severed Loan Documents will be given by Borrower only as of the Closing Date.

(d) Any amounts recovered from the Property or any other collateral for the Loan after the occurrence of an Event of Default may be applied by Lender toward the payment of any principal and/or interest of the Loan and/or any other amounts due under the Loan Documents in such order, proportion and priority as Lender in its sole and absolute discretion shall determine.

**Section 10.3 Right to Cure Defaults.** Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder or under the other Loan Documents or being deemed to have cured any Event of Default, make, do or perform any obligation of Borrower hereunder or under the other Loan Documents in such manner and to such extent as Lender may deem necessary. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property for such purposes. All costs and expenses incurred by Lender in remedying or attempting to remedy such Event of Default or such other breach or default by Borrower or in appearing in, defending, or bringing any action or proceeding shall bear interest at the Default Rate from the date such costs and expenses were incurred to the date reimbursement payment is received by Lender. All such costs and expenses incurred by Lender, together with interest thereon calculated at the Default Rate, shall be deemed to constitute a portion of the Obligations, shall be secured by the liens and security interests provided to Lender under the Loan Documents and shall be immediately due and payable upon demand by Lender therefore.

**Section 10.4 Remedies Cumulative.** The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole and absolute discretion. No delay or omission to exercise any right, power or remedy accruing upon an Event of Default shall impair any such right, power or remedy or shall be construed as a waiver thereof, but any such right, power or remedy may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default shall not be construed to be a waiver of any subsequent Default or Event of Default or to impair any right, power or remedy consequent thereon.

## ARTICLE 11 - MISCELLANEOUS

**Section 11.1 Successors and Assigns.** This Agreement and all agreements, covenants, representations and warranties in this Agreement, by or on behalf of Borrower, shall inure to the benefit of the legal representatives, successors and assigns of Lender.

**Section 11.2 Lender's Discretion.** Whenever pursuant to this Agreement Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Lender and shall be final and conclusive. Prior to a Securitization, whenever pursuant to this Agreement the Rating Agencies are given any right to approve or disapprove, or any arrangement or term is to be satisfactory to the Rating Agencies, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory, based upon Lender's determination of Rating Agency criteria, shall be substituted therefore.

### **Section 11.3 Governing Law.**

(A) THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, THE LOAN WAS MADE BY LENDER AND ACCEPTED BY BORROWER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOAN DELIVERED PURSUANT HERETO WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIEN AND SECURITY INTEREST CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS, AND THIS



AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(B) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE NOTE OR THE OTHER LOAN DOCUMENTS MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT:

**NATIONAL CORPORATE RESEARCH, LTD.  
10 EAST 40<sup>TH</sup> STREET, 10<sup>TH</sup> FLOOR  
NEW YORK, NEW YORK 10016**

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE AGENT IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

**Section 11.4 Modification, Waiver in Writing.** No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement or of any other Loan Document, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to or demand on Borrower shall entitle Borrower to any other or future notice or demand in the same, similar or other circumstances.

**Section 11.5 Delay Not a Waiver.** Neither any failure nor any delay on the part of Lender in insisting upon strict performance of any term, condition, covenant or agreement in, or exercising any right, power, remedy or privilege under, this Agreement or any other Loan Document shall operate as or constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement or any other Loan Document, Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount. Lender shall have the right to waive or reduce any time periods that Lender is entitled to under the Loan Documents in its sole and absolute discretion.

**Section 11.6 Notices.** All notices, demands, requests, consents, approvals or other communications (any of the foregoing, a "Notice") required, permitted, or desired to be given hereunder shall be in writing (a) sent by telefax (with answer back acknowledged), (b) sent by registered or certified mail, postage prepaid, return receipt requested, (c) delivered by hand or (d) delivered by reputable overnight courier addressed to the party to be so notified at its address hereinafter set forth, or to such other address as such party may hereafter specify in accordance with the provisions of this Section 11.6. Any Notice shall be deemed to have been received: (i) if sent by telefax, on the date of sending the telefax if sent during business hours on a Business Day (otherwise on the next Business Day), (ii) if sent by registered or certified mail, on the date of delivery or the date of the first attempted delivery, in either case on a Business Day (otherwise on the next Business Day), (iii) if delivered by hand, on the date of delivery if delivered during business hours on a Business Day (otherwise on the next Business Day), and (iv) if sent by an overnight commercial courier, on the next Business Day, in each case addressed to the parties as follows:

If to Lender: UBS Real Estate Securities Inc.  
1285 Avenue of the Americas  
New York, New York 10019  
Attention: Transaction Manager – Henry Chung  
Facsimile No.: 212-821-2943

with a copy to: Katten Muchin Rosenman LLP  
550 South Tryon Street, Suite 2900  
Charlotte, North Carolina 28202  
Attention: Daniel S. Huffenus, Esq.  
Facsimile No.: 704-344-3056

If to Borrower: Mountain Blue Hotel Group, LLC  
205 Marion Square Plaza  
Fairmont, West Virginia 26554  
Attn: William A. Abruzzino  
Facsimile No.: (304) 534-8427

with a copy to: Freisem, Macon, Swann & Malone LLP

2905 Piedmont Road, N.E., Suite C  
Atlanta, Georgia 30305-2755  
Attn: George Freisem, Esq.  
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**Section 11.7 Trial by Jury.** BORROWER AND LENDER EACH HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER AND LENDER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH PARTY IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.

**Section 11.8 Headings.** The Article and/or Section headings and the Table of Contents in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

**Section 11.9 Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

**Section 11.10 Preferences.** Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Borrower to any portion of the Obligations. To the extent Borrower makes any payment to Lender, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other Person under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the Obligations or a portion thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Lender.

**Section 11.11 Waiver of Notice.** Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Agreement or the other Loan Documents specifically and expressly provide for the giving of notice by Lender to Borrower and except with respect to matters for which Borrower is not, pursuant to the applicable Legal Requirements, permitted to waive the giving of notice. Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Agreement or the other Loan Documents do not specifically and expressly provide for the giving of notice by Lender to Borrower.

**Section 11.12 Remedies of Borrower.** In the event that a claim or adjudication is made that Lender or its agents have acted unreasonably or unreasonably delayed acting in any case where, by law or under this Agreement or the other Loan Documents, Lender or such agent, as the case may be, has an obligation to act reasonably or promptly, Borrower agrees that neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedy shall be limited to commencing an action seeking injunctive relief or declaratory judgment. The parties hereto agree that any action or proceeding to determine whether Lender or its agent has acted reasonably shall be determined by an action seeking declaratory judgment.

**Section 11.13 Expenses; Indemnity.**

(a) Borrower shall pay or, if Borrower fails to pay, reimburse Lender upon receipt of notice from Lender, for all reasonable costs and expenses (including reasonable attorneys' fees and expenses) incurred by Lender in connection with (i) Borrower's ongoing performance of and compliance with Borrower's agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date, including, without limitation, confirming compliance with environmental and insurance requirements; (ii) Lender's ongoing performance of and compliance with all agreements and covenants contained in this Agreement and the other Loan Documents on its part to be performed or complied with after the Closing Date; (iii) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Agreement and the other Loan Documents and any other documents or matters requested by Borrower; (iv) the filing and recording fees and expenses, title insurance and reasonable fees and expenses of counsel for providing to Lender all required legal opinions, and other similar expenses incurred, in creating and perfecting the Liens in favor of Lender pursuant to this Agreement and the other Loan Documents; (v) enforcing or preserving any rights in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation or otherwise, in each case against, under or affecting Borrower, this Agreement, any other Loan Document, the Property, or any other security given for the Loan; (vi) enforcing any obligations of, or collecting any payments due from, Borrower or Guarantor under this Agreement or the other Loan Documents or with respect to the Property or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work out" or of any insolvency or bankruptcy proceedings; and (vii) securing Borrower's compliance with any requests made by Lender pursuant to the provisions of this Agreement, including Section 9.1, Section 11.29 or Section 11.30 hereof; provided, however, that Borrower shall not be liable for the payment of any such costs and expenses to the extent the same arise by reason of the gross negligence, illegal acts, fraud or willful misconduct of Lender. At Lender's discretion, any such costs and expenses due and payable to Lender may be paid to Lender from any amounts in the Clearing Account or the Cash Management Account.

(b) Borrower shall indemnify, defend and hold harmless Lender Indemnitees from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and expenses of counsel for any Lender Indemnitee in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not such Lender Indemnitee shall be designated a party thereto), that may be imposed on, incurred by, or asserted against any Lender Indemnitee in any manner relating to

or arising out of (i) any breach by Borrower of its obligations under, or any misrepresentation by Borrower contained in, this Agreement or the other Loan Documents, (ii) any misstatement or omission in any report, certificate, financial statement, other agreement, instrument or document or other materials or information provided by or on behalf of Borrower pursuant to this Agreement or any other Loan Document or in connection with the Loan, or (iii) the use or intended use of the proceeds of the Loan (collectively, the "**Indemnified Liabilities**"); provided, however, that Borrower shall not have any obligation to the Lender Indemnitees hereunder to the extent that such Indemnified Liabilities arise from the gross negligence, illegal acts, fraud or willful misconduct of the Lender Indemnitees. To the extent that the undertaking to indemnify, defend and hold harmless set forth in the preceding sentence may be unenforceable because it violates any law or public policy, Borrower shall pay the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by the Lender Indemnitees.

(c) Borrower shall pay for or, if Borrower fails to pay, to reimburse Lender for, any fees, costs and expenses of any Rating Agency in connection with any consent, approval, waiver or confirmation obtained from such Rating Agency pursuant to the terms and conditions of this Agreement or any other Loan Document and Lender shall be entitled to require payment of such fees, costs and expenses as a condition precedent to the obtaining of any such consent, approval, waiver or confirmation.

**Section 11.14 Schedules Incorporated.** The Schedules annexed hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

**Section 11.15 Offsets, Counterclaims and Defenses.** Any assignee of Lender's interest in and to this Agreement and the other Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to such documents which Borrower may otherwise have against any assignor of such documents, and no such unrelated offset, counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

**Section 11.16 No Joint Venture or Partnership.** Borrower and Lender intend that the relationships created hereunder and under the other Loan Documents be solely that of borrower and lender. Nothing herein or therein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Borrower and Lender or to grant Lender any interest in the Property other than that of mortgagee, beneficiary or lender.

**Section 11.17 Publicity.** All news releases, publicity or advertising by Borrower or its Affiliates through any media which refers to the Loan, the Loan Documents or Lender or any of its Affiliates shall be subject to the prior approval of Lender. Borrower authorizes Lender to issue press releases, advertisements and other promotional materials in connection with Lender's own promotional and marketing activities, including in connection with a Secondary Market Transaction, and such materials may describe the Loan in general terms or in detail and Lender's participation therein in the Loan.

**Section 11.18 Waiver of Marshalling of Assets.** To the fullest extent permitted by law, Borrower, for itself and its successors and assigns, waives all rights to a marshalling of the assets of Borrower, Borrower's partners, members and others with interests in Borrower, and of the Property, and agrees not to assert any right under any laws pertaining to the marshalling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Lender under the Loan Documents to a sale of the Property for the collection of the Debt without any prior or different resort for collection or of the right of Lender to the payment of the Debt out of the net proceeds of the Property in preference to every other claimant whatsoever.

**Section 11.19 Waiver of Offsets/Defenses/Counterclaims.** Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or its agents or otherwise to offset any obligations to make the payments required by the Loan Documents. No failure by Lender to perform any of its obligations hereunder shall be a valid defense to, or result in any offset against, any payments which Borrower is obligated to make under any of the Loan Documents.

**Section 11.20 Conflict; Construction of Documents; Reliance.** In the event of any conflict between the provisions of this Agreement and any of the other Loan Documents, the provisions of this Agreement shall control. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of the Loan Documents and that such Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same. Borrower acknowledges and agrees that, with respect to the Loan, Borrower shall rely solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Lender or any parent, subsidiary or Affiliate of Lender. Lender shall not be subject to any limitation whatsoever in the exercise of any rights or remedies available to it under any of the Loan Documents or any other agreements or instruments which govern the Loan by virtue of the ownership by it or any parent, subsidiary or Affiliate of Lender of any legal, beneficial or economic interest any of them may acquire in Borrower, and Borrower hereby irrevocably waives the right to raise any defense or take any action on the basis of the foregoing with respect to Lender's exercise of any such rights or remedies. Borrower acknowledges that Lender engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of Borrower or its Affiliates.

**Section 11.21 Brokers and Financial Advisors.** Borrower hereby represents that, except for ValueXpress LLC ("Broker"), it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement. Borrower will pay Broker a commission pursuant to a separate agreement. Borrower shall indemnify, defend and hold Lender harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses of any kind (including Lender's attorneys' fees and expenses) in any way relating to or arising from a claim by any Person (including Broker) that such Person acted on behalf of Borrower or Lender in connection with the transactions contemplated herein. The provisions of this Section 11.21 shall survive the expiration and termination of this Agreement and the payment of the Debt.

**Section 11.22 Exculpation.** Subject to the qualifications below, Lender shall not enforce the liability and obligation of Borrower to perform and observe the obligations contained in this Agreement, the Note, the Security Instrument or the other Loan Documents by any action or proceeding wherein a money judgment shall be sought against Borrower, except that Lender may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Lender to enforce and realize upon its interest under this Agreement, the Note, the Security Instrument and the other Loan Documents, or in the Property, the Rents, or any other collateral given to Lender pursuant to the Loan Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against Borrower only to the extent of Borrower's interest in the Property, in the Rents, and in any other collateral given to Lender, and Lender, by accepting this Agreement, the Note, the Security Instrument and the other Loan Documents, agrees that it shall not sue for, seek or demand any deficiency judgment against Borrower in any such action or proceeding under or by reason of or under or in connection with this Agreement, the Note, the Security Instrument or the other Loan Documents. The provisions of this Section 11.22 shall not, however, (a) constitute a waiver, release or impairment of any obligation evidenced or secured by any of the Loan Documents; (b) impair the right of Lender to name Borrower as a party defendant in any action or suit for foreclosure and sale under the Security Instrument; (c) affect the validity or enforceability of any guaranty or indemnity made in connection with the Loan or any of the rights and remedies of Lender thereunder; (d) impair the right of Lender to obtain the appointment of a receiver; (e) impair the enforcement of the Assignment of Leases; (f) constitute a prohibition against Lender to seek a deficiency judgment against Borrower in order to fully realize the security granted by the Security Instrument or to commence any other appropriate action or proceeding in order for Lender to exercise its rights and remedies against the Property, the Rents or any other collateral given to Lender pursuant to the Loan Documents; or (g) constitute a waiver of the right of Lender to enforce the liability and obligation of Borrower, by money judgment or otherwise, to the extent of any loss, damage, cost, expense, liability, claim or other obligation incurred by Lender (including attorneys' fees and costs reasonably incurred) arising out of or in connection with, and Borrower shall be personally liable for, the following (all such liability and obligation of Borrower for any or all of the following being referred to herein as the "**Borrower's Recourse Liabilities**"):

(i) fraud, intentional or material misrepresentation by Borrower, Guarantor or any Affiliate of Borrower or Guarantor in connection with the Loan;

(ii) the gross negligence or willful misconduct by or on behalf of Borrower, Guarantor or any Affiliate of Borrower or Guarantor or any of their respective agents or representatives in connection with the Loan;

(iii) the breach of any representation, warranty, covenant or indemnification provision in the Environmental Indemnity or in a Security Instrument concerning Environmental Laws and Hazardous Substances and any indemnification of Lender and other Persons with respect thereto in either document;

(iv) the removal or disposal of any portion of the Property after an Event of Default;

(v) the misappropriation, misapplication or conversion by Borrower of (A) any Insurance Proceeds paid by reason of any Casualty, (B) any Awards or other amounts received in connection with a Condemnation of all or a portion of the Property, or (C) any Rents;

(vi) any security deposits, advance deposits or any other deposits collected with respect to the Property which are not delivered to Lender upon a foreclosure of the Property or action in lieu thereof, except to the extent any such security deposits were applied in accordance with the terms and conditions of the applicable Leases prior to the occurrence of the Event of Default that gave rise to such foreclosure or action in lieu thereof;

(vii) Borrower's failure to obtain and maintain in full force and effect fully paid for Policies as required by this Agreement or to pay any Taxes or assessments affecting the Property;

(viii) failure to pay charges for labor or materials or other charges that can create Liens on any portion of the Property;

(ix) Borrower's indemnification of Lender set forth in Section 9.2 hereof;

(x) any material physical waste at the Property;

(xi) any damage or destruction to the Property caused by the acts or omissions of Borrower, Guarantor or any of their principals, officers, agents, employees or contractors;

(xii) the payment of fees or other amounts by Borrower to any of its Affiliates in violation of the Loan Documents; or

(xiii) Borrower's commission of a criminal act.

Notwithstanding anything to the contrary in this Agreement, the Note or any of the other Loan Documents, (A) Lender shall not be deemed to have waived any right which Lender may have under Section 506(a), 506(b) or 1111(b) or any other provisions of the U.S. Bankruptcy Code or any other Bankruptcy Law to file a claim for the full amount of the Debt or to require that all collateral shall continue to secure all of the Obligations in accordance with the Loan Documents, and (B) the Debt shall be fully recourse to Borrower in the event that any of the following occurs (each, a "**Springing Recourse Event**"): (1) Borrower fails to permit on-site inspections of the Property, fails to provide financial information, fails to maintain its status as a single purpose entity or fails to appoint a new property manager upon the request of Lender, in each case as required by, and in accordance with the terms and provisions of, this Agreement and the other Loan Documents; (2) Borrower fails to obtain Lender's prior consent to any Indebtedness or voluntary Lien encumbering the Property or any part thereof or interest therein except to the extent expressly permitted by this Agreement; (3) Borrower fails to obtain Lender's prior consent to any Transfer except to the extent expressly permitted by this Agreement or the Security Instrument; (4) Borrower files a voluntary petition under the Bankruptcy Law; (5) an Affiliate, officer, director, or representative which controls, directly or indirectly, Borrower files, or joins in the filing of, an involuntary petition against Borrower under the Bankruptcy Law, or solicits or causes to be solicited petitioning creditors for any involuntary petition against Borrower from any Person; (6) Borrower files an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it by any other Person under the Bankruptcy



Law, or solicits or causes to be solicited petitioning creditors for any involuntary petition against Borrower from any Person; (7) any Affiliate, officer, director, or representative which controls, directly or indirectly, Borrower consents to or acquiesces in or joins in an application for the appointment of a custodian, receiver, trustee, or examiner for Borrower or any portion of the Property; (8) Borrower makes an assignment for the benefit of creditors, or admits, in writing or in any action or proceeding, its insolvency or inability to pay its debts as they become due; (9) the first full monthly payment of principal and interest on the Note is not paid when due; or (10) unless and until Borrower delivers evidence acceptable to Lender that Borrower has timely filed with the bankruptcy court the notice of satisfaction of all dismissal conditions, and accompanying order, as set forth in Motion to Dismiss dated 8/22/13, Case No. 12-78261-JEM.

As used in this Section 11.22, the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise and the terms “controlled” and “controlling” shall have correlative meanings.

**Section 11.23 Prior Agreements.** This Agreement and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written, including, without limitation, the Mortgage Loan Application dated August 13, 2012 between Borrower and Lender, are superseded by the terms of this Agreement and the other Loan Documents.

**Section 11.24 Servicer.**

(a) At the option of Lender, the Loan may be serviced by a master servicer, primary servicer, special servicer and/or trustee (any such master servicer, primary servicer, special servicer and trustee, together with its agents, nominees or designees, are collectively referred to herein as “Servicer”) selected by Lender and Lender may delegate all or any portion of its responsibilities under this Agreement and the other Loan Documents to Servicer pursuant to a pooling and servicing agreement, servicing agreement, special servicing agreement and/or other agreement providing for the servicing of one (1) or more mortgage loans (collectively, the “Servicing Agreement”) between Lender and Servicer. Borrower shall be responsible for (i) any reasonable set-up fees or any other initial costs and expenses relating to or arising under the Servicing Agreement and (ii) any fees and expenses of Servicer (including, without limitation, attorneys’ fees and disbursements) in connection with any release of the Property, any prepayment, assumption, amendment or modification of the Loan, any documents or matters requested by Borrower, special servicing or work-out of the Loan or enforcement of the Loan Documents. Without limiting the generality of the foregoing, Servicer shall be entitled to reimbursement of costs and expenses as and to the same extent (but without duplication) as Lender is entitled thereto under this Agreement and the other Loan Documents.

(b) Upon notice thereof from Lender, Servicer shall have the right to exercise all rights of Lender and enforce all obligations of Borrower and Guarantor pursuant to the provisions of this Agreement and the other Loan Documents.

(c) Provided Borrower shall have been given notice of Servicer's address by Lender, Borrower shall deliver, or cause to be delivered, to Servicer duplicate originals of all notices and other documents and instruments which Borrower or Guarantor may or shall be required to deliver to Lender pursuant to this Agreement and the other Loan Documents (and no delivery of such notices or other documents and instruments by Borrower or Guarantor shall be of any force or effect unless delivered to Lender and Servicer as provided above).

**Section 11.25 Joint and Several Liability.** If Borrower consists of more than one (1) Person, the representations, warranties, covenants, obligations and liabilities of each such Person shall be joint and several.

**Section 11.26 Creation of Security Interest.** Notwithstanding any other provision set forth in this Agreement, the Note, the Security Instrument or any of the other Loan Documents, Lender may at any time grant a security interest in all or any portion of its rights under this Agreement, the Note, the Security Instrument or any of the other Loan Documents (including, without limitation, the payments owing to it) (a) to any Federal Reserve Bank in accordance with Regulation A of the Board of Governors of the Federal Reserve System or to the central reserve bank or similar authority of any other country to secure any obligation of Lender or its Affiliates to such bank or similar authority or (b) to secure any borrowing by Lender or its Affiliates from any company that purchases or funds financial assets by issuing commercial paper.

**Section 11.27 Intentionally Omitted.**

**Section 11.28 Set-Off.** In addition to any other rights and remedies of Lender provided by the Loan Documents and by law, Lender shall have the right, without prior notice to Borrower, any such notice being expressly waived by Borrower to the extent permitted by applicable law, upon any amount becoming due and payable by Borrower hereunder or under the other Loan Documents (whether at the stated maturity, by acceleration or otherwise) to set-off and appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by Lender or any Affiliate of Lender to or for the credit or the account of Borrower. Lender agrees to promptly notify Borrower after any such set-off and application made by Lender; provided that the failure to give such notice shall not affect the validity of such set-off and application.

**Section 11.29 Component Notes.** Without in any way limiting Lender's other rights under this Agreement or any other Loan Document (including Lender's rights under Section 9.1 and Section 11.30 hereof), Lender shall have the right, at any time and in its sole and absolute discretion, to require Borrower to execute and deliver new component notes (including senior and junior notes) to replace the original note or modify the original note to reflect multiple components of the Loan, which notes may be paid in such order of priority as may be designated by Lender, provided that (a) the aggregate principal amount of such component notes shall, on the date created, equal the Outstanding Principal Balance immediately prior to the creation of such component notes, (b) the weighted average interest rate of all such component notes shall, on the date created, equal the interest rate which was applicable to the Loan immediately prior to the creation of such component notes, and (c) the scheduled debt service payments on all such

component notes shall, on the date created, equal the scheduled debt service payments under the Loan immediately prior to the creation of such component notes. Borrower shall cooperate with all reasonable requests of Lender in order to establish the component notes and shall execute and deliver, and cause to be executed and delivered, such documents as shall reasonably be required by Lender or any Rating Agency in connection therewith, all in form and substance reasonably satisfactory to Lender and, if applicable, satisfactory to such Rating Agency (including, without limitation, the severance of security documents). Borrower hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to establish the component notes as described in this Section 11.29, Borrower ratifying all that its said attorney shall do by virtue thereof; provided, however, Lender shall not make or execute any such documents under such power until three (3) days after notice has been given to Borrower by Lender of Lender's intent to exercise its rights under such power. Lender shall reimburse Borrower for all reasonable third-party costs and expenses incurred by Borrower in connection with the creation of the component notes and all requirements relating thereto.

**Section 11.30 Mezzanine Loan.** Without in any way limiting Lender's other rights under this Agreement or any other Loan Document (including Lender's rights under Section 9.1 and Section 11.29 hereof), Lender shall have the right (the "**Mezzanine Option**") at any time, in its sole and absolute discretion, to divide the Loan into two parts: a mortgage loan (the "**Mortgage Loan**") and one or more mezzanine loans (each individually, a "**Mezzanine Loan**"). In effectuating the foregoing, Lender (in its capacity as the lender under the Mezzanine Loans, "**Mezzanine Lender**") will make one or more mezzanine loans to single purpose, bankruptcy remote entities that own, directly or indirectly, all of the legal, beneficial and economic interests in Borrower (each individually, a "**Mezzanine Borrower**") in the amount of the related Mezzanine Loan; each Mezzanine Borrower will contribute the amount of its Mezzanine Loan and the proceeds of any junior Mezzanine Loan contributed to such Mezzanine Borrower by its immediately junior Mezzanine Borrower to Borrower (Borrower, in its capacity as the borrower under the Mortgage Loan, "**Mortgage Borrower**") or to its immediately senior Mezzanine Borrower, as applicable; and Mortgage Borrower will apply the contribution to pay down the Loan to the amount of the Mortgage Loan. In connection with the Mezzanine Option:

(a) Lender shall have the right to establish different interest rates and debt service payments for the Mortgage Loan and the Mezzanine Loans and to require the payment of the Mortgage Loan and the Mezzanine Loans in such order of priority as may be designated by Lender; provided, that (i) the aggregate principal amount of the Mortgage Loan and the Mezzanine Loans shall equal the Outstanding Principal Balance immediately prior to the creation of the Mortgage Loan and the Mezzanine Loans, (ii) the weighted average interest rate of the Mortgage Loan and the Mezzanine Loans shall, on the date created, equal the interest rate which was applicable to the Loan immediately prior to creation of the Mortgage Loan and the Mezzanine Loans and (iii) the scheduled debt service payments on the Mortgage Loan and the Mezzanine Loans shall, on the date created, equal the scheduled debt service payments under the Loan immediately prior to creation of the Mortgage Loan and the Mezzanine Loans.

(b) Each Mezzanine Borrower shall be a single purpose, bankruptcy remote entity under the criteria established by the Rating Agencies and shall own directly one hundred percent (100%) of the legal, beneficial and economic interests in Mortgage Borrower or its immediately

senior Mezzanine Borrower, as applicable. The security for any Mezzanine Loan shall include a pledge by the related Mezzanine Borrower of one hundred percent (100%) of the direct ownership interests in Mortgage Borrower or its immediately senior Mezzanine Borrower, as applicable.

(c) Borrower, Mortgage Borrower and Mezzanine Borrowers shall cooperate with all reasonable requests of Lender in order to convert the Loan into the Mortgage Loan and the Mezzanine Loans and shall execute and deliver, and cause to be executed and delivered, such documents as shall reasonably be required by Lender or any Rating Agency in connection therewith, all in form and substance reasonably satisfactory to Lender and, if applicable, satisfactory to such Rating Agency (including, without limitation, the delivery of bankruptcy non-consolidation opinions and the modification of organizational documents and loan documents). Each of Borrower, Mortgage Borrower and Mezzanine Borrowers hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to convert the Loan as described in this Section 11.30, each of Borrower, Mortgage Borrower and Mezzanine Borrowers ratifying all that its said attorney shall do by virtue thereof; provided, however, Lender shall not make or execute any such documents under such power until three (3) days after notice has been given to Borrower by Lender of Lender's intent to exercise its rights under such power. Lender shall reimburse Borrower, Mortgage Borrower and Mezzanine Borrower for all reasonable third-party costs and expenses incurred by Borrower, Mortgage Borrower and Mezzanine Borrower in connection with the creation of the Mortgage Loan and Mezzanine Loans and all requirements relating thereto.

#### **Section 11.31 Approvals; Third Parties; Conditions.**

(a) All approval rights retained or exercised by Lender with respect to any Leases, contracts, plans, studies and other matters are solely to facilitate Lender's credit underwriting, and shall not be deemed or construed as a determination that Lender has passed on the adequacy thereof for any other purpose and may not be relied upon by Borrower or any other Person.

(b) This Agreement and the other Loan Documents are for the sole and exclusive use of Borrower and Lender and may not be enforced, nor relied upon, by any other Person. Nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon any Person other than Borrower and Lender any right to insist upon or to enforce the performance or observance of any of the terms, covenants and conditions contained herein or therein. All conditions to the obligations of Lender hereunder or under the other Loan Documents are imposed solely and exclusively for the benefit of Lender and no other Person shall have standing to require satisfaction of such conditions or be entitled to assume that Lender will refuse to make the Loan (or, if applicable, make any advances) or otherwise perform or satisfy such obligations in the absence of strict compliance with any or all of such conditions and no other Person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender at any time in Lender's sole and absolute discretion.

**Section 11.32 Limitation on Liability of Lender's Officers, Employees, etc.** Any obligation or liability whatsoever of Lender which may arise at any time under this Agreement or

any other Loan Document shall be satisfied, if at all, out of Lender's interest in the Property only. No such obligation or liability shall be personally binding upon, nor shall resort for the enforcement thereof be had to, any other asset or property of Lender or the asset or property of any of Lender's shareholders, directors, officers, employees or agents, regardless of whether such obligation or liability is in the nature of contract, tort or otherwise.

**Section 11.33 Certain Additional Rights of Lender (VCOC).** Notwithstanding anything to the contrary contained in this Agreement, Lender shall have:

(a) the right to routinely consult with and advise Borrower's management regarding the significant business activities and business and financial developments of Borrower; provided, however, that such consultations shall not include discussions of environmental compliance programs or disposal of Hazardous Substances. Consultation meetings should occur on a regular basis (no less frequently than quarterly) with Lender having the right to call special meetings at any reasonable times upon reasonable notice;

(b) the right, in accordance with the terms of this Agreement, to examine the books and records of Borrower at any reasonable times upon reasonable notice;

(c) the right, in accordance with the terms of this Agreement, including, without limitation, Section 4.1.6 hereof, to receive monthly, quarterly and year end financial reports, including balance sheets, statements of income, shareholder's equity and cash flow, a management report and schedules of outstanding indebtedness; and

(d) the right, without restricting any other rights of Lender under this Agreement (including any similar right), to approve any acquisition by Borrower of any other significant property (other than personal property required for the day to day operation of the Properties).

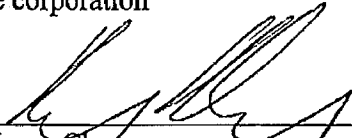
The rights described above in this Section 11.33 may be exercised by any entity which owns and controls, directly or indirectly, substantially all of the interests in Lender. As used in this Section 11.33, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise and the terms "controlled" and "controlling" shall have correlative meanings.

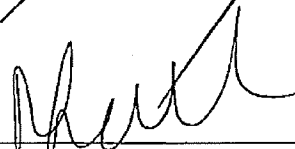
[NO FURTHER TEXT ON THIS PAGE]

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

**LENDER:**

**UBS REAL ESTATE SECURITIES INC.**, a Delaware corporation

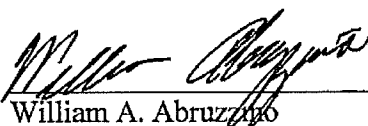
By:   
Henry Chung  
Managing Director

By:   
Racquel Small  
Director

**BORROWER:**

**MOUNTAIN BLUE HOTEL GROUP, LLC**, a  
Georgia limited liability company

By: Tara Hotel Management, Inc., a Georgia  
corporation, its manager

By:   
\_\_\_\_\_  
William A. Abruzzo  
President

**SCHEDULE I**  
**(RENT ROLL)**

None.



**SCHEDULE II**  
**(REQUIRED REPAIRS)**

None

**SCHEDULE III**

**Rent Roll**



Loan Application - Borrower Organization Chart

**1. Borrower Organizational Chart**

**PLEASE COMPLETE ALL INFORMATION**

**BORROWER**  
 Name: Mountain Blue Hotel Group, LLC  
 Entity Type: GA LLC

**GENERAL PARTNER, MANAGER OR MANAGING MEMBER**  
 Name: Tara Hotel Management, Inc.  
 Entity Type: GA corporation  
 Percentage: 0 %  
 Please Diagram Ownership at Bottom of Page

Name: William A. Abruzzino  
 Percent: 1 %

Name: AA Property, LLC  
 Percent: 12 %  
 (See Exhibit "A")

Name: Rebecca A. Abruzzino  
 Percent: 29 %

Name: Peachtree Village Partners, LLC  
 Percent: 6 %  
 (See Exhibit "B")

Name: Martha Hughes  
 Percent: 10 %

Name: Rebecca A. Abruzzino\*\*  
 Percent: 10 %

Name: Martha Hughes \*  
 Percent: 10 %

Name: Mark A. Abruzzino  
 Percent: 10 %

Name: Judy Nunnally  
 Percent: 10 %

Name: \_\_\_\_\_  
 Percent: \_\_\_\_\_ %

Name: Jaxon Smalley  
 Percent: 2 %

Name: \_\_\_\_\_  
 Percent: \_\_\_\_\_ %

**PLEASE LIST GENERAL PARTNER, MANAGER OR MANAGING MEMBER OWNERSHIP BELOW**

Name: \_\_\_\_\_  
 Percent: \_\_\_\_\_ %

Name: \_\_\_\_\_  
 Percent: \_\_\_\_\_ %

Name: \_\_\_\_\_  
 Percent: \_\_\_\_\_ %

Name: \_\_\_\_\_  
 Percent: \_\_\_\_\_ %

\* as Trustee of the William A. Abruzzino and Rebecca A. Abruzzino Generation Skipping Trust

\*\* as Trustee of the Robert A. Abruzzino Irrevocable Trust

EXHIBIT "A"

**1. Borrower Organizational Chart**

PLEASE COMPLETE ALL INFORMATION

BORROWER  
Name: AA Property, LLC  
Entity Type: WV LLC

GENERAL PARTNER, MANAGER OR  
MANAGING MEMBER  
Name: Larry Puccio  
Entity Type: Managing Member  
Percentage: 12 %  
Please Diagram Ownership at Bottom of  
Page

Name: Larry Puccio  
Percent: 50 %

Name: \_\_\_\_\_  
Percent: \_\_\_\_\_ %

Name: Joe Manchin III  
Percent: 50 %

Name: \_\_\_\_\_  
Percent: \_\_\_\_\_ %

Name: \_\_\_\_\_  
Percent: \_\_\_\_\_ %

Name: \_\_\_\_\_  
Percent: \_\_\_\_\_ %

Name: \_\_\_\_\_  
Percent: \_\_\_\_\_ %

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Percent: \_\_\_\_\_ %

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Percent: \_\_\_\_\_ %

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Percent: \_\_\_\_\_ %

Name: \_\_\_\_\_  
Percent: \_\_\_\_\_ %

Name: \_\_\_\_\_  
Percent: \_\_\_\_\_ %

PLEASE LIST GENERAL PARTNER, MANAGER OR  
MANAGING MEMBER OWNERSHIP BELOW

Name: \_\_\_\_\_  
Percent: \_\_\_\_\_ %

Name: \_\_\_\_\_  
Percent: \_\_\_\_\_ %

Name: \_\_\_\_\_  
Percent: \_\_\_\_\_ %

Name: \_\_\_\_\_  
Percent: \_\_\_\_\_ %

EXHIBIT "B"

**1. Borrower Organizational Chart**

PLEASE COMPLETE ALL INFORMATION

BORROWER
Name: <u>Peachtree Village Partners, LLC</u>
Entity Type: <u>GA LLC</u>

GENERAL PARTNER, MANAGER OR MANAGING MEMBER
Name: <u>George H. Freisen</u>
Entity Type: <u>Managing Member</u>
Percentage: <u>6</u> %
Please Diagram Ownership at Bottom of Page

Name: <u>George H. Freisen</u>
Percent: <u>50</u> %

Name: _____
Percent: _____ %

Name: <u>Allen C. Freisen</u>
Percent: <u>50</u> %

Name: _____
Percent: _____ %

Name: _____
Percent: _____ %

Name: _____
Percent: _____ %

Name: _____
Percent: _____ %

Name: _____
Percent: _____ %

Name: _____
Percent: _____ %

Name: _____
Percent: _____ %

Name: _____
Percent: _____ %

Name: _____
Percent: _____ %

PLEASE LIST GENERAL PARTNER, MANAGER OR MANAGING MEMBER OWNERSHIP BELOW
--

Name: _____
Percent: _____ %

Name: _____
Percent: _____ %

Name: _____
Percent: _____ %

Name: _____
Percent: _____ %

**SCHEDULE IV**

**(DESCRIPTION OF REA)**

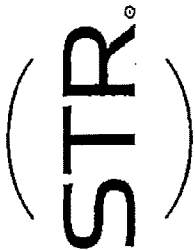
Declaration of Operation and Easement Agreement dated as of June 15, 2006 and recorded in Deed Book 1319, Page 503 among the Land Records of Monongalia County, West Virginia, as amended by that certain Modification No. 1 to the Declaration of Operation and Easement Agreement dated April 9, 2007 and recorded in Deed Book 1341, Page 131.

**SCHEDULE V**

**(UPDATED INFORMATION)**

1. Any proposed program for the renovation, improvement or development of the Property, or any part thereof, including the estimated cost thereof and the method of financing to be used.
2. The general competitive conditions to which the Property is or may be subject.
3. Management of the Property.
4. Occupancy rate expressed as a percentage for each of the last five (5) years.
5. Principal businesses, occupations and professions carried on, in or from the Property.
6. Number of tenants occupying 10% or more of the total rentable square footage of the Property, the principal business of each such tenant, and the principal provisions of the Leases with such tenants (including, but not limited to: rent per annum, expiration date, and renewal options).
7. The average effective annual rent per square foot or unit for each of the last three (3) years.
8. Schedule of the lease expirations for each of the following ten (10) years stating:
  - (a) The number of tenants whose leases will expire.
  - (b) The total area in square feet covered by such Leases.
  - (c) The annual rent represented by such Leases.
  - (d) The percentage of gross annual rent represented by such Leases.

**SCHEDULE VI**  
**(Smith Travel Research Reports form)**



United Kingdom  
Blue Fin Building  
110 Southwark Street  
London SE1 0TA  
Phone: +44 (0)20 7922 1930  
Fax: +44 (0)20 7922 1931  
www.strglobal.com

United States  
735 East Main Street  
Hendersonville  
TN 37075  
Phone: +1 (615) 824 8664  
Fax: +1 (615) 824 3848  
www.str.com

# Hilton Garden Inn Morgantown Weekly STAR Report

For the Week of: June 23, 2013 - June 29, 2013

STR #: 60154

Date Created: July 02, 2013

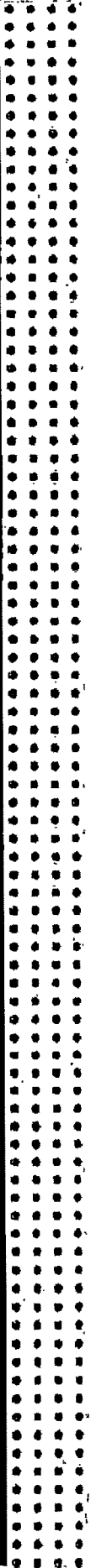
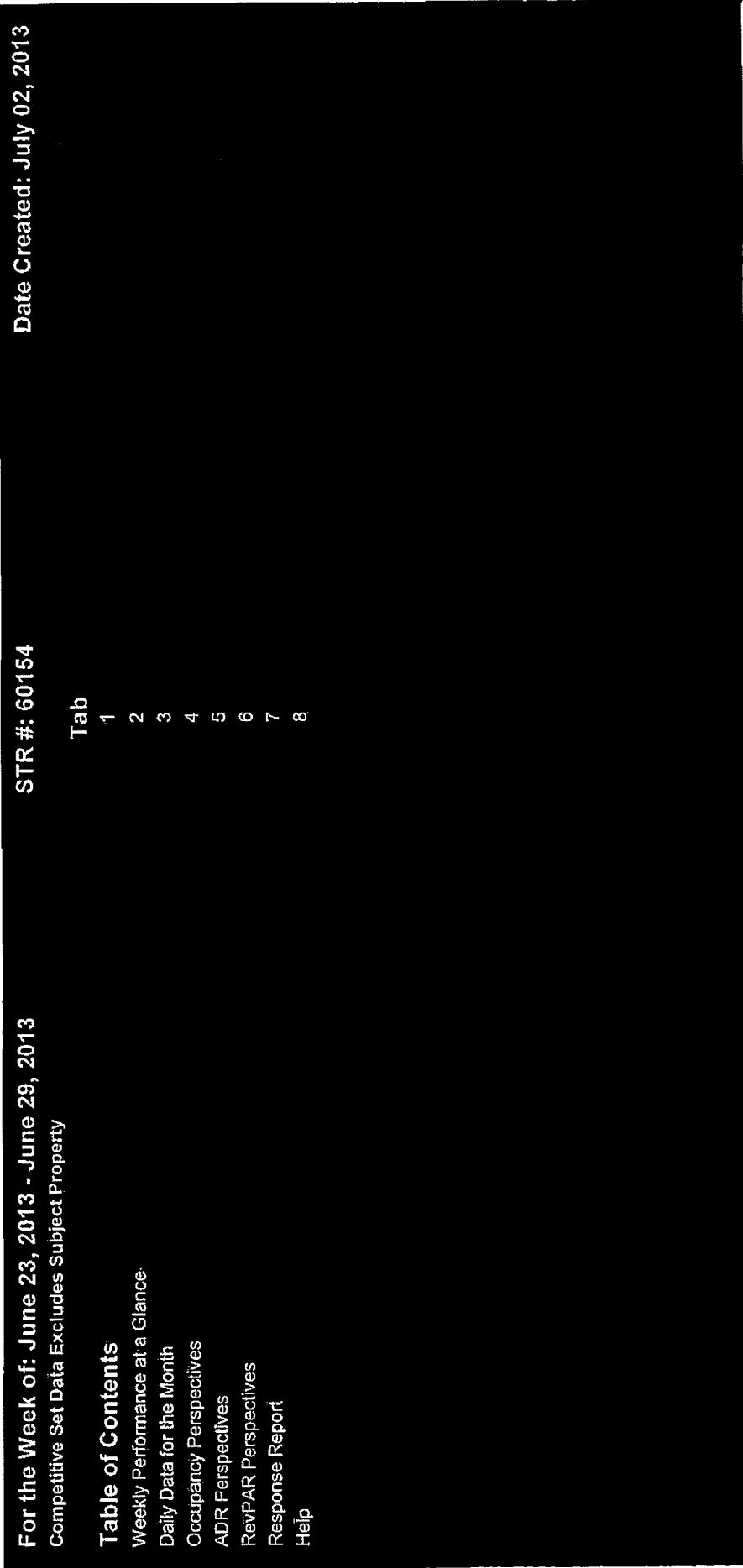
Competitive Set Data Excludes Subject Property

## Table of Contents

- Weekly Performance at a Glance
- Daily Data for the Month
- Occupancy Perspectives
- ADR Perspectives
- RevPAR Perspectives
- Response Report
- Help

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### Tab 2 - Weekly Performance at a Glance - My Property vs. Competitive Set

Hilton Garden Inn Morgantown 150 Suncrest Towne Center Dr Morgantown, WV 26505-1827 Phone: (304) 225-3500  
 STR # 60154 Chain ID: 000043606 Mgt Co: None Owner: None  
 For the Week of: June 23, 2013 - June 29, 2013 Date Created: July 02, 2013

**June 23, 2013 - June 29, 2013**

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Total
	% Chg	% Chg	% Chg	% Chg	% Chg	% Chg	% Chg	% Chg
My Property	75.4%	99.2%	99.2%	99.2%	96.6%	73.7%	80.5%	89.1%
Comp Set	52.6%	90.1%	84.6%	86.2%	68.0%	68.0%	74.1%	73.4%
Index (MPI)	143.5	123.7	116.9	115.0	142.1	108.4	108.7	121.4
ADR	104.99	121.92	127.18	123.99	109.03	98.20	93.80	112.61
Comp Set	103.32	100.25	102.09	102.49	97.89	90.80	96.85	99.19
Index (ARI)	101.6	121.6	124.6	121.0	111.4	108.1	96.9	113.5
RevPAR	79.19	120.89	126.10	122.94	105.33	72.40	75.52	100.34
Comp Set	54.32	80.34	86.58	88.36	66.96	61.73	71.73	72.80
Index (RGI)	145.8	150.5	145.6	139.1	158.3	117.3	105.3	137.8

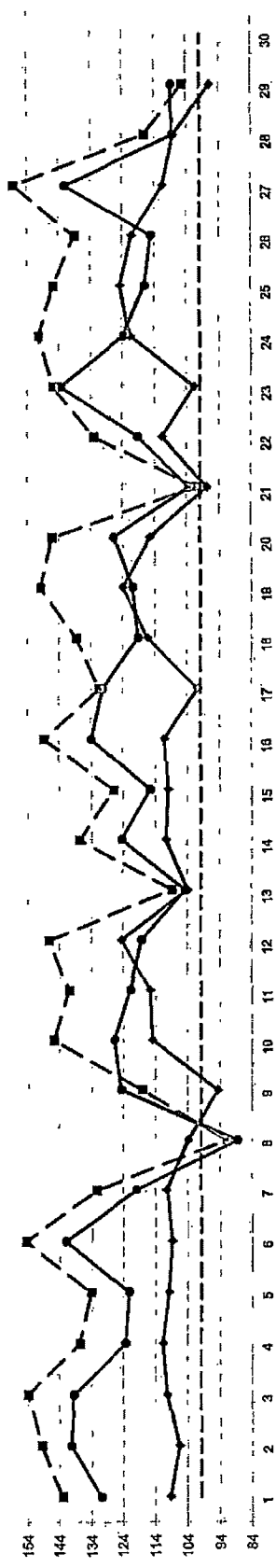
**Running 28 Days (by Day of Week)**

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Total
	% Chg	% Chg	% Chg	% Chg	% Chg	% Chg	% Chg	% Chg
My Property	66.3%	95.1%	99.4%	99.6%	92.8%	84.5%	82.6%	88.7%
Comp Set	48.8%	73.2%	82.6%	83.6%	72.9%	74.1%	76.9%	73.1%
Index (MPI)	135.8	130.0	120.3	119.0	128.3	114.1	107.7	121.3
ADR	104.66	114.11	123.27	123.43	111.05	105.73	105.05	113.25
Comp Set	100.89	102.14	105.35	103.14	101.07	98.49	99.41	101.61
Index (ARI)	103.7	111.7	117.0	119.7	109.9	107.4	105.7	111.5
RevPAR	69.41	108.55	122.49	122.91	103.05	89.38	87.02	100.40
Comp Set	49.27	74.76	87.01	86.27	73.08	72.95	76.47	74.26
Index (RGI)	140.9	145.2	140.8	142.5	141.0	122.5	113.8	135.2

**Tab 3 - Daily Data for the Month**

Hilton Garden Inn Morgantown 150 Sunnyside Towne Center Dr Morgantown, WV 26505-1827 Phone: (304) 225-8550  
 STR # 60164 Chain ID: 000043608 Mtj Co. Name: Chwarr, Nena  
 For the Week of: June 23, 2015 - June 29, 2015 Data Created: July 02, 2015

Daily Indexes for the Month of June



—◆— Occupancy Index —■— RevPAR Index

Occupancy (%)	Jun 1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
My Property	84.7	91.0	92.0	92.0	92.0	92.0	92.0	92.0	92.0	92.0	92.0	92.0	92.0	92.0	92.0	92.0	92.0	92.0	92.0	92.0	92.0	92.0	92.0	92.0	92.0	92.0	92.0	92.0	92.0	
Comp Set	84.7	91.0	92.0	92.0	92.0	92.0	92.0	92.0	92.0	92.0	92.0	92.0	92.0	92.0	92.0	92.0	92.0	92.0	92.0	92.0	92.0	92.0	92.0	92.0	92.0	92.0	92.0	92.0	92.0	
Index (A/R)	139.9	148.4	159.9	165.3	172.3	182.1	192.8	204.7	218.1	233.0	249.5	267.6	287.4	308.9	332.1	357.1	383.0	410.0	438.0	467.0	497.0	528.0	560.0	593.0	627.0	662.0	698.0	735.0	773.0	
% Chg																														
My Property	-13.0	8.1	1.1	-1.7	0.0	0.0	-1.7	0.9	4.9	-9.3	-11.4	-0.8	0.0	-12.4	14.4	-3.1	24.8	-3.4	-0.8	-4.8	20.8	-9.0	0.0	-1.1	0.0	-0.8	10.7	-8.4	-19.5	
Comp Set	24.2	-15.1	-7.9	-15.9	-11.6	-19.6	-12.3	-13.5	-37.5	-29.8	-16.3	-11.5	-15.8	-4.5	-3.9	-14.0	-21.6	-14.6	-14.4	-10.6	-15.8	-15.4	-16.5	-17.7	-11.2	-12.7	10.4	36.4	11.5	4.6
Index (A/R)	-30.0	-36.7	-15.1	18.7	13.4	22.2	14.7	-7.6	46.6	26.3	16.5	13.0	4.1	18.8	0.9	45.0	26.5	16.1	15.8	35.4	8.1	18.3	21.3	21.9	12.7	10.4	36.4	11.5	4.6	

ADR	Jun 1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
My Property	104.60	108.03	113.00	119.70	118.16	114.53	116.89	107.26	97.71	111.74	124.23	127.17	102.95	108.08	108.89	108.78	108.59	124.42	110.69	96.02	111.03	104.89	121.82	127.18	123.88	106.03	68.20	93.80	68.20	93.80
Comp Set	95.86	96.58	103.41	107.19	107.61	105.25	103.32	103.15	97.20	107.41	122.16	105.26	88.69	97.34	97.74	107.47	104.67	100.39	94.06	99.19	89.62	108.32	100.25	102.09	102.48	97.89	90.90	96.85	96.85	
Index (A/R)	109.2	109.5	110.2	111.7	109.8	108.8	109.4	109.8	119.4	105.0	115.7	124.5	109.9	110.9	109.9	111.0	109.9	119.3	123.9	115.4	115.4	111.0	101.6	121.9	121.0	111.4	109.3	98.9	98.9	
% Chg																														
My Property	-0.1	-2.3	-6.0	-2.0	1.2	2.9	2.0	1.2	-15.2	-1.7	5.5	6.2	-2.8	3.5	8.7	1.4	-10.7	-2.3	4.1	3.1	14.6	-6.8	4.7	3.3	6.8	5.5	-3.8	-4.4	-12.1	
Comp Set	-4.3	0.2	5.0	8.2	12.6	12.3	0.2	2.9	14.6	-1.3	8.9	4.5	-5.4	-5.7	-0.5	-11.5	-3.6	-4.9	-4.9	-3.6	-3.0	-17.0	-5.9	-18.4	-3.6	2.9	3.8	-1.8	-6.8	
Index (A/R)	-1.9	-2.4	-9.5	-10.1	-5.4	-1.9	-1.7	-5.0	-3.4	-3.4	1.7	-7.8	-2.0	3.1	1.9	-18.5	-3.9	2.9	2.9	-3.0	-17.0	-5.9	-18.4	-3.6	2.9	3.8	-1.8	-6.8	-12.1	

RevPAR	Jun 1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
My Property	10.54	11.04	11.30	11.70	11.81	11.59	11.59	10.77	9.45	11.74	12.42	12.71	10.29	10.80	10.89	10.87	12.44	11.06	9.60	11.03	10.49	12.18	12.64	10.33	72.40	75.52	68.20	93.80	68.20	93.80
Comp Set	91.91	93.28	93.45	93.91	93.00	92.79	91.54	84.95	80.27	93.65	97.33	98.42	78.88	89.11	88.41	93.21	79.80	87.23	82.32	74.92	73.40	82.78	80.34	84.59	83.96	86.96	81.73	71.73	71.73	
Index (R/P)	114.8	118.9	121.9	125.7	126.8	125.1	125.1	125.1	111.1	111.1	111.1	111.1	111.1	111.1	111.1	111.1	111.1	111.1	111.1	111.1	111.1	111.1	111.1	111.1	111.1	111.1	111.1	111.1	111.1	
% Chg																														
My Property	-16.4	-13.5	-6.8	-2.0	1.2	1.1	2.8	8.1	-22.3	-12.9	4.6	6.2	-14.8	18.5	3.4	26.4	-13.7	-3.1	-0.9	18.3	-22.4	-6.8	-7.9	2.3	0.6	4.8	7.0	-17.0	-29.2	
Comp Set	18.6	-14.9	-8.5	-6.0	-0.7	-0.7	-11.0	16.8	-26.3	-30.8	-11.4	-7.5	-11.2	1.0	-0.6	-14.5	-16.0	-11.3	-16.8	-8.3	-13.5	-16.2	-15.1	-12.9	-8.1	-6.6	-19.8	-24.1	-27.3	
Index (R/P)	-31.3	-35.4	4.1	7.6	1.9	11.9	10.7	-8.2	8.4	25.8	18.1	14.9	-4.0	17.3	4.0	47.7	1.5	8.3	18.1	30.6	-10.4	11.3	8.7	17.4	19.0	14.4	34.2	9.4	-2.6	

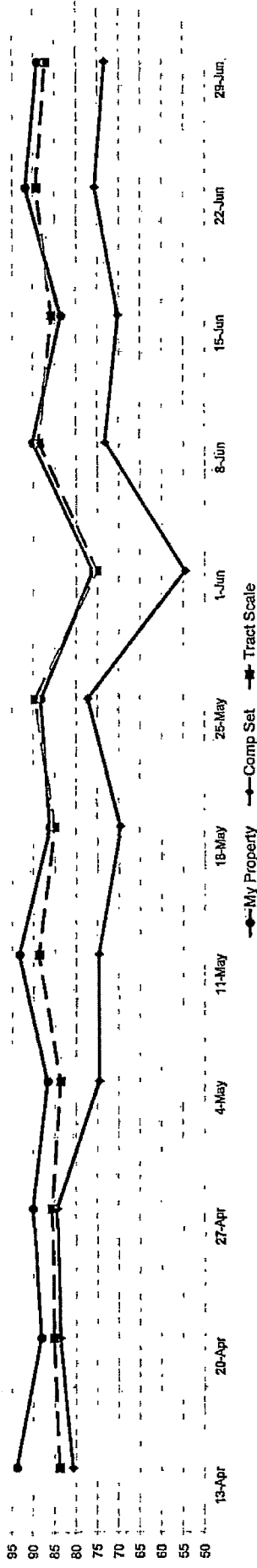
\* See "Help" tab for explanation.

### Tab 4 - Occupancy Perspectives

Hilton Garden Inn Morgantown 150 Suncrest Towne Center Dr Morgantown, WV 26505-1627 Phone: (304) 225-9500  
 STR # 60154 Chain ID: 000043808 Mgt Cc: None Owner: None  
 For the Week of: June 23, 2013 - June 29, 2013 Data Created: July 02, 2013

Tract Scale\*: West Virginia North Upscale Chains

Weekly Occupancy (%) - Apr 07, 2013 to Jun 29, 2013



Occ (%)	Jun							Current Week							Run Week 28	Run MTD
	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa		
My Property	82.0	85.8	88.7	90.9	88.0	86.0	87.2	89.0	87.9	88.3	88.6	89.1	89.2	88.2	87.3	87.0
Comp Set	71.0	81.1	81.8	83.2	84.9	87.5	88.2	84.4	82.0	82.6	83.0	83.2	83.2	83.2	83.0	83.0
Tract Scale	72.0	82.0	82.0	82.0	82.0	82.0	82.0	82.0	82.0	82.0	82.0	82.0	82.0	82.0	82.0	82.0

Index (MPI)	Jun							Current Week							Run Week 28	Run MTD
	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa		
My Property	151	151	151	151	151	151	151	151	151	151	151	151	151	151	151	151
Comp Set	140.4	139.6	123.3	122.3	142.1	119.9	109.9	124.7	129.9	121.9	118.2	104.8	124.5	133.9	130.4	118.2
Tract Scale	86.4	110.2	104.3	107.3	108.1	104.1	104.1	63.1	94.8	95.5	101.3	101.7	90.1	100.1	105.4	102.3

Index % Chg	Jun							Current Week							Run Week 28	Run MTD
	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa		
My Property	7.2	-3.2	-2.5	0.2	-1.0	2.3	0.1	0.9	-1.5	-1.0	-0.9	-0.2	1.2	-0.8	-2.7	-1.0
Comp Set	15.1	15.1	15.1	15.1	15.1	15.1	15.1	15.1	15.1	15.1	15.1	15.1	15.1	15.1	15.1	15.1
Tract Scale	7.2	-3.2	-2.5	0.2	-1.0	2.3	0.1	0.9	-1.5	-1.0	-0.9	-0.2	1.2	-0.8	-2.7	-1.0

Rank	Jun							Current Week							Run Week 28	Run MTD
	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa		
Your rank	1 of 5	1 of 5	1 of 5	1 of 5	1 of 5	1 of 5	1 of 5	1 of 5	1 of 5	1 of 5	1 of 5	1 of 5	1 of 5	1 of 5	1 of 5	1 of 5
Occ % Chg	2 of 5	1 of 5	1 of 5	1 of 5	1 of 5	1 of 5	1 of 5	1 of 5	1 of 5	1 of 5	1 of 5	1 of 5	1 of 5	1 of 5	1 of 5	1 of 5

\* See 'Help' tab for explanation.

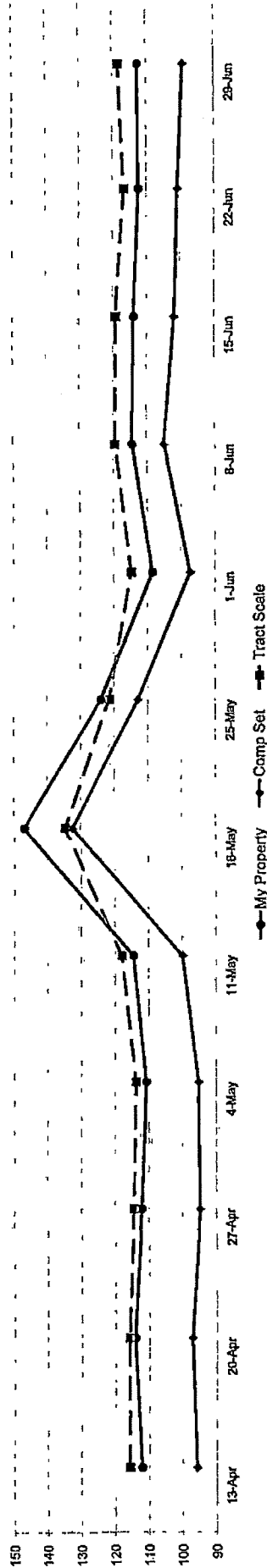
SMITH TRAVEL RESEARCH, Inc

### Tab 5 - ADR Perspectives

Hilton Garden Inn Morgantown 160 Suncrest Towne Center Dr Morgantown, WV 26505-1827 Phone: (304) 225-9500  
 STR # 60154 Chain ID: 000043806 Mgt Co: None Owner: None  
 For the Week of: June 23, 2013 - June 29, 2013 Date Created: July 02, 2013

Tract Scale\*: West Virginia North Upscale Chain

Weekly ADR - Apr 07, 2013 to Jun 29, 2013



ADR	Jun							Current Week							Current Week	Run 28	Run MTD														
	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa																	
My Property	108.05	113.59	119.70	116.16	114.53	115.98	107.25	97.71	111.74	124.26	127.17	109.35	105.08	108.46	103.30	121.45	124.42	119.69	96.02	111.03	104.59	121.62	122.18	123.98	105.03	98.20	63.60	112.51	113.25	112.07	
Comp Set	93.56	103.41	107.19	105.21	105.25	104.56	103.32	100.15	97.20	107.41	102.16	105.29	98.39	97.34	97.73	107.47	104.87	100.38	94.06	94.16	89.82	104.32	100.26	101.89	102.49	97.80	90.40	66.85	89.19	101.81	101.43
Tract Scale	113.68	119.28	125.05	124.27	119.53	117.73	113.70	118.83	121.89	122.93	124.16	115.15	114.41	113.84	110.29	121.54	121.69	113.31	113.81	113.51	111.59	120.11	121.52	122.82	119.39	115.87	114.03	118.34	118.39	118.25	

ADR % Chg	Jun							Current Week							Current Week	Run 28	Run MTD													
	2	3	4	5	6	7	8	9	10	11	12	13	14	15				16	17	18	19	20	21	22	23	24	25	26	27	28
My Property	-2.3	-3.0	-2.0	1.2	2.9	2.0	1.2	-15.2	-1.7	5.5	6.2	-2.6	3.5	6.7	1.4	-10.7	-2.3	-0.1	-2.1	-14.8	-6.8	-2.8	0.5	5.5	-2.9	-0.4	-12.1	-1.9	-1.4	-1.5
Comp Set	0.2	5.0	6.2	12.6	12.3	0.2	-2.9	-14.6	-1.4	5.9	4.5	5.4	6.7	3.5	-0.5	-11.3	3.8	-2.9	1.6	2.7	-0.9	1.0	0.3	-1.0	-0.7	-0.5	0.5	3.4	3.3	
Tract Scale	6.0	2.9	5.5	6.8	3.0	1.9	-4.8	6.6	5.5	4.3	5.9	0.7	3.2	7.0	-1.1	-2.7	3.6	2.0	-0.5	1.4	-0.4	0.2	2.7	1.2	-0.3	1.5	-5.1	-4.4	2.3	

Index (ARI)	Jun							Current Week							Current Week	Run 28	Run MTD															
	2	3	4	5	6	7	8	9	10	11	12	13	14	15				16	17	18	19	20	21	22	23	24	25	26	27	28	29	
Comp Set	106.5	110.2	111.7	109.6	109.6	110.4	103.8	94.7	115.0	115.7	124.5	103.9	110.5	109.9	111.0	100.9	116.3	123.9	115.4	97.5	111.8	101.6	121.5	124.6	121.0	111.4	105.1	96.9	94.0	101.5	104.7	
Tract Scale	93.2	95.6	95.7	95.1	95.7	95.4	94.3	84.3	82.4	91.8	101.1	102.4	95.0	95.3	82.3	85.4	92.3	100.3	102.1	86.2	84.5	97.7	94.0	101.5	104.7	101.0	91.2	84.9	82.2	92.2	95.2	95.5

Index % Chg	Jun							Current Week							Current Week	Run 28	Run MTD														
	2	3	4	5	6	7	8	9	10	11	12	13	14	15				16	17	18	19	20	21	22	23	24	25	26	27	28	29
Comp Set	-2.4	-0.6	-0.4	-0.1	-0.4	1.8	-3.7	-26.0	-0.4	-0.4	1.7	-7.5	-2.0	3.1	1.9	-19.8	-5.9	2.9	-3.6	-17.0	-5.9	-10.4	-3.4	2.9	3.6	-3.1	-1.9	-6.9	-7.0	-0.4	5.2
Tract Scale	-2.9	-7.7	-7.1	-5.3	-5.0	0.0	2.9	-20.5	-6.8	1.1	0.4	-3.4	0.3	-0.3	2.5	-8.2	-5.7	-2.1	-1.6	-15.9	-6.4	-7.0	-0.4	5.2	5.7	-4.2	-3.5	-3.0	-3.5	-3.3	-3.7

Rank	Jun							Current Week							Current Week	Run 28	Run MTD														
	2	3	4	5	6	7	8	9	10	11	12	13	14	15				16	17	18	19	20	21	22	23	24	25	26	27	28	29
Year Rank	3 of 5	2 of 5	2 of 5	3 of 5	2 of 5	2 of 5	2 of 5	3 of 5	3 of 5	3 of 5	2 of 5	4 of 5	3 of 5	3 of 5	3 of 5	4 of 5	4 of 5	3 of 5	2 of 5	5 of 5	4 of 5	4 of 5	3 of 5	1 of 5	1 of 5	1 of 5	1 of 5	1 of 5	3 of 5	3 of 5	3 of 5
ADR % Chg	3 of 5	5 of 5	4 of 5	4 of 5	5 of 5	1 of 5	1 of 5	1 of 5	1 of 5	1 of 5	1 of 5	1 of 5	2 of 5	2 of 5	2 of 5	2 of 5	3 of 5	3 of 5	2 of 5	5 of 5	4 of 5	4 of 5	3 of 5	2 of 5	2 of 5	2 of 5	2 of 5	2 of 5	3 of 5	3 of 5	3 of 5

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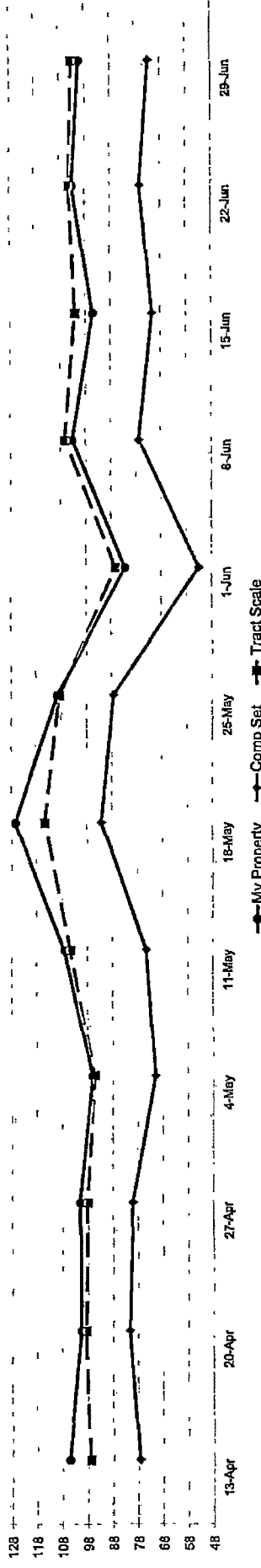
\* See "Help" tab for explanation.

**Tab 6 - RevPAR Perspectives**

Hilton Garden Inn Morgantown 150 Suncrest/Towhee Center Dr Morgantown, WV 26505-1827 Phone: (304) 225-9500  
 STR # 60154 Chain ID: 000043608 Mgt Co: None Owner: None  
 For the Week of: June 23, 2013 - June 29, 2013 Date Created: July 02, 2013

Tract Scale: West Virginia North Upscale Chain

**Weekly RevPAR - Apr 07, 2013 to Jun 29, 2013**



● My Property    □ Comp Set    ◆ Tract Scale

RevPAR	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
My Property	84.73	113.03	118.70	116.18	112.59	115.86	76.17	94.85	85.84	123.23	127.17	85.25	89.21	84.31	78.09	104.83	120.92	123.36	109.01	74.05	110.00	75.19	120.89	126.10	122.04	103.31	72.40	71.32
Comp Set	43.28	73.45	66.91	93.00	72.79	97.54	84.68	48.27	55.63	87.33	88.42	78.48	69.11	68.41	53.21	76.60	87.23	82.32	74.52	73.40	82.78	54.32	80.34	88.58	83.38	66.86	61.73	71.73
Tract Scale	70.61	107.34	119.83	122.62	108.77	113.07	99.73	69.98	107.89	120.37	122.07	99.69	85.49	95.70	86.80	107.54	117.86	120.74	107.48	87.51	109.32	72.81	115.80	120.15	116.16	103.09	85.12	87.95

RevPAR % Chg	Jun
My Property	13.5
Comp Set	-14.8
Tract Scale	13.9

Index (RCI)	Jun
Comp Set	149.8
Tract Scale	91.7

Index % Chg	Jun
Comp Set	33.4
Tract Scale	-0.1

Rank	Jun
Your Rank	1 of 5
RevPAR % Chg	2 of 5

Current Week	Su	Mo	Tu	We	Th	Fr	Sa
23	23	24	25	26	27	28	29
Run	75.19	120.89	126.10	122.04	103.31	72.40	71.32
MTD	54.32	80.34	88.58	83.38	66.86	61.73	71.73
YTD	72.81	115.80	120.15	116.16	103.09	85.12	87.95

Current Week	Su	Mo	Tu	We	Th	Fr	Sa
23	23	24	25	26	27	28	29
Run	-7.6	2.3	6.8	4.8	7.8	-17.0	-8.2
MTD	-15.1	-12.9	-8.1	-8.0	-19.8	-24.1	-27.3
YTD	-2.8	0.2	1.8	-2.5	-0.3	-8.9	-17.2

Current Week	Su	Mo	Tu	We	Th	Fr	Sa
23	23	24	25	26	27	28	29
Run	143.0	150.5	145.6	139.1	158.3	117.3	105.3
MTD	109.8	104.4	105.0	104.0	102.2	76.1	77.3
YTD	97.2	96.9	96.9	96.9	96.9	96.9	96.9

Current Week	Su	Mo	Tu	We	Th	Fr	Sa
23	23	24	25	26	27	28	29
Run	6.7	17.4	18.0	14.4	34.2	9.4	-2.6
MTD	0.0	2.1	4.8	7.7	7.9	-10.9	-14.5
YTD	0.0	2.1	4.8	7.7	7.9	-10.9	-14.5

Current Week	Su	Mo	Tu	We	Th	Fr	Sa
23	23	24	25	26	27	28	29
Run	2.0	1.6	1.6	2.0	1.6	1.6	2.0
MTD	2.0	1.6	1.6	2.0	1.6	1.6	2.0
YTD	2.0	1.6	1.6	2.0	1.6	1.6	2.0

\* See 'Help' tab for explanation.

# Tab 7 - Response Report

Hilton Garden Inn Morgantown 150 Sumcrest Towne Center Dr Morgantown, WV 26505-1827 Phone: (304) 225-9500  
 STR # 60154 Chain ID: 000043806 Mgt. Co: None Owner: None  
 For the Week of: June 23, 2013 - June 29, 2013 Date Created: July 02, 2013

**This Year**  
 May 27th - Memorial Day  
 Jun 16th - Father's Day

**Last Year**  
 May 28th - Memorial Day  
 Jun 17th - Father's Day  
 Jul 4th - Independence Day  
 Jul 20th - First Day of Ramadan  
 Sep 3rd - Labor Day  
 Sep 17th - Rosh Hashanah

2013 (This Year)

	Sun	Mon	Tue	Wed	Thu	Fri	Sat
May	19	20	21	22	23	24	25
May/June	26	27	28	29	30	31	1
June	2	3	4	5	6	7	8
June	9	10	11	12	13	14	15
June	16	17	18	19	20	21	22
June	23	24	25	26	27	28	29

2012 (Last Year)

	Sun	Mon	Tue	Wed	Thu	Fri	Sat
May	20	21	22	23	24	25	26
May/June	27	28	29	30	31	1	2
June	3	4	5	6	7	8	9
June	10	11	12	13	14	15	16
June	17	18	19	20	21	22	23
June	24	25	26	27	28	29	30

## Weekly STAR

STR ID	STR Name	City, State	Zip	Phone	Rooms	Open Date
60154	Hilton Garden Inn Morgantown	Morgantown, WV	26505-1827	(304) 225-9500	118	200910
8052	Ramada Morgantown	Morgantown, WV	26508-8853	(304) 296-3431	149	197406
17894	Hampton Inn Morgantown	Morgantown, WV	26505-3403	(304) 599-1200	107	199106
33757	Holiday Inn Express Morgantown	Morgantown, WV	26508-7305	(304) 291-2600	68	200004
54631	Residence Inn Morgantown	Morgantown, WV	26505-2803	(304) 599-0237	104	200607
					546	

Data received: X = Both years, T = This year only, L = Last year only, blank = No data

## Tab 8 - Help

### Definitions

- ADR (Average Daily Rate)** - Room revenue divided by rooms sold, displayed as the average rental rate for a single room.
- Competitive (Comp) Set** - A peer group of competitive hotels selected by hotel management to benchmark the subject property's performance.
- Contract** - Rooms sold/revenue from bookings sold at rates stipulated by contracts including airline crews and permanent guests.
- Exchange Rate** - The factor used to convert revenue from US Dollars to the local currency. Reports display the daily exchange rates for each day shown. STR obtains exchange rate data from [Oanda.com](http://Oanda.com). Any aggregated number in the report (MTD, Running 28 Day, Current Week) uses the exchange rate of each relative day when calculating the data.
- Food & Beverage Revenue (F&B)** - Revenue derived from food and beverage sales.
- Group** - Rooms sold/revenue from bookings sold simultaneously in blocks of ten (10) or more.
- Index (Occupancy, ADR, RevPar)** - Property performance divided by competitive set performance multiplied by 100. Internationally, indexes are also referred to as MPI - Market Penetration Index (Occupancy Index), ARI - Average Rate Index (ADR Index), and RGI - Revenue/RevPAR Generation Index (RevPAR Index).
- Market Class** - Class is an industry categorization which includes chain-affiliated and independent hotels. The class for a chain-affiliated hotel is the same as its chain scale. An independent hotel is assigned a class based on its ADR, relative to that of the chain hotels in their geographic proximity. There are six (6) class groups: Luxury, Upper Upscale, Upscale, Upper Midscale, Midscale and Economy.
- Market Class Combined (or Collapsed)** - If a single class segment is insufficient for reporting, classes are combined. There are three combined class segments: Luxury and Upper Upscale, Upscale and Upper Midscale, and Midscale and Economy.
- Market Scale** - Hotels located in the subject property's market and classified in the subject property's STR chain scale segment. There are seven (7) scale groups; Luxury, Upper Upscale, Upscale, Upper Midscale, Midscale, Economy and Independent.
- Market Scale (Collapsed)** - Hotels located in the subject property's market and classified in the subject property's STR chain scale segment. There are two (2) market scale (collapsed) groups: Upscale (includes Luxury, Upper Upscale, Upscale, Independent) and Midscale/Economy (includes Upper Midscale, Midscale, Economy).
- MTD (Month to Date)** - If a month ends during the current week, the MTD number would represent the month that ended.
- Occupancy** - Rooms sold divided by rooms available multiplied by 100. Occupancy is always displayed as a percentage of rooms occupied.
- Other Revenue** - All hotel revenue other than room and food and beverage revenue.
- Percent Change (% Chg)** - Amount of growth - up, down or flat - this period versus same period last year (day, week, running month-to-date). Calculated as  $(\frac{TY-LY}{LY}) * 100$ .
- Percent Change Rank (Occupancy, ADR, RevPar)** - The percent change for the property is compared to the percent change of each hotel in the comp set.
- Rank (Occupancy, ADR, RevPar)** - Property performance ranked versus hotels in the competitive set (e.g. a "3 of 6" ADR ranking means the subject hotel's absolute ADR is third highest of the six competitors).
- RevPAR (Revenue per Available Room)** - Room revenue divided by rooms available
- Room Revenue** - Revenue derived from guestroom rental.
- Segmented Data** - Rooms sold and revenue data broken down by Transient, Group, and Contract.
- Tract Scale** - Hotels located in the subject property's tract and classified in the subject property's STR chain scale segment. There are four (4) tract scale groups: Upscale (includes Luxury, Upper Upscale, Upscale), Midscale (includes Upper Midscale and Midscale), Economy and Independent.
- Transient** - Rooms sold/revenue from guests with reservations at Rack, Corporate, Corporate Negotiated, Package, Government or foreign traveler rates.

### FAQ

- How is my hotel performing versus competition?**  
The weekly DaySTAR report provides timely occupancy, average room rate, revenue per available room benchmarking of your hotel's performance versus your own selected competitors and an STR defined industry segment.
- Is my hotel's data included in the competitive numbers?**  
Your hotel's data is excluded from competitive set performance and included in the industry numbers.
- How does STR determine currency and exchange rates?**  
Currency is user-defined and is displayed at the top of the report. STR obtains exchange rate data from [Oanda.com](http://Oanda.com).
- How are percentage changes computed?**  
Hotel and competitive performance changes are measured against same period prior year.
- Why do my percentage change numbers have such a large range?**  
The data for this year vs. the same period last year may vary greatly. Consider if you sold 74 rooms this year vs. 4 last year, the percent change would be  $1750\%: (74-4)/4 * 100$ .
- What is an index?**  
An index is an easy way to compare your hotel's performance versus competition. An index of 100 or higher means your hotel's absolute performance is the same or better than competition.
- What does the "Rank" information mean?**  
Your hotel's performance is ranked against the other properties in your competitive set. If your hotel's RevPAR rank is "2 of 6", that means your hotel's RevPAR was second highest of the six hotels in your competitive set.
- What does "running 28 days" mean?**  
The most recent 28 days' historical performance. The running 28 day numbers are based on the most current 28-day period, ending with the last day included in the weekly report.
- What does "run MTD" mean?**  
Running month-to-date. The MTD numbers are based on a calendar month and include all days of the same month, through the most recent calendar day included in the report. If the most recent calendar day included in the report is a weekend, the MTD numbers only include data from the recently ended month.
- What if there are blanks in my competitive set numbers?**  
Your competitive set did not include sufficient data for reporting. A minimum of three (3) hotels must report data in order for STR to provide competitive set performance.
- What if there are blanks in my competitive set percentage change?**  
Your competitive set did not include sufficient data for reporting prior year data.
- Who can I contact if I have more questions?**  
Check out the glossary and FAQ at [www.str.com](http://www.str.com) or e-mail [info@str.com](mailto:info@str.com)