

CITY MANAGER

2014 SEP 17 PM 1:38

September 12, 2014

**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

City of Fort Lauderdale  
City Manager  
100 North Andrews Avenue  
Fort Lauderdale, Florida 33301

Re: 801 Seabreeze Blvd., Ft. Lauderdale, FL 33316

Ladies and Gentlemen:

Please be advised that JPMORGAN CHASE BANK, NATIONAL ASSOCIATION (“**Lender**”) is the holder of an Amended and Restated Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Notice of Future Advance dated as of July 1, 2014 (the “**Mortgage**”) from Rahn Bahia Mar L.L.C. (“**Borrower**”). The Mortgage is secured in part by the leasehold estate of Borrower in the above-referenced property. The Mortgage was recorded on July 7, 2014 as Document Number 112392725 in the Office of the City Register of Broward County, Florida, a certified copy of which is enclosed herewith.

This letter shall serve as notice of the Mortgage held by Lender and shall satisfy Article 13, Section 2 of that certain Lease described in Exhibit A attached hereto requiring delivery of a certified copy of the recorded mortgage to you and providing the name and address of Lender as the Leasehold Mortgagee.

In connection with all of the rights afforded to Lender as a “Leasehold Mortgagee” pursuant to the Lease, please be advised that all notices to Lender shall be made as follows:

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION  
383 Madison Avenue  
New York, New York 10179  
Attention: Joseph E. Geoghan  
Facsimile No.: (212) 834-6029

And

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION  
383 Madison Avenue  
New York, New York 10179

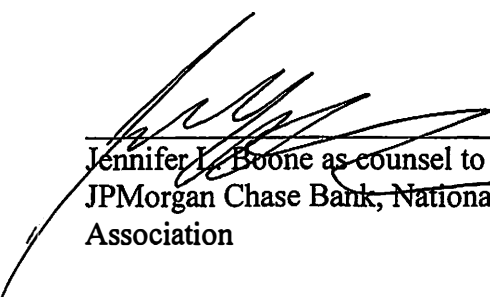
Attention: Nancy Alto  
Facsimile No.: (917) 546-2564

And

Cadwalader, Wickersham & Taft LLP  
One World Financial Center  
New York, New York 10281  
Attention: William P. McInerney, Esq.  
Facsimile No.: (212) 504-6666

Thank you for your attention to this matter.

Very truly yours,




Jennifer L. Boone as counsel to  
JPMorgan Chase Bank, National  
Association

Enclosure

RECEIPT ACKNOWLEDGED:

CITY OF FORT LAUDERDALE

By:



Name: Lee R. Feldman

Title: City Manager

Exhibit A

Schedule of Lease Documents

Amended and Restated Lease Agreement Lease made by and between City of Fort Lauderdale, lessor, and Rahn Bahia Mar, Ltd., lessee, dated January 4, 1995, which lease appears of record in Book 23169 at page 0347.

First Amendment to Amended and Restated Lease Agreement dated May 6, 2014.

PREPARED BY AND UPON  
RECORDATION RETURN TO:  
Cadwalader, Wickersham & Taft LLP  
One World Financial Center  
New York, New York 10281  
Attention: William P. McInerney, Esq.

204715217

**RAHN BAHIA MAR L.L.C., as mortgagor**  
(Borrower)


to

**JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, as mortgagee**  
(Lender)

**AMENDED AND RESTATED LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES  
AND RENTS, SECURITY AGREEMENT AND NOTICE OF FUTURE ADVANCE**

Dated: As of July 1, 2014

Location: 801 Seabreeze Blvd.  
Ft. Lauderdale, FL 33316

NOTE TO RECORDER: THIS AMENDED AND RESTATED MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND NOTICE OF FUTURE ADVANCE ("MORTGAGE") AMENDS AND RESTATES THE AMENDED AND RESTATED LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT RECORDED IN OFFICIAL RECORDS BOOK 50076, PAGE 1850 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA (AS AMENDED BY THE FIRST MODIFICATION OF AMENDED AND RESTATED LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT RECORDED IN OFFICIAL RECORDS BOOK 50910, PAGE 1085 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA), WHICH ITSELF AMENDED AND RESTATED THE AMENDED AND RESTATED LEASEHOLD MORTGAGE AND SECURITY AGREEMENT RECORDED IN OFFICIAL RECORDS BOOK 42589, PAGE 278 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, WHICH ITSELF AMENDED AND RESTATED THE LEASEHOLD MORTGAGE AND SECURITY AGREEMENT RECORDED IN OFFICIAL RECORDS BOOK 38713, PAGE 1571 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA. ALL APPLICABLE FLORIDA DOCUMENTARY STAMP AND INTANGIBLE TAXES PAYABLE WITH RESPECT TO THE FOREGOING MORTGAGES AND THE NOTES SECURED THEREBY (AS MORE PARTICULARLY DESCRIBED IN THE RECITALS) WERE PAID ON: (A) THE ORIGINAL MORTGAGE (AS DEFINED IN RECITAL A) WHEN RECORDED IN OR BOOK 17892, PAGE 359 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA AND (B) ON THE FIRST AMENDED AND RESTATED MORTGAGE (AS DEFINED IN RECITAL B) WHEN RECORDED IN OR BOOK 20729, PAGE 170 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY. THIS MORTGAGE SECURES THE NOTE (AS DEFINED IN RECITAL F) IN FAVOR OF LENDER IN THE STATED PRINCIPAL AMOUNT OF \$85,000,000.00, OF WHICH \$19,240,000.00  CONSTITUTES ADDITIONAL INDEBTEDNESS SUBJECT TO TAX. AS SUCH, ADDITIONAL DOCUMENTARY STAMP TAX IN THE AMOUNT OF \$67,340.00 AND INTANGIBLE TAX IN THE

AMOUNT OF \$38,480.00 ARE DUE AND HAVE BEEN PAID UPON THE RECORDATION OF THIS  
SECURITY INSTRUMENT.

**AMENDED AND RESTATED LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES  
AND RENTS, SECURITY AGREEMENT AND NOTICE OF FUTURE ADVANCE**

**THIS AMENDED AND RESTATED LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND NOTICE OF FUTURE ADVANCE** (this "**Mortgage**") is made as July 1, 2014, by **RAHN BAHIA MAR L.L.C.**, a Delaware limited liability company, having its principal place of business at 1175 N.E. 125<sup>th</sup> Street, Suite 102, North Miami, Florida 33161, as mortgagor ("**Borrower**") to **JPMORGAN CHASE BANK, NATIONAL ASSOCIATION**, a banking association chartered under the laws of the United States of America, having an address at 383 Madison Avenue, New York, New York 10179, as mortgagee (together with its successors and assigns, "**Lender**").

**RECITALS:**

A. On or about December 10, 2004, Bank of America, N.A., Bear Stearns Commercial Mortgage, Inc., and Merrill Lynch Mortgage Lending, Inc. made a loan in the original principal amount of Seven Hundred Million and No/Dollars (\$700,000,000.00) to Borrower and certain other obligors party thereto evidenced by a Promissory Note (the "**Original Note**") in the original principal amount of Seven Hundred Million and No/Dollars (\$700,000,000.00) made by Borrower and the other obligors party thereto and secured in part by a Leasehold Mortgage and Security Agreement recorded in Official Records Book 38713, Page 1571 of the Public Records of Broward County, Florida, which was one of six mortgages recorded in Palm Beach, Broward and Collier Counties, all of which secured the Original Note (collectively, the "**Original Mortgage**"). All applicable Florida documentary stamp taxes and intangible taxes on the Original Note and Original Mortgage were paid on recording of the Original Mortgage in Official Records Book 17892, Page 359 of the Public Records of Palm Beach County, Florida.

B. On or about August 11, 2006, the Original Note was amended, restated, renewed and increased pursuant to an Amended and Restated Promissory Note (the "**First Amended and Restated Note**") in the original principal amount of Nine Hundred Million and No/Dollars (\$900,000,000.00) made by Borrower and certain other obligors party thereto, and secured in part by an Amended and Restated Leasehold Mortgage and Security Agreement recorded on August 14, 2006 in Official Records Book 42589, Page 278 of the Public Records of Broward County, Florida, which was one of five mortgages (one of the Original Mortgages was satisfied) recorded in Palm Beach, Broward and Collier Counties, all of which secured the First Amended and Restated Note (collectively, the "**First Amended and Restated Mortgage**"). All applicable additional Florida documentary stamp taxes and intangible taxes on the First Amended and Restated Note and First Amended and Restated Mortgage were paid on recording of the First Amended and Restated Mortgage in Official Records Book 20729, Page 170 of the Public Records of Palm Beach County, Florida.

C. On or about August 9, 2013, the First Amended and Restated Note was amended, restated, renewed pursuant to an Amended and Restated Promissory Note in the original principal amount of \$425,000,000.00, which was then split into (i) an Amended and Restated Promissory Note A-1 in the original principal amount of Two Hundred Thirty-Three

Million Seven Hundred Fifty Thousand and No/Dollars (\$233,750,000.00) made by Borrower and the other obligors party thereto (the **"Second Amended and Restated Note A-1"**), and (ii) an Amended and Restated Promissory Note A-2 in the original principal amount of One Hundred Ninety-One Million Two Hundred Fifty Thousand and No/Dollars (\$191,250,000.00) made by Borrower and the other obligors party thereto (the **"Second Amended and Restated Note A-2"**), and together with the Second Amended and Restated Note A-1, collectively, the **"Second Amended and Restated Note"**), and secured in part by an Amended and Restated Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement recorded in Official Records Book 50076, Page 1850 of the Public Records of Broward County, Florida, which was one of four mortgages (one of the First Amended and Restated Mortgages was satisfied) recorded in Palm Beach, Broward and Collier Counties, all of which secured the Second Amended and Restated Note (collectively, the **"Second Amended and Restated Mortgage"**). No additional Florida documentary stamp taxes and intangible taxes were due on the Second Amended and Restated Note or Second Amended and Restated Mortgage as they were paid upon the recording of the Original Mortgage and the First Amended and Restated Mortgage.

D. On or about July 1, 2014, (a) the Borrower and certain other obligors party thereto entered into two Note Splitter Agreements and a Loan Documents Modification Agreement, (b) the Second Amended and Restated Note A-1 was split, amended, restated and renewed by (i) the Amended and Restated Promissory Note A-1A (**"Note A-1A"**) in the original principal amount of One Hundred Seventy-Five Million Nine Hundred Forty-Four Thousand One Hundred Seventy-Five and No/100 Dollars (\$175,944,175.00) made by the other obligors party thereto in favor of WELLS FARGO BANK, NATIONAL ASSOCIATION, as Trustee for the Holders of Boca Hotel Portfolio Trust 2013-BOCA Commercial Mortgage Pass Through Certificates Series 2013-BOCA (**"Prior Lender"**), and (ii) the Amended and Restated Promissory Note A-1B (**"Note A-1B"**) in the original principal amount of Thirty-Six Million One Hundred Sixty-Eight Thousand and No/100 Dollars (\$36,168,000.00) made by Borrower in favor of Prior Lender, both of which continued to be secured by the Second Amended and Restated Mortgage (c) the Second Amended and Restated Note A-2 was split, amended, restated and renewed by (i) the Amended and Restated Promissory Note A-2A (**"Note A-2A"**); and together with the Note A-1A, collectively the **"Other Obligor Notes"**) in the original principal amount of One Hundred Forty-Three Million Nine Hundred Fifty-Four Thousand Three Hundred Twenty-Five and No/100 Dollars (\$143,954,325.00) made by the other obligors party thereto in favor of Prior Lender, and (ii) the Amended and Restated Promissory Note A-2B (**"Note A-2B"**); and together with Note A-1B, collectively, the **"Prior Note"**) in the original principal amount of Twenty-Nine Million Five Hundred Ninety-Two Thousand and No/100 Dollars (\$29,592,000.00) made by Borrower in favor of Prior Lender, both of which continued to be secured by the Second Amended and Restated Mortgage, and (d) the Second Amended and Restated Mortgage was amended by that certain First Modification of Amended and Restated Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement (**"First Amendment to Second Amended and Restated Mortgage"**), to provide, among other thing and as more particularly set forth therein, that the Second Amended and Restated Mortgage secures only the Prior Note and shall no long be cross collateralized with any property owned by any of the other obligors under the Second Amended and Restated Mortgage. No additional Florida documentary stamp taxes and intangible taxes were due on the Prior Note, Other Obligor Notes, and the First Amendment to Second Amended and Restated Mortgage as there were no additional obligors, the aggregate original principal balance of the Prior Note and Other Obligor Notes was less than the



outstanding principal balance of the Second Amended and Restated Note, and all taxes were paid upon the recording of Original Mortgage and the First Amended and Restated Mortgage.

E. Immediately prior to the recording of this Mortgage: (a) Prior Lender endorsed Note A-1B to Lender pursuant to an allonge, (b) Prior Lender endorsed Note A-2B to Lender pursuant to an allonge, and (c) Prior Lender assigned the Second Amended and Restated Mortgage recorded in Official Records Book 50076, Page 1850 of the Public Records of Broward County, Florida as amended by the First Modification of Amended and Restated Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement recorded in Official Records Book 50910, Page 1685 of the Public Records of Broward County, Florida to Lender pursuant to an Assignment of Amended and Restated Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement and Promissory Notes which is to be recorded in the Public Records of Broward County, Florida. Prior Lender remains the owner and holder of the Other Obligor Notes which continue to be secured by those Second Amended and Restated Mortgages other than the Second Amended and Restated Mortgage recorded in Official Records Book 50076, Page 1850 of the Public Records of Broward County, Florida.

F. On this date Borrower is executing and delivering to Lender an Amended, Restated and Consolidated Promissory Note (the "Note") in the original principal amount of Eighty-Five Million and No/Dollars (\$85,000,000.00) which renews, amends and consolidates: (a) Note A-1B which has an outstanding principal balance of \$36,168,000.00, (b) Note A-2B which has an outstanding principal balance of \$29,592,000.00, and (c) a future advance made by Lender to Borrower pursuant to the Mortgage in the amount of Nineteen Million Two Hundred Forty Thousand and No/Dollars (\$19,240,000.00) (the "Future Advance").

G. This Mortgage amends, restates and renews the Second Amended and Restated Mortgage in its entirety and secures all of the indebtedness evidenced by the Note and secures the Borrower's other obligations under the Note, the Loan Agreement and the other Loan Documents (as herein defined); and

H. This Mortgage is given pursuant to the Loan Agreement, and payment, fulfillment, and performance by Borrower of its obligations thereunder and under the other Loan Documents are secured hereby, and each and every term and provision of the Loan Agreement and the Note, including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Mortgage (the Loan Agreement, the Note, this Mortgage, and all other documents evidencing or securing the Debt (including all additional mortgages, deeds to secure debt and assignments of leases and rents) or executed or delivered in connection therewith, are hereinafter referred to collectively as the "Loan Documents").

**NOW THEREFORE**, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Mortgage:

## ARTICLE I - GRANTS OF SECURITY

**Section 1.1 Property Mortgaged.** Borrower does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Lender and its successors and assigns, all of Borrower's right, title and interest in and to the following property, rights, interests and estates now owned, or hereafter acquired by Borrower (collectively, the "**Property**"):

(a) Leasehold Estate. The leasehold estate of Borrower described in Exhibit A attached hereto and made a part hereof (the "**Land**") pursuant to the Ground Lease (as defined below);

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

(c) Improvements. The buildings, structures, fixtures, additions, enlargements, alleyways and connecting tunnels, sidewalks, utility pipes, conduits and lines, parking areas, roadways, cart paths, bridges, lakes, irrigation systems, course markers and boat docks presently situated upon the Land, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land and tennis courts and any other income producing Land now or hereafter improved (collectively, the "**Improvements**");

(d) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements, including, but not limited to, those arising under and by virtue of the Ground Lease, and the reversion and reversions and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Land and the Improvements, including, but not limited to, those arising under and by virtue of the Ground Lease, and every part and parcel thereof, with the appurtenances thereto;

(e) Equipment. All "goods" and "equipment," as such terms are defined in Article 9 of the Uniform Commercial Code (as hereinafter defined), now owned or hereafter acquired by Borrower, which is used at or in connection with the Improvements or the Land or is located thereon or therein (including, but not limited to, all machinery, equipment, furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired by Borrower and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto (collectively, the "**Equipment**"). Notwithstanding the foregoing, Equipment

shall not include any property belonging to tenants under Leases except to the extent that Borrower shall have any right or interest therein;

(f) Fixtures. All Equipment now owned, or the ownership of which is hereafter acquired, by Borrower which is so related to the Land and Improvements forming part of the Property that it is deemed fixtures or real property under the law of the particular state in which the Equipment is located, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, including, but not limited to, engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Borrower's interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (collectively, the "Fixtures"). Notwithstanding the foregoing, "Fixtures" shall not include any property which tenants are entitled to remove pursuant to leases except to the extent that Borrower shall have any right or interest therein;

(g) Personal Property. All furniture, furnishings, objects of art, machinery, goods, tools, supplies, appliances, inventory and articles of personal property and accessions thereof and renewals and replacements thereof and substitutions therefor, if any (including, but not limited to, beds, bureaus, chiffoniers, chests, chairs, desks, lamps, mirrors, bookcases, tables, rugs, carpeting, drapes, draperies, curtains, shades, venetian blinds, screens, paintings, hangings, pictures, divans, couches, luggage carts, luggage racks, stools, sofas, chinaware, linens, pillows, blankets, glassware, foodcarts, cookware, dry cleaning facilities, dining room wagons, keys or other entry systems, bars, bar fixtures, liquor and other drink dispensers, icemakers, radios, television sets, intercom and paging equipment, electric and electronic equipment, dictating equipment, private telephone systems, medical equipment, potted plants, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air conditioning systems, elevators, escalators, fittings, plants, apparatus, stoves, ranges, refrigerators, laundry machines, tools, machinery, engines, dynamos, motors, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, call systems, brackets, electrical signs, bulbs, bells, ash and fuel, conveyors, cabinets, lockers, shelving, spotlighting equipment, dishwashers, garbage disposals, washers and dryers), kitchen fixtures, bar equipment, lawn mowers and other gardening tools, tractors and other motorized vehicles, other customary hotel equipment, general intangibles, contract rights, accounts, accounts receivable, franchises, licenses, certificates and permits, and all other personal property of any kind or character whatsoever as defined in and subject to the provisions of the Uniform Commercial Code, whether tangible or intangible, other than Fixtures, which are

now or hereafter owned by Borrower and which are located within or about the Land and the Improvements, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof (collectively, the "**Personal Property**"), and the right, title and interest of Borrower in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (the "**Uniform Commercial Code**"), superior in lien to the lien of this Mortgage and all proceeds and products of the above;

(h) Leases and Rents. All leases, subleases or subsubleases, lettings, licenses, concessions or other agreements (whether written or oral) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Land and the Improvements, and every modification, amendment or other agreement relating to such leases, subleases, subsubleases, or other agreements entered into in connection with such leases, subleases, subsubleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into (collectively, the "**Leases**"), whether before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, revenues, issues and profits arising from the Leases and any extension, renewal or replacement thereof together with all rents, rent equivalents, income, fees, receivables, receipts, accounts, deposits profits, (including, but not limited to, all oil and gas or other mineral royalties and bonuses), charges for services rendered and any and all payment and consideration of whatever form or nature received by Borrower or its agents or employees from any and all sources relating to the use, enjoyment and occupancy of the Land and the Improvements, including, without limitation, all revenues and credit card receipts collected from guest rooms, restaurants, room service, bars, meeting rooms, banquet rooms and recreational facilities (including, without limitation, any membership income, membership fees, initiation fees, membership transfer fees, membership dues, membership charges, deposits, rental fees, late payment fees, service charges and any other charges, revenues, fees or any other payments or income received in connection with the operation or use of any club, including, without limitation, any country club, offering tennis, beach, cabana, swimming, fitness, croquet, dining, marina or other social facilities), all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Borrower or any operator or manager of the hotel or the commercial space located in the Improvements or acquired from others (including, without limitation, from the rental of any office space, retail space, guest rooms or other space, halls, stores, and offices, and deposits securing reservations of such space), license, lease, sublease and concession fees and rentals, health or country club membership fees, food and beverage wholesale and retail sales, service charges, vending machine sales and proceeds, movie rentals, telephone service, if any, from business interruption or other loss of income insurance from the Land and the Improvements whether paid or accrued before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (collectively, the "**Rents**") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt. Notwithstanding the foregoing, "Rents" shall not include (i) gratuities or service charges with

respect to food, beverage, banquet or other guest services paid or received via credit card and owed to employees working at the Property or (ii) federal, state and municipal excise, sales; use and similar taxes collected directly from patrons or guests of the Property as a part of or based on the sales price of any goods, services or other items. This assignment of present and future Leases shall be effective without further or supplemental assignment;

(i) Condemnation Awards. All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

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

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

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

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

(n) Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses (including, without limitation, liquor licenses, if any, to the extent permitted by applicable Legal Requirements), plans, specifications and other documents, now or hereafter entered into, including, without limitation the Boat Show Agreement, and all rights therein and thereto (subject to any restrictions on assignment), respecting or pertaining to the use, occupation, construction (to the extent assignable), management or operation of the Land and any part thereof and any Improvements or respecting or pertaining to any business or activity conducted on the Land and any part thereof and all right, title and interest of Borrower therein and thereunder, including, without limitation, the right, upon the happening and during the continuance of an Event of Default, to receive and collect any sums payable to Borrower thereunder;

(o) Trademarks. To the extent assignable, all tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(p) Accounts. All reserves, escrows and deposit accounts maintained by Borrower with respect to the Property, including, without limitation and all accounts established pursuant to, the Lockbox Agreements and the Cash Management Agreement, including, without

limitation, the Cash Management Account and the Lockbox Accounts, together with all deposits or wire transfers made to such accounts, all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof; provided that, unless an Event of Default or an event which would, with the giving of notice or the passage of time, or both, constitute an Event of Default exists, Borrower shall be permitted to make distributions of the funds which are properly released to Borrower from such accounts pursuant to the terms and provisions of the Loan Agreement, the Cash Management Agreement and other Loan Documents, to its direct or indirect members free and clear of any lien created hereby provided that such payments are made in the normal course of operations of Borrower and do not violate the terms or provisions of the Loan Documents;

(q) Letter of Credit. All letter-of-credit rights (whether or not the letter of credit is evidenced by a writing) Borrower now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.1;

(r) Tort Claims. All commercial tort claims Borrower now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.1;

(s) Ground Lease. That certain Amended and Restated Lease executed by the City of Fort Lauderdale, as lessor ("**Ground Lessor**") and Borrower, as lessee, dated January 4, 1995, a memorandum of which was recorded on February 23, 1995 in Official Records Book 23168, Page 347, all of the Public Records of Broward County, Florida (collectively, as the same may hereafter be amended, restated, replaced, supplemented, renewed, extended or otherwise modified from time to time, the "**Ground Lease**"), the leasehold estate created thereby, and all assignments, modifications, extensions and renewals of the Ground Lease and all credits, deposits (including, without limitation, any deposit of cash or securities or any other property which may be held to secure Borrower's performance of its obligations under the Ground Lease), options, privileges and rights of Borrower as lessee under the Ground Lease, including, but not limited to, rights of first refusal, if any, and the right, if any, to renew or extend the Ground Lease for a succeeding term or terms and the right of Borrower to acquire the fee estate of the Ground Lessor pursuant to the terms of the Ground Lease, and all the estate, right, title, claim or demand whatsoever of Borrower either in law or in equity, in possession or expectancy, of, in and to the Property or any part thereof and also including all the right, title, claim or demand whatsoever of Borrower either in law or in equity, in possession or expectancy, of, in and to Lender's right, as tenant under the Ground Lease, to elect under Section 365(h)(1) of the Bankruptcy Code to terminate or treat the Ground Lease as terminated in the event (i) of the bankruptcy, reorganization or insolvency of the Ground Lessor, and (ii) the rejection of the Ground Lease by Ground Lessor, as debtor in possession, or by a trustee for Ground Lessor, pursuant to Section 365 of the Bankruptcy Code;

(t) Additional Ground Lease Interest. Any and all other, further or additional title, estates, interests or rights which the Borrower now or may at any time acquire in or to the Land or the Ground Lease;

(u) Interest Rate Cap Agreement. The Interest Rate Cap Agreement, including, but not limited to all "accounts", "chattel paper", "general intangibles", and

"investment property" (as such terms are defined in the Uniform Commercial Code as from time to time in effect) constituting or relating to the foregoing, and all products and proceeds of the foregoing;

(v) Purchase Agreement. To the extent the same may be encumbered or assigned pursuant to the terms thereof and to the fullest extent permitted by applicable law, the Purchase Agreement and all rights of Borrower thereunder to receive payments, indemnification or otherwise; and

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

AND without limiting any of the other provisions of this Mortgage, to the extent permitted by applicable Legal Requirements, Borrower expressly grants to Lender, as secured party, a security interest in the portion of the Property which is or may be subject to the provisions of the Uniform Commercial Code which are applicable to secured transactions; it being understood and agreed that the Improvements and Fixtures are part and parcel of the Land (the Land, the Improvements and the Fixtures collectively referred to as the "Real Property") appropriated to the use thereof and, whether affixed or annexed to the Real Property or not, shall for the purposes of this Mortgage be deemed conclusively to be real estate and mortgaged hereby.

**Section 1.2 Assignment of Rents.** Borrower hereby absolutely and unconditionally assigns to Lender all of Borrower's right, title and interest in and to all current and future Leases and Rents; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of the Cash Management Agreement and Section 7.1(h) of this Mortgage, Lender grants to Borrower a revocable license to (and Borrower shall have the express right subject to the terms hereof to) (a) collect, receive, use and enjoy the Rents and Borrower shall hold such Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, in trust for the benefit of Lender, for use in the payment of such sums in accordance with the terms of the Other Loan Documents and (b) otherwise deal with and enjoy the rights of lessor under the Leases.

**Section 1.3 Security Agreement.** This Mortgage is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Mortgage, Borrower hereby grants to Lender, as security for the Obligations (hereinafter defined), a security interest in the Fixtures, the Equipment and the Personal Property and other property constituting the Property, whether now owned or hereafter acquired, to the full extent that the Fixtures, the Equipment, the Personal Property and such other property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called the "Collateral"). If an Event of Default shall occur and be continuing, Lender, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the

generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Lender after the occurrence and during the continuance of an Event of Default, Borrower shall, at its expense, assemble the Collateral and make it available to Lender at a convenient place (at the Land if tangible property) reasonably acceptable to Lender. Borrower shall pay to Lender within ten (10) Business Days following written demand any and all expenses, including reasonable legal expenses and attorneys' fees, incurred or paid by Lender in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence and during the continuance of an Event of Default. Any notice of sale, disposition or other intended action by Lender with respect to the Collateral sent to Borrower in accordance with the provisions hereof at least ten (10) Business Days prior to such action, shall, except as otherwise provided by applicable Legal Requirements, constitute reasonable notice to Borrower. The proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by applicable Legal Requirements, be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper. Borrower's (debtor's) principal place of business is as set forth on page one hereof and the address of Lender (secured party) is as set forth on page one hereof.

**Section 1.4 Fixture Filing.** Certain of the Property is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the Land, and this Mortgage, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures.

**Section 1.5 Pledges of Monies Held.** Borrower hereby pledges to Lender all of its respective right, title and interest in and to any and all monies now or hereafter held by Lender or on behalf of Lender in connection with the Loan, including, without limitation, any sums deposited in the Lockbox Accounts, the Cash Management Account, the Reserve Funds and Net Proceeds, as additional security for the Obligations until expended or applied as provided in this Mortgage or the other Loan Documents.

### **CONDITIONS TO GRANT**

TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Lender and its successors and assigns, forever, pursuant to the terms and conditions set forth herein;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall well and truly pay to Lender the Debt at the time and in the manner provided in the Note, the Loan Agreement and this Mortgage, shall well and truly perform the Other Obligations as set forth in this Mortgage and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note, the Loan Agreement and the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void; provided, however, that Borrower's obligation to indemnify and hold harmless Lender pursuant to the provisions hereof shall survive any such payment or release.



process of construction or repair on the Land, in each case in accordance with the terms of the Loan Agreement and the Ground Lease.

**Section 3.5 Waste.** Borrower shall not commit or suffer any material waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that may reasonably be expected to invalidate or allow the cancellation of any Policy, or do or permit to be done thereon anything that may reasonably be expected to in any way materially impair the value of the Property or the security of this Mortgage. Borrower will not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

**Section 3.6 Payment for Labor and Materials.** (a) Except as provided in the Loan Agreement or as otherwise provided in Section 3.6(b) below, Borrower will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials ("Labor and Material Costs") incurred in connection with the Property and never permit to exist beyond the due date thereof in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests hereof except for the Permitted Encumbrances.

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

**Section 3.7 Performance of Other Agreements.** Borrower shall observe and perform each and every term, covenant and provision to be observed or performed by Borrower pursuant to the Loan Agreement, any other Loan Document and any other material agreements or recorded instrument affecting or pertaining to the Property and any amendments, modifications or changes thereto.

**Section 3.8 Change of Name, Identity or Structure.** Except as may be expressly permitted under the Loan Agreement, Borrower shall not change Borrower's name, identity (including its trade name or names) or, if not an individual, Borrower's corporate, partnership or other structure without notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change and, in the case of a change in Borrower's structure, without first obtaining the prior written consent of Lender. Lender is hereby authorized contemporaneously with the effective date of any such change, to file and/or record, any financing statement or financing statement change to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of Lender, Borrower shall execute a certificate in form satisfactory to Lender listing the trade names under which Borrower intends to operate the Property, and representing and warranting that Borrower does business under no other trade name with respect to the Property.

**Section 3.9 Title.** Borrower has good, marketable and insurable leasehold title to the real property comprising part of the Property and good title to the balance of such Property, free and clear of all Liens (as defined in the Loan Agreement) whatsoever except the Permitted Encumbrances (as defined in the Loan Agreement), such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. The Permitted Encumbrances in the aggregate do not materially and adversely affect the value, operation or use of the Property or Borrower's ability to repay the Loan. This Mortgage, when properly recorded in the appropriate records, together with the proper filing of any Uniform Commercial Code financing statements required to be filed in connection therewith, will create (a) a valid, perfected first priority lien on the Property, subject only to Permitted Encumbrances and the Liens created by the Loan Documents and (b) perfected security interests in and to, and perfected collateral assignments of, all personalty (including the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances, such other Liens as are permitted pursuant to the Loan Documents and the Liens created by the Loan Documents. To Borrower's Knowledge after due inquiry, there are no claims for payment for work, labor or materials affecting the Property which are past due and are or may become a lien prior to, or of equal priority with, the Liens created by the Loan Documents unless such claims for payments are being contested in accordance with the terms and conditions of the Loan Agreement and this Mortgage.

**Section 3.10 Letter of Credit Rights.** If Borrower is at any time a beneficiary under a letter of credit relating to the properties, rights, titles and interests referenced in Section 1.1 of this Mortgage now or hereafter issued in favor of Borrower, Borrower shall promptly notify Lender thereof and, at the request and option of Lender, Borrower shall, pursuant to an agreement in form and substance satisfactory to Lender, either (i) arrange for the issuer and any confirmer of such letter of credit to consent to an assignment to Lender of the proceeds of any drawing under the letter of credit or (ii) arrange for Lender to become the transferee beneficiary of the letter of credit, with Lender agreeing, in each case that the proceeds of any drawing under the letter of credit are to be applied as provided in Section 7.2 of this Mortgage.

**Section 3.11 Ground Lease.** Except as otherwise provided in the Loan Agreement, Borrower shall (a) pay all rents, additional rents and other sums required to be paid by Borrower, as tenant under and pursuant to the provisions of the Ground Lease as and when

such rents or other charges are payable, (b) diligently perform and observe all of the terms, covenants and conditions of the Ground Lease on the part of Borrower, as tenant thereunder, to be performed and observed prior to the expiration of any applicable grace period therein provided, and (c) promptly notify Lender of the giving of any notice by the Ground Lessor under the Ground Lease to Borrower of any default by Borrower in the performance or observance of any of the terms, covenants or conditions of the Ground Lease on the part of Borrower, as tenant thereunder, to be performed or observed and deliver to Lender a true copy of each such notice. Except as otherwise provided in the Loan Agreement, Borrower shall not (i) without the prior consent of Lender, surrender the leasehold estate created by the Ground Lease or terminate or cancel the Ground Lease, which consent shall not be unreasonably withheld, conditioned or delayed, (ii) without the prior consent of Lender, modify, change, supplement, alter or amend the Ground Lease, in any material respect, either orally or in writing. Borrower hereby assigns to Lender, as further security for the payment of the Debt and for the performance and observance of the terms, covenants and conditions of this Mortgage and the Loan Agreement, all of the rights, privileges and prerogatives of Borrower, which rights, privileges and prerogatives may be exercised by Lender upon the occurrence and during the continuance of an Event of Default by Borrower, as tenant under the Ground Lease, to surrender the leasehold estate created by the Ground Lease or to terminate, cancel, modify, change, supplement, alter or amend the Ground Lease, and any such surrender of the leasehold estate created by the Ground Lease or termination, cancellation, modification, change, supplement, alteration or amendment of the Ground Lease without the prior consent of Lender shall be void and of no force and effect. If Borrower shall default in the performance or observance of any term, covenant or condition of the Ground Lease on the part of Borrower, as tenant thereunder, to be performed or observed, and such default shall remain uncured after the expiration of any applicable cure or grace period, then, without limiting the generality of the other provisions of this Mortgage and the Loan Agreement, and without waiving or releasing Borrower from any of its obligations hereunder or thereunder, Lender shall have the right, but shall be under no obligation, to pay any sums and to perform any act or take any action as may be appropriate to cause all of the terms, covenants and conditions of the Ground Lease on the part of Borrower, as tenant thereunder, to be performed or observed or to be promptly performed or observed on behalf of Borrower, to the end that the rights of Borrower in, to and under the Ground Lease shall be kept unimpaired and free from default. If Lender shall make any payment or perform any act or take action in accordance with the preceding sentence, Lender will notify Borrower of the making of any such payment, the performance of any such act, or the taking of any such action. In any such event, subject to the rights of tenants, subtenants and other occupants under the Leases, Lender and any Person designated by Lender shall have, and are hereby granted, subject to the terms and the provisions of the Ground Lease, the right to enter upon the Property at any time and from time to time after such default by Borrower, which remains uncured after the expiration of any applicable cure or grace period, for the purpose of taking any such action to cure any such default. Lender may pay and expend such sums of money as Lender deems reasonably necessary for any such purpose and upon so doing shall be subrogated to any and all rights of the Ground Lessor. Borrower hereby agrees to pay to Lender within three (3) Business Days after written demand therefor, all such sums so paid and expended by Lender, together with interest thereon from the day of such demand at the Default Rate. All sums so paid and expended by Lender and the interest thereon shall be secured by the legal operation and effect of this Mortgage. If the Ground Lessor shall deliver to Lender a copy of any written notice of default sent by said Ground Lessor to Borrower,

as tenant under the Ground Lease, such notice shall constitute full protection to Lender for any action taken or omitted to be taken by Lender, in good faith, in reliance thereon. Borrower will not subordinate or consent to the subordination of the Ground Lease to any mortgage, security deed, lease or other interest on or in the Ground Lessor's interest in all or any part of the Property without the prior written consent of Lender.

**Section 3.12 No Merger of Fee and Leasehold Estates.** So long as any portion of the Debt shall remain unpaid, unless Lender shall otherwise consent in accordance with the Loan Agreement, the fee title to the Property and the leasehold estate therein created pursuant to the provisions of the Ground Lease shall not merge but shall always be kept separate and distinct, notwithstanding the union of such estates in Borrower, Lender, or in any other Person by purchase, operation of law or otherwise. Lender reserves the right, at any time, to release portions of the Property, including, but not limited to, the leasehold estate created by the Ground Lease, with or without consideration, at Lender's election, without waiving or affecting any of its rights hereunder or under the Note or the other Loan Documents and any such release shall not affect Lender's rights in connection with the portion of the Property not so released.

**Section 3.13 Borrower's Acquisition of Fee Estate.** In the event that Borrower, so long as any portion of the Debt remains unpaid, shall be the owner and holder of the fee title to the Property, the lien of the Mortgage shall be spread to cover Borrower's fee title to the Property and said fee title shall be deemed to be included in the Property without any further action. Borrower agrees, at its sole cost and expense, including without limitation Lender's reasonable third party attorneys' fees, to (a) execute any and all documents or instruments necessary to subject its fee title to the Property to the lien of this Mortgage; and (b) provide a title insurance policy which shall insure that the lien of the Mortgage is a first lien on Borrower's fee title to the Property subject to the Permitted Encumbrances. The foregoing shall not be construed to permit Borrower to acquire the aforesaid fee interest and Borrower's right to acquire additional property shall remain subject to the restrictions relating thereto contained in the Loan Agreement and the other Loan Documents. Notwithstanding the foregoing, if the Ground Lease is for any reason whatsoever terminated prior to the natural expiration of its term, and if, pursuant to any provisions of the Ground Lease or otherwise, Lender or its designee shall acquire from the Ground Lessor thereunder another lease of the Property, Borrower shall have no right, title or interest in or to such other lease or the leasehold estate created thereby.

**Section 3.14 Rejection of the Ground Lease.**

(a) If the Ground Lease is terminated for any reason in the event of the rejection or disaffirmance of the Ground Lease pursuant to the Bankruptcy Code, or any other law affecting creditor's rights, (i) Borrower, immediately after obtaining notice thereof, shall give notice thereto to Lender, (ii) Borrower, without the prior written consent of Lender, shall not elect to treat the Ground Lease as terminated pursuant to Section 365(h) of the Bankruptcy Code or any comparable federal or state statute or law, and any election by Borrower made without such consent shall be void and (iii) this Mortgage and the Loan Agreement and all the liens, terms, covenants and conditions of this Mortgage and the Loan Agreement hereby extends to and covers Borrower's possessory rights under Section 365(h) of the Bankruptcy Code and to any claim for damages due to the rejection of the Ground Lease or other termination of the Ground Lease. In addition, Borrower hereby assigns irrevocably to Lender, Borrower's rights to

treat the Ground Lease as terminated pursuant to Section 365(h) of the Bankruptcy Code and to offset rents under such Ground Lease in the event any case, proceeding or other action is commenced by or against the Ground Lessor under the Bankruptcy Code or any comparable federal or state statute or law.

(b) Borrower hereby assigns to Lender (i) Borrower's right to reject the Ground Lease under Section 365 of the Bankruptcy Code or any comparable federal or state statute or law with respect to any case, proceeding or other action commenced by or against Borrower under the Bankruptcy Code or comparable federal or state statute or law and (ii) Borrower's right to seek an extension of the one hundred and twenty (120) day period within which Borrower must accept or reject the Ground Lease under Section 365 of the Bankruptcy Code or any comparable federal or state statute or law with respect to any case, proceeding or other action commenced by or against Borrower under the Bankruptcy Code or comparable federal or state statute or law. Further, if the foregoing assignment is not effective under applicable law and Borrower shall desire to so reject the Ground Lease, at Lender's request, Borrower shall assign its interest in the Ground Lease to Lender in lieu of rejecting the Ground Lease, upon receipt by Borrower of written notice from Lender of such request together with Lender's agreement to cure any existing defaults of Borrower under the Ground Lease.

(c) Borrower hereby agrees that if the Ground Lease is terminated for any reason in the event of the rejection or disaffirmance of the Ground Lease pursuant to the Bankruptcy Code or any other law affecting creditor's rights, any property not removed by the Borrower as permitted or required by the Ground Lease, shall at the option of Lender be deemed abandoned by Borrower, provided that Lender may remove any such property required to be removed by Borrower pursuant to the Ground Lease and all actual costs and expenses associated with such removal shall be paid by Borrower within ten (10) days of receipt by Borrower of an invoice for such removal costs and expenses.

#### ARTICLE IV - OBLIGATIONS AND RELIANCES

**Section 4.1 Relationship of Borrower and Lender.** The relationship between Borrower and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Borrower, and no term or condition of any of the Loan Agreement, the Note, this Mortgage and the other Loan Documents shall be construed so as to deem the relationship between Borrower and Lender to be other than that of debtor and creditor.

**Section 4.2 No Reliance on Lender.** Without limiting Section 9.3 of the Loan Agreement, the general partners, members, principals and (if Borrower is a trust) beneficial owners of Borrower are experienced in the ownership and operation of properties similar to the Property, and Borrower and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Borrower is not relying on Lender's expertise, business acumen or advice in connection with the Property.

**Section 4.3 No Lender Obligations.** (a) Notwithstanding the provisions of Subsections 1.1(h) and (n) or Section 1.2, Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents.

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

**Section 4.4 Reliance.** Borrower recognizes and acknowledges that in accepting the Loan Agreement, the Note, this Mortgage and the other Loan Documents, Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Section 4.1 of the Loan Agreement without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; that such reliance existed on the part of Lender prior to the date hereof, that the warranties and representations are a material inducement to Lender in making the Loan; and that Lender would not be willing to make the Loan and accept this Mortgage in the absence of the warranties and representations as set forth in Section 4.1 of the Loan Agreement.

## **ARTICLE V - FURTHER ASSURANCES**

**Section 5.1 Recording of Mortgage, Etc.** Borrower shall (or shall cause), the execution and delivery, at Borrower's sole cost and expense, of (i) this Mortgage and the other Loan Documents and (ii) from time to time, each instrument of further assurance of the lien or security interest evidenced herein or in the other Loan Documents and Borrower shall be solely responsible for the payment of any fees, costs or expenses related to the filing, registration or recordation of any of the foregoing in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Lender in, the Property. Borrower will pay all taxes (other than any taxes which may be imposed from time to time upon Lender's income, stock or assets), filing, registration or recording fees, and all actual out-of-pocket expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Mortgage, the other Loan Documents, any note, deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, any deed of trust or mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

**Section 5.2 Further Acts, Etc.** Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may

hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage, or for complying with all Legal Requirements. Borrower hereby authorizes Lender to file or record one or more financing statements to evidence more effectively the security interest of Lender in the Property. Such financing statements may describe as the collateral covered thereby "all assets of the debtor, whether now owned or hereafter acquired" or words to that effect. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including without limitation, such rights and remedies available to Lender pursuant to this Section 5.2; provided, however, that (a) Lender shall not exercise such power of attorney unless Borrower shall have unreasonably failed or refused to perform such action or execute such documents for at least five (5) Business Days after receipt of Lender's written request therefor, and (b) Lender shall provide Borrower with written notice of all such actions taken under the power of attorney and copies of any documents executed under such power of attorney within a reasonable period of time after the taking or execution thereof.

**Section 5.3 Changes in Tax, Debt, Credit and Documentary Stamp Laws.**

(a) If any law is enacted or adopted or amended after the date of this Mortgage which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property granted by this Mortgage, Borrower will pay the tax, with interest and penalties thereon, if any (provided, that nothing hereunder shall require Borrower to pay any income tax imposed on Lender by reason of its interest in the Property) after receipt of written notice thereof. If Lender is advised by counsel chosen by it that the payment of tax by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury then Lender shall have the option by written notice of not less than one hundred eighty (180) days to declare the Debt immediately due and payable, provided, however, no Spread Maintenance Payment or other prepayment fee or premium shall be due or payable in connection therewith, but any actual third party Breakage Costs shall be paid by Borrower in connection with the foregoing payment.

(b) Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Mortgage or the Debt. If such claim, credit or deduction shall be required by law, Lender shall have the option, by written notice of not less than one hundred eighty (180) days to declare the Debt immediately due and payable, provided, however, no Spread Maintenance Payment or other prepayment fee or premium shall be due or payable in connection therewith, but any actual third party Breakage Costs shall be paid by Borrower in connection with the foregoing payment.

(c) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note, this Mortgage, or any of the other Loan Documents or impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any, provided that Borrower shall have the right to contest such amounts in accordance with the terms and conditions of the Loan Agreement.

**Section 5.4 Severing of Mortgage.** The provisions of Section 8.2(c) of the Loan Agreement are hereby incorporated by reference herein.

**Section 5.5 Replacement Documents.** Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other Loan Document, Borrower will issue, in lieu thereof, a replacement Note or other Loan Document, dated the date of and on identical terms as such lost, stolen, destroyed or mutilated Note or other Loan Document.

#### **ARTICLE VI - DUE ON SALE/ENCUMBRANCE**

**Section 6.1 Lender Reliance.** Borrower acknowledges that Lender has examined and relied on the experience of Borrower and its general partners, members, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Debt and the performance of the Other Obligations. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should an Event of Default be continuing with respect to repayment of the Debt or the performance of the Other Obligations, Lender can recover the Debt or any part thereof by a sale of the Property.

**Section 6.2 No Sale/Encumbrance.** Neither Borrower nor any Restricted Party shall Transfer the Property or any part thereof or any interest therein or permit or suffer the Property or any part thereof or any interest therein to be Transferred other than as expressly permitted pursuant to the terms of the Loan Agreement.

#### **ARTICLE VII - RIGHTS AND REMEDIES UPON DEFAULT**

**Section 7.1 Remedies.** Upon the occurrence and during the continuance of any Event of Default, Borrower agrees that Lender may take such action as is permitted by applicable Legal Requirements, without notice or demand (unless required by applicable Legal Requirements), as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

- (a) declare the entire unpaid Debt to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Mortgage under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable Legal Requirements, institute proceedings for the partial



foreclosure of this Mortgage for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Mortgage for the balance of the Debt not then due, unimpaired and without loss of priority;

(d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;

(e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note, the Loan Agreement or in the other Loan Documents;

(f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Mortgage or the other Loan Documents;

(g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower, any guarantor or any indemnitor with respect to the Loan or of any Person liable for the payment of the Debt;

(h) the license granted to Borrower under Section 1.2 hereof shall automatically be revoked until such time as the Event of Default has been cured by Borrower and such Event of Default has been accepted by Lender in its sole discretion, Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise (except for any damages caused by the Bad Acts of Lender) and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may, subject to applicable Legal Requirements; (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, the Ground Lease, obtain and evict tenants (subject to any non-disturbance agreements that Lender may have entered into with such tenants, if any), and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower; (vi) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred

in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees;

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Fixtures, the Equipment, the Personal Property or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Fixtures, the Equipment, the Personal Property, and (ii) request Borrower at its expense to assemble the Fixtures, the Equipment, the Personal Property and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Fixtures, the Equipment, the Personal Property sent to Borrower in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Borrower;

(j) apply any sums then deposited or held in escrow or otherwise by or on behalf of Lender in accordance with the terms of the Loan Agreement, this Mortgage or any other Loan Document to the payment of the following items in any order in its sole discretion: (i) Taxes and Other Charges; (ii) Insurance Premiums; (iii) interest on the unpaid principal balance of the Note; (iv) amortization of the unpaid principal balance of the Note; and (v) all other sums payable pursuant to the Note, the Loan Agreement, this Mortgage and the other Loan Documents, including without limitation advances made by Lender pursuant to the terms of this Mortgage;

(k) pursue such other remedies as Lender may have under applicable Legal Requirements; or

(l) apply the undisbursed balance of any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Lender shall deem to be appropriate in its discretion.

In the event of a sale, by foreclosure, power of sale or otherwise, of less than all of the Property, this Mortgage shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority.

**Section 7.2 Application of Proceeds.** Upon the occurrence and during the continuance of an Event of Default, the purchase money, proceeds and avails of any disposition of the Property, and or any part thereof, or any other sums collected by Lender pursuant to the Note, this Mortgage or the other Loan Documents, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper.

**Section 7.3 Right to Cure Defaults.** Upon the occurrence and during the continuance of any Event of Default, or if Borrower fails to make any payment or to do any act as herein provided, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, make any payment or do any act required of Borrower hereunder in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized to enter upon

the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Mortgage or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 7.3, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such actual costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Mortgage and the other Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

**Section 7.4 Actions and Proceedings.** Subject to the terms of the Loan Agreement, during the continuance of an Event of Default, Lender has the right (a) to appear in and defend any action or proceeding brought with respect to the Property and (b) to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its discretion, decides should be brought to protect its interest in the Property; provided that Lender shall notify Borrower in writing that it intends to bring such action at least ten (10) days prior to Lender instituting any such action (unless (a) an Event of Default exists, in which case such notice shall not be required or (b) the provision of such notice by Lender is reasonably likely to result in the imminent danger of the Property, or any part thereof or interest therein, being sold, forfeited or lost, in which case Lender shall endeavor to provide Borrower with notice as soon as is reasonably practicable after such action is taken), and Lender shall endeavor to provide Borrower and its legal counsel reasonable periodic status as to any such action brought by Lender.

**Section 7.5 Recovery of Sums Required To Be Paid.** Subject to the terms of the Loan Agreement, during the continuance of an Event of Default, Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

**Section 7.6 Intentionally Omitted.**

**Section 7.7 Other Rights, Etc.** (a) The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Mortgage. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Borrower or any guarantor or any indemnitor with respect to the Loan to take any action to foreclose this Mortgage upon the occurrence and during the continuance of an Event of Default or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt or any portion thereof, except as provided in the Loan Agreement, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Mortgage or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Borrower, and Lender shall have no liability whatsoever for decline in value of the Property, except as arising solely from Lender's Bad Acts, or for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Lender shall not be deemed an election of judicial relief if any such possession is requested or obtained with respect to any Property or collateral not in Lender's possession.

(c) During the continuance of an Event of Default, Lender may resort for the payment of the Debt to any other security held by Lender in connection with the Loan in such order and manner as Lender, in its discretion, may elect. During the continuance of an Event of Default, Lender may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof or of the other Loan Documents without prejudice to the right of Lender thereafter to foreclose this Mortgage or under any other Loan Document. The rights of Lender under this Mortgage or under any other Loan Document shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein or in any other Loan Document to the exclusion of any other provision. Lender shall not be limited exclusively to the rights and remedies herein stated or stated in any other Loan Document but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

**Section 7.8 Right to Release Any Portion of the Property.** Subject to the terms and conditions of the Loan Agreement, Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Mortgage, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Mortgage shall continue as a lien and security interest in the remaining portion of the Property.

**Section 7.9 Violation of Laws.** Subject to the terms and conditions of the Loan Agreement, if the Property is not in material compliance with Legal Requirements not cured within any applicable cure periods, Lender may impose additional requirements upon Borrower in connection herewith including, without limitation, monetary reserves or financial equivalents.

**Section 7.10 Recourse and Choice of Remedies.** Notwithstanding any other provision of this Mortgage or the Loan Agreement, including, without limitation, Section 9.3 of the Loan Agreement, to the fullest extent permitted by applicable Legal Requirements, Lender and the other Indemnified Parties (as hereinafter defined) are entitled to enforce against Borrower the obligations of Borrower contained in Sections 9.1, 9.2 and 9.3 herein and Section 9.3 of the Loan Agreement without first resorting to or exhausting any security or collateral and without first having recourse to the Note or any of the Property, through foreclosure or acceptance of a deed in lieu of foreclosure or otherwise, and upon the occurrence and during the continuance of an Event of Default, in the event Lender commences a foreclosure action against the Property, Lender is entitled to pursue a deficiency judgment with respect to

such obligations against Borrower. The provisions of Sections 9.1, 9.2 and 9.3 herein and Section 9.3 of the Loan Agreement are, relative to Borrower, exceptions to any non-recourse or exculpation provisions in the Loan Agreement, the Note, this Mortgage or the other Loan Documents, and Borrower is fully and personally liable for the obligations pursuant to Sections 9.1, 9.2 and 9.3 herein and Section 9.3 of the Loan Agreement. The liability of Borrower with respect to the Loan pursuant to Sections 9.1, 9.2 and 9.3 herein and Section 9.3 of the Loan Agreement is not limited to the original principal amount of the Note. Notwithstanding the foregoing, nothing herein shall inhibit or prevent Lender from foreclosing or exercising any other rights and remedies pursuant to the Loan Agreement, the Note, this Mortgage and the other Loan Documents, whether simultaneously with foreclosure proceedings or in any other sequence. A separate action or actions may be brought and prosecuted against Borrower pursuant to Sections 9.1, 9.2 and 9.3 herein and Section 9.3 of the Loan Agreement whether or not action is brought against any other Person or whether or not any other Person is joined in the action or actions. In addition, Lender shall have the right but not the obligation to join and participate in, as a party if it so elects, any administrative or judicial proceedings or actions initiated in connection with any matter addressed in Article 9 herein.

**Section 7.11 Right of Entry.** Upon reasonable notice to Borrower, Lender and its agents shall have the right to enter and inspect the Property at all reasonable times provided that the entrants use commercially reasonable efforts to not negatively impair the guests', Tenants' or Managers' reasonable rights to use the Property.

## ARTICLE VIII - PREPAYMENT

**Section 8.1 Prepayment.** The Debt may not be prepaid in whole or in part except in accordance with the express terms and conditions of the Loan Agreement.

## ARTICLE IX - INDEMNIFICATION

**Section 9.1 General Indemnification.** Except to the extent caused by the Bad Acts of Lender, Borrower shall, at its sole cost and expense, protect (with legal counsel reasonably acceptable to Lender), defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement, punitive damages, foreseeable and unforeseeable consequential damages, of whatever kind or nature (including but not limited to reasonable attorneys' fees and other costs of defense) (collectively, the "Losses") imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) ownership of this Mortgage, the Property or any interest therein or receipt of any Rents; (b) any amendment to, or restructuring of, the Debt, the Note, the Loan Agreement, this Mortgage, or any other Loan Documents; (c) any and all lawful action that may be taken by Lender in connection with the enforcement of the provisions of this Mortgage, the Loan Agreement, the Note or any of the other Loan Documents, whether or not suit is filed in connection with same, or in connection with Borrower, any guarantor or any indemnitor and/or any partner, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary

federal or state bankruptcy, insolvency or similar proceeding; (d) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (e) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (f) any failure on the part of Borrower to perform or be in compliance with any of the terms of this Mortgage, the Note, the Loan Agreement or any of the other Loan Documents; (g) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (h) the failure of any person to file timely with the Internal Revenue Service an accurate Form 1099-B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions, which may be required in connection with this Mortgage, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Mortgage is made; (i) any failure of the Property to be in compliance with any Legal Requirements; (j) the enforcement by any Indemnified Party of the provisions of this Article 9; (k) any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; (l) the payment of any commission, charge or brokerage fee to anyone claiming through Borrower which may be payable in connection with the funding of the Loan; or (m) any material misrepresentation made by Borrower in this Mortgage or any other Loan Document. Any amounts payable to Lender by reason of the application of this Section 9.1 shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Lender until paid.

**Section 9.2 Mortgage and/or Intangible Tax.** Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Mortgage, the Note or any of the other Loan Documents, but excluding any income, franchise or other similar taxes. Borrower hereby agrees that, in the event that it is determined that any documentary stamp taxes or intangible personal property taxes are due hereon or on any mortgage or promissory note executed in connection herewith (including, without limitation, the Note), Borrower shall indemnify and hold harmless the Indemnified Parties for all such documentary stamp and/or intangible taxes, including all penalties and interest assessed or charged in connection therewith.

**Section 9.3 ERISA Indemnification.** Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses (including, without limitation, reasonable attorneys' fees and reasonable and documented out-of-pocket costs incurred in the investigation, defense, and settlement of Losses incurred in correcting any non-exempt prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Lender's sole discretion) that Lender may incur, directly or indirectly, as a result of a breach of any of the representations made under Section 4.1.9 of the Loan Agreement or a breach of any negative covenants contained in Section 5.2.9 of the Loan Agreement.

**Section 9.4 Duty to Defend; Attorneys' Fees and Other Fees and Expenses.**

In connection with any indemnification obligations of Borrower hereunder, upon written request by any Indemnified Party, Borrower shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals reasonably approved by the Indemnified Parties. Notwithstanding the foregoing, if the defendants in any such claim or proceeding include both Borrower and any Indemnified Party and Borrower and such Indemnified Party shall have reasonably concluded that there are any legal defenses available to it and/or other Indemnified Parties that are different from or additional to those available to Borrower, such Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Party, provided that no compromise or settlement shall be entered without Borrower's consent, which consent shall not be unreasonably withheld. Within five (5) Business Days after receipt of written demand from Lender, Borrower shall pay or, in the sole and absolute discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

**Section 9.5 Environmental Indemnity.** Simultaneously with this Mortgage, Borrower and Guarantor have executed that certain Environmental Indemnity. The obligations of Borrower and Guarantor under the Environmental Indemnity are not part of the Debt and are not secured by this Mortgage.

**ARTICLE X - WAIVERS**

**Section 10.1 Waiver of Counterclaim.** To the extent permitted by applicable law, Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with this Mortgage, the Loan Agreement, the Note, any of the other Loan Documents, or the Obligations.

**Section 10.2 Marshalling and Other Matters.** To the extent permitted by applicable Legal Requirements, Borrower hereby waives the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Borrower, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Mortgage and on behalf of all persons to the extent permitted by applicable Legal Requirements.

**Section 10.3 Waiver of Notice.** To the extent permitted by applicable Legal Requirements, Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Mortgage or the Loan Documents specifically and expressly provides for the giving of notice by Lender to Borrower and except with respect to matters for which Lender is required by applicable Legal Requirements to give notice, and Borrower hereby expressly waives the right to receive any notice from Lender with

respect to any matter for which this Mortgage or the Loan Documents does not specifically and expressly provide for the giving of notice by Lender to Borrower.

**Section 10.4 Waiver of Statute of Limitations.** To the extent permitted by applicable Legal Requirements, Borrower hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Debt or performance of its Other Obligations.

**Section 10.5 Survival.** The indemnifications made pursuant to Sections 9.1, 9.2 and 9.3 and the obligations pursuant to Section 9.4 herein shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by any of the following: any satisfaction or other termination of this Mortgage, any assignment or other transfer of all or any portion of this Mortgage or Lender's interest in the Property (but, in such case, shall benefit both Indemnified Parties and any assignee or transferee), any exercise of Lender's rights and remedies pursuant hereto including, but not limited to, foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Loan Agreement, the Note or any of the other Loan Documents, any transfer of all or any portion of the Property (whether by Borrower or by Lender following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), any amendment to this Mortgage, the Loan Agreement, the Note or the other Loan Documents, and any act or omission that might otherwise be construed as a release or discharge of Borrower from the obligations pursuant hereto.

## ARTICLE XI - EXCULPATION

The provisions of Section 9.3 of the Loan Agreement are hereby incorporated by reference into this Mortgage to the same extent and with the same force as if fully set forth herein.

## ARTICLE XII - NOTICES

All notices or other written communications hereunder shall be delivered in accordance with Section 10.6 of the Loan Agreement.

## ARTICLE XIII - APPLICABLE LAW

**Section 13.1 Governing Law.** This Mortgage shall be governed in accordance with the terms and provisions of Section 10.3 of the Loan Agreement; provided that the provisions of this Mortgage regarding the creation, perfection and enforcement of the Liens and security interests herein granted shall be governed by and construed under the laws of the State in which the Property is located.

**Section 13.2 Usury Laws.** Notwithstanding anything to the contrary contained herein, (a) all agreements and communications between Borrower and Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed interest, the interest contracted for, charged or received by Lender shall never exceed the Maximum Legal Rate or amount, (b) in calculating whether any interest exceeds the Maximum Legal Rate, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of



all principal indebtedness of Borrower to Lender, and (c) if through any contingency or event, Lender receives or is deemed to receive interest in excess of the Maximum Legal Rate, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Borrower to Lender, or if there is no such indebtedness, shall immediately be returned to Borrower.

**Section 13.3 Provisions Subject to Applicable Law.** All rights, powers and remedies provided in this Mortgage may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable Legal Requirements. If any term of this Mortgage or any application thereof shall be invalid or unenforceable, the remainder of this Mortgage and any other application of the term shall not be affected thereby.

#### ARTICLE XIV - DEFINITIONS

All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage may be used interchangeably in singular or plural form and the word "**Borrower**" shall mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or any interest therein," the term "**Guarantor**" shall be deemed to refer to each and every Person comprising the Guarantor from time to time, jointly and severally, and to include the successors and assigns of each such Person, the word "**Lender**" shall mean "Lender and any subsequent holder of the Note," the word "**Note**" shall mean "the Note and any other evidence of indebtedness secured by this Mortgage," the word "**Property**" shall include any portion of the Property and any interest therein, and the phrases "**attorneys' fees**", "**legal fees**" and "**counsel fees**" shall include any and all reasonable attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases, the Ground Lease and the Rents and enforcing its rights hereunder.

#### ARTICLE XV - MISCELLANEOUS PROVISIONS

**Section 15.1 No Oral Change.** This Mortgage, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought or by repayment of the Debt in full in accordance with the Loan Agreement.

**Section 15.2 Successors and Assigns.** This Mortgage shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

**Section 15.3 Inapplicable Provisions.** If any term, covenant or condition of the Loan Agreement, the Note or this Mortgage is held to be invalid, illegal or unenforceable in any

respect, the Loan Agreement, the Note and this Mortgage shall be construed without such provision.

**Section 15.4 Headings, Etc.** The headings and captions of various Sections of this Mortgage are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

**Section 15.5 Number and Gender.** Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

**Section 15.6 Subrogation.** If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt, the performance and discharge of Borrower's obligations hereunder, under the Loan Agreement, the Note and the other Loan Documents and the performance and discharge of the Other Obligations.

**Section 15.7 Entire Agreement.** The Note, the Loan Agreement, this Mortgage and the other Loan Documents constitute the entire understanding and agreement between Borrower and Lender with respect to the transactions arising in connection with the Debt and supersede all prior written or oral understandings and agreements between Borrower and Lender with respect thereto. Borrower hereby acknowledges that, except as incorporated in writing in the Note, the Loan Agreement, this Mortgage and the other Loan Documents, there are not, and were not, and no persons are or were authorized by Lender to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Note, the Loan Agreement, this Mortgage and the other Loan Documents.

**Section 15.8 Limitation on Lender's Responsibility.** No provision of this Mortgage shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger other than as a result of actions of Lender that constitute Bad Acts. Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession".

**Section 15.9 Conflict of Terms.** In case of any conflict between the terms of this Mortgage and the terms of the Loan Agreement, the terms of the Loan Agreement shall prevail.

**Section 15.10 Release or Assignment of Mortgage.** Notwithstanding anything to the contrary herein, if all of the Debt is indefeasibly paid in full and satisfied and such payment is not subject to rescission, then in that event only, all rights, except those rights and indemnifications stated to survive termination hereof, shall automatically terminate and Lender shall upon the request of Borrower reasonably cooperate in the delivery of either a satisfaction of this Mortgage or an assignment in connection with the terms of the Loan Agreement. All reasonable costs incurred by Lender under this paragraph, including, without limitation, reasonable third-party attorney's fees and disbursements, promptly shall be reimbursed by Borrower.

## ARTICLE XVI - STATE-SPECIFIC PROVISIONS

**Section 16.1 Principles of Construction.** In the event of any inconsistencies between the terms and conditions of this Article 16 and the terms and conditions of this Mortgage, the terms and conditions of this Article 16 shall control and be binding.

**Section 16.2 Choice of Law.** At the end of Section 13.1 (Governing Law), add the following: "THE PROCEDURES GOVERNING THE ENFORCEMENT BY LENDER OF ITS FORECLOSURE AND PROVISIONAL REMEDIES AGAINST BORROWER UNDER THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS WITH RESPECT TO THE LAND OR OTHER ASSETS SITUATED IN FLORIDA, INCLUDING BY WAY OF ILLUSTRATION, BUT NOT LIMITATION, ACTIONS FOR FORECLOSURE, REPLEVIN, FOR CLAIM AND DELIVERY OF PROPERTY, FOR INJUNCTIVE RELIEF OR FOR THE APPOINTMENT OF A RECEIVER SHALL BE GOVERNED BY THE LAWS OF THE STATE OF FLORIDA."

**Section 16.3 Future Advances.** This Mortgage is given to secure not only the existing Debt, but also such future advances, whether such advances are obligatory or are to be made at the option of Lender or the holder hereof, or otherwise as are made within twenty (20) years from the date hereof, to the same extent as if such future advances were made on the date of the execution of this Mortgage. The total amount of Debt that may be so secured by this Mortgage may be increased or decreased from time to time (as set forth in the Loan Agreement), but the total unpaid balance so secured at any one time shall not exceed twice the face amount of the Note, plus interest thereon, and any disbursements made under this Mortgage for the payment of impositions, taxes, assessments, levies, insurance, or otherwise with interest on such disbursements at the rate set forth in the Note, plus any increases in the principal balance as the result of negative amortization or deferred interest, if any. It is agreed that any additional sum or sums advanced by Lender pursuant to the terms hereof shall be equally secured with and have the same priority as the original Debt and shall be subject to all of the terms, provisions and conditions of this Mortgage, whether or not such additional loans or advances are evidenced by other promissory notes or other guaranties of Borrower and whether or not identified by a recital that it or they are secured by this Mortgage. It is further agreed that any additional promissory note or guaranty or promissory notes or guaranties executed and delivered pursuant to this paragraph shall automatically be deemed to be included in the term "Note" wherever it appears in the context of this Mortgage. Without the prior written consent of Lender, which Lender may grant or withhold in its sole discretion, Borrower shall not file for record any notice limiting the maximum principal amount that may be secured by this Mortgage to a sum less than the

maximum principal amount set forth in this paragraph. It is understood and agreed that this future advance provision shall not be construed to obligate Lender to make any such additional loans or advances. Borrower hereby expressly waives and relinquishes any rights granted under Florida Statutes, Section 697.04, or otherwise, to limit the amount of indebtedness that may be secured by this Mortgage at any time during the term of this Mortgage. Borrower further covenants not to file for record any notice limiting the maximum principal amount that may be secured by this Mortgage and agrees that any such notice, if filed, shall be null and void.

**Section 16.4 Assignment of Rents.** The assignment of rents contained in this Mortgage is intended to, and does, constitute an assignment of rents as contemplated in Florida Statutes, Section 697.07. If an Event of Default has occurred and is continuing, Lender shall be entitled to the remedies provided in said Section 697.07, in addition to all rights and remedies, whether procedural or substantive, in effect at the time of execution or enforcement of this Mortgage. Nothing contained in this Section will diminish, alter, impair, or affect any other rights and remedies of Lender, including but not limited to, the appointment of a receiver, nor will any provision herein, diminish, alter, impair or affect any rights or powers of the receiver in law or equity or as set forth elsewhere in this Mortgage. In addition, this assignment of rents will be fully operative without regard to value of the Property or without regard to the adequacy of the Property to serve as security for the obligations owed by Borrower to Lender, and will be in addition to any rights arising under Section 697.07. Except for the notices of default required under this Mortgage or the Loan Documents, if any, Borrower waives any further notice of default or demand for turn over of Rents to Lender under Section 697.07(3).

**Section 16.5 Maturity Date.** The Loan shall be due and payable in full on or before July 9, 2016, as may be extended for three (3) successive terms of one (1) year each, subject to the satisfaction of certain conditions set forth in the Loan Agreement.

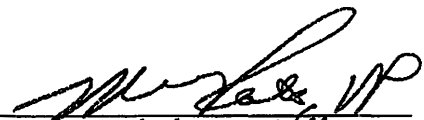
[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, this Mortgage has been executed by Borrower as of the day and year first above written.

**BORROWER:**

**RAHN BAHIA MAR L.L.C.**, a Delaware limited liability company

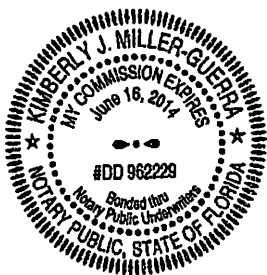
By:

  
Name: J. Kenneth Tate  
Title: Vice President

**NOTARY ACKNOWLEDGMENT**

STATE OF Florida )  
COUNTY OF Manatee ) SS.

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of May, 2014, by J. Kenneth Tate as Vice President of RAHN BAHIA MAR L.L.C., a Delaware limited liability company, on behalf of said limited liability company. He/She is personally known to me or has produced a State of \_\_\_\_\_ driver's license as identification.



Sign Name: Kimberly J. Miller-Guerra  
Print Name: Kimberly J. Miller-Guerra  
My Commission Expires: June 16, 2014  
NOTARY PUBLIC Serial No. (none, if blank):  
#DD 962229

[NOTARY SEAL]

FOR NOTARY STAMP

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

ACKNOWLEDGED AND AGREED TO:

LENDER:

JPMORGAN CHASE BANK, NATIONAL  
ASSOCIATION, a banking association chartered  
under the laws of the United States of America

By:

Name:

Title:

Steven Hantz  
Executive Director

NOTARY ACKNOWLEDGMENT

STATE OF New York )  
 ) SS.  
COUNTY OF New York )

The foregoing instrument was acknowledged before me this 14 day of May, 2014, by  
Steven Hantz, as Exec Director of JPMORGAN  
CHASE BANK, NATIONAL ASSOCIATION, a banking association chartered under the laws  
of the United States of America, on behalf of said banking association. He/She is personally  
known to me or has produced a State of AZ driver's license as identification.

Sign Name:

Print Name:

My Commission Expires:

NOTARY PUBLIC Serial No. (none, if blank):

[NOTARY SEAL]

FOR NOTARY STAMP

My Commission Expires:

Notary Public

MICHAEL A. CUOMO  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 02CU6268078  
Qualified in New York County  
My Commission Expires August 27, 2016

**EXHIBIT A****LEGAL DESCRIPTION****BAHIA MAR HOTEL:**

Leasehold Estate as created by that certain lease from City of Fort Lauderdale, a municipal corporation of Florida, as Lessor, and Fort Lauderdale Candlelight Corporation, a Florida corporation (now known as Bahia Mar Yachting Center, Inc.) dated September 1, 1962, recorded September 8, 1964 in Official Records Book 2870, Page 530; as amended by Amendment thereto dated September 8, 1964, recorded September 8, 1964 in Official Records Book 2870, Page 582; as modified by Modification thereto dated December 7, 1971, recorded December 6, 1972 in Official Records Book 5080, Page 845; as amended by Amendment thereto dated April 22, 1980, recorded June 13, 1980 in Official Records Book 8958, Page 334; assigned by Bahia Mar Yachting Center, Inc. to Bahia Mar Hotel and Yachting Center, Inc. by Assignment of Lease recorded in Official Records Book 9066, Page 472; assigned by Bahia Mar Hotel and Yachting Center, Inc., to Bahia Mar Associates, Limited by Assignment of Lease recorded in Official Records Book 10204, Page 761, and as affected by Lessor's Statement recorded August 14, 1980 in Official Records Book 9066, Page 465, and Lessor's Statement recorded in Official Records Book 9066, Page 469; and assigned by Bahia Mar Associates, Limited to Rahn Bahia Mar, Ltd., by Consent to Assignment of Leasehold Interest and Assignment and Assumption of Leasehold Interest, dated June 29, 1994, recorded July 1, 1994 in Official Records Book 22333, Page 886, as amended and restated in Amended and Restated Lease Agreement dated January 4, 1995, recorded February 23, 1995 in Official Records Book 23168, Page 347, and as amended by the First Amendment to Amended and Restated Lease Agreement dated JULY 1, 2014 and recorded in Official Records Book 50912, Page 1085, all of the public records of Broward County, Florida, demising for a term of years the following:

All that part of BAHIA MAR, according to the plat thereof recorded in Plat Book 35, page 39 of the public records of Broward County, Florida, lying West of the West right-of-way line of Seabreeze Boulevard, excepting therefrom, Parcel No. 1 and ALSO EXCEPTING the North 80 feet of Parcel No. 34.



I hereby certify this document to be a true, correct and complete copy of the record filed in my office. Dated this 10 day of SEPTEMBER, 2014  
County Administrator.

By [Signature]  
Deputy Clerk