

CONSTRUCTION LOAN AGREEMENT

THIS CONSTRUCTION LOAN AGREEMENT ("Agreement") is made and entered into effective as of September 25, 2014, by and between **LUHRS CM, LLC**, an Arizona limited liability company ("Borrower"), and **BANK OF THE OZARKS** ("Lender"). For ease of reference the title of the various articles in this Agreement are provided hereinbelow:

Article I	Definition of Terms
Article II	The Loan
Article III	Allocations and Advances
Article IV	Warranties and Representations
Article V	Covenants of Borrower
Article VI	Assignments, Casualty, Condemnation and Reserves
Article VII	Events of Default
Article VIII	Lender's Disclaimers - Borrower's Indemnities
Article IX	Miscellaneous

ARTICLE I

DEFINITION OF TERMS

Section 1.1. Definitions. As used in this Agreement, the following terms shall have the respective meanings indicated below:

Acceptable Accounting Standards: GAAP or other sound and accepted accounting standards approved by Lender in writing, applied on a basis consistent with that of previous statements and which completely and accurately disclose the financial condition (including all contingent liabilities) of the party at issue.

Additional Origination Fee: An amount equal to **one percent (1%)** of any Advance of the Earn-Out Proceeds or any portion thereof up to a maximum aggregate Additional Origination Fee of **FORTY THOUSAND AND NO/100 DOLLARS (\$40,000.00)**.

Advance: A disbursement by Lender, whether by journal entry, deposit to Borrower's account, check to third party or otherwise of any of the proceeds of the Loan or any insurance proceeds, or Borrower's Deposit.

Affiliate: When used with respect to any Person, any other Person which directly or indirectly controls or is controlled by or is under common control with such Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), with respect to any Person, shall mean possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or interests, by contract or otherwise; provided, however, in no event shall Lender be deemed an Affiliate of Borrower.

Affiliate Fees: As defined in Section 3.5(b)(2) hereof.

Agreement: This Construction Loan Agreement, as the same may from time to time be amended or supplemented.

Allocations: The line items set forth in the Budget for which Advances of Loan proceeds will be made.

Amortization Commencement Date: As defined in the Note.

Amortizing Principal Reduction Payments: As defined in the Note.

Appraised Value: The fair market value of the Mortgaged Property (or any applicable portion thereof as required hereunder) as indicated by the appraisal prepared by an appraiser designated by Lender, in Lender's sole discretion, and presented and based upon such standards as may be reasonably required by Lender and satisfying the requirements of Section 2.5(b) hereof; provided, however, that (i) Lender shall be entitled to obtain a new or updated appraisal in any instance when the Appraised Value is to be determined hereunder, and (ii) the cost of any such new or updated appraisal is to be borne solely by Borrower.

Approved Bulk Agreement: A bulk room contract, discount program or patronage agreement entered into by Borrower with respect to the Improvements which is either (i) preapproved in writing by Lender, or (ii) is entered into at arms-length, market rates, and in the best interests of Borrower and the Mortgaged Property, and is for less than twenty-five (25) room nights per month average and with a term of no more than twelve (12) months.

Approved Operating Budget: As defined in Section 5.33 hereof.

Architectural Barrier Laws: Any and all architectural barrier laws, including without limitation, the Americans with Disabilities Act of 1990, P.L. 101-336, as amended, or any successor thereto.

Assignee: As defined in Section 9.3 hereof.

Assignment of Economic Incentives: That certain Pledge and Collateral Assignment of Economic Incentives of even date herewith executed by Borrower for the benefit of Lender.

Borrower's Deposit: Such cash amounts as Lender may deem necessary for Borrower to deposit with it in accordance with the provisions of Section 3.6 of this Agreement.

Budget: The budget which is set forth on Exhibit C attached hereto and incorporated herein by reference.

Business Day: A weekday, Monday through Friday, except a legal holiday or a day on which banking institutions in Dallas, Texas are authorized or required by law to be closed. Unless otherwise provided, the term "days" when used herein shall mean calendar days.

Cash Flow Reserve: As defined on Exhibit B hereof.

Cash Flow Reserve Initial Termination Date. As defined on Exhibit B hereof.

CC&R: That certain Agreement of Covenants, Conditions and Restrictions Regarding Outparcels executed by and between Hhluhrs and Borrower and granting certain rights by and between Borrower and the owners of the adjoining parcels; provided, however, the CC&R is not to be recorded of record.

City of Phoenix: **THE CITY OF PHOENIX**, a municipal corporation, organized and existing under the laws of the State of Arizona.

Code: The Uniform Commercial Code, as amended from time to time, in effect in the state in which the Mortgaged Property is situated.

Commencement Date: **October 15, 2014**.

Completion: The full and complete performance of all work (including all punch list items) required to fully construct and equip the Improvements in accordance with this Agreement, the Plans, all other security agreements and all Legal Requirements and the Franchise Agreement and Franchisor's other requirements with respect thereto so as to facilitate the designation of the

Improvements as a dual brand Courtyard by Marriott and Residence Inn by Marriott in accordance with the terms of the Franchise Agreement.

Completion Date: The earlier of (i) the earliest date Completion is required pursuant to any Franchise Agreement, and (ii) **October 1, 2016**, as for the entirety of the Improvements; provided, however, with respect to the Completion Date of October 1, 2016, absent the then existence of an Event of Default, Borrower shall have the one-time right and option to extend the Completion Date of October 1, 2016 to **April 1, 2017**, which such extension option shall not be exercised earlier than seven (7) Business Days before October 1, 2016.

Compliance Certificate: A certificate to be furnished to Lender, in the form attached hereto as Exhibit D and made a part hereof for all purposes, certified by the appropriate officer of Borrower pursuant to the applicable provisions of this Agreement, certifying that as of the date thereof, among other things that (i) the Debt Service Coverage Ratio for the applicable period immediately preceding the date of the certificate is in the amount stated in the Compliance Certificate and including such financial documentation or other backup information as may be required by Lender, (ii) no Material Adverse Change has occurred since the date hereof or, if a Material Adverse Change shall have occurred, a specification in detail of the nature and duration of any Material Adverse Change, and (iii) no Event of Default shall have occurred and be continuing or, if any Event of Default shall have occurred and be continuing, a specification in detail of the nature and period of existence thereof and any action taken or proposed to be taken by Borrower to remedy such circumstance.

Constituent Party: Any signatory to this Agreement or any other Loan Document that signs on Borrower's behalf (or on behalf of Guarantor or other specified party) that is a corporation, limited liability company, limited liability partnership, general partnership, limited partnership, joint venture, trust or other type of business association or legal entity.

Construction Account: As defined in Section 5.31 hereof.

Construction Contracts: Collectively, the right, title and interest of Borrower in any and all contracts, subcontracts and agreements, written or oral, between Borrower and any other party, and between parties other than Borrower in any way relating to any restoration, renovation, expansion, repair or construction of all or any portion of the Improvements or the supplying of material (especially fabricated or otherwise), labor, supplies or other services therefor.

Contested Item: Any Imposition, mechanic's or materialman's lien asserted against all or any part of the Mortgaged Property if, and so long as (i) Borrower has notified Lender of same within five (5) days of obtaining knowledge thereof; (ii) Borrower shall diligently and in good faith contest the same by appropriate legal proceedings which shall operate to prevent the enforcement of collection of the same and the sale of the Mortgaged Property or any part thereof to satisfy the same; (iii) Borrower shall have furnished to Lender a cash deposit, or an indemnity bond satisfactory to Lender with a surety satisfactory to Lender, in the amount of such Imposition or lien claim, plus a reasonable additional sum to pay all costs, interest and penalties that may be imposed or incurred in connection therewith, to ensure payment of the matters under contest and to prevent any sale or forfeiture of the Mortgaged Property or any part thereof; (iv) Borrower shall promptly upon final determination thereof pay the amount of any such Imposition or lien claim so determined, together with all costs, interest and penalties which may be payable in connection therewith; (v) the failure to pay such Imposition or lien claim does not constitute a default under any other lien instrument, mortgage or security interest covering or affecting any part of the Mortgaged Property; and (vi) notwithstanding the foregoing, Borrower shall immediately upon request of Lender pay any such Imposition or lien claim notwithstanding such contest, if in the reasonable opinion of Lender the Mortgaged Property shall be in jeopardy or in danger of being forfeited or foreclosed. Lender may pay over any such cash deposit or part thereof to the claimant entitled thereto at any time when, in the judgment of Lender, the entitlement of such claimant is established.

Contingency Allocation: As defined in Section 3.5 hereof.

Contractor: Any Person with whom Borrower contracts for the development, construction and completion of the Improvements or any part thereof; provided, however, as described in Section 3.3 hereof, both the general Construction Contract and the identity of the Contractor shall be subject to Lender's prior written approval.

Contracts: All of the right, title, and interest of Borrower, including equitable rights, in, to, and under any and all: (i) contracts for the purchase and/or sale of all or any portion of the Mortgaged Property, whether such contracts are now or at any time hereafter existing, including but without limitation, any and all earnest money or other deposits escrowed or to be escrowed or letters of credit provided or to be provided by the purchasers under the contracts, including all amendments and supplements to and renewals and extensions of the contracts at any time made, and together with all payments, earnings, income, and profits arising from the sale of all or any portion of the Mortgaged Property or from the contracts and all other sums due or to become due under and pursuant thereto and together with any and all earnest money, security, letters of credit or other deposits under any of the contracts; (ii) contracts, licenses, permits, and rights relating to living unit equivalents or other entitlements with respect to water, wastewater, and other utility services whether executed, granted, or issued by a Person, which are directly or indirectly related to, or connected with, the development, ownership, maintenance or operation of the Mortgaged Property, whether such contracts, licenses, and permits are now or at any time thereafter existing, including without limitation, any and all rights of living unit equivalents or other entitlements with respect to water, wastewater, and other utility services, certificates, licenses, zoning variances, permits, and no-action letters from each Governmental Authority required: (a) to evidence compliance by Borrower and all improvements constructed or to be constructed on the Mortgaged Property with all Legal Requirements applicable to the Mortgaged Property; (b) for the construction and/or development of any improvements on the Mortgaged Property or rehabilitation thereof, if applicable (c) to develop and/or operate the Mortgaged Property as a commercial and/or residential project, as the case may be; (iii) financing arrangements relating to the financing of or the purchase of all or any portion of the Mortgaged Property by future purchasers; (iv) Economic Incentives or similar agreements or understandings; (v) agreements relating in any way to the construction, development or rehabilitation of the Land or Improvements or provision of materials therefor including, without limitation, all Construction Contracts; (vi) contracts with architects or engineers or others for the preparation or provision of any Plans, including all amendments and supplements to and renewals and extensions of such contracts at any time made; and (vii) other contracts which in any way relate to the use, enjoyment, occupancy, operation, maintenance, repair, management or ownership of the Mortgaged Property (save and except any and all Leases), including, without limitation, the Franchise Agreement.

Cure Period: As defined in Section 7.1(b) hereof.

Debtor Relief Laws: Title 11 of the United States Code, as now or hereafter in effect, or any other applicable law, domestic or foreign, as now or hereafter in effect, relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement or composition, extension or adjustment of debts or similar laws affecting the rights of creditors.

Debt Service Coverage Ratio: As defined in Exhibit B hereof.

Default: Any condition or event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default.

Default Interest Rate: The rate of interest specified in the Note to be paid by Borrower from and after the occurrence of an Event of Default but in no event in excess of the Maximum Lawful Rate.

Design Professional: Any Person, if any, with whom Borrower contracts for the provision of planning, design, architectural, engineering or other similar services relating to the construction of the Improvements, including, without limitation, ACRM Architects.

Developer's Fee Allocation: As defined in Section 3.5 hereof.

Disposition: Any sale, lease (except as expressly permitted pursuant to the Loan Documents), exchange, assignment, conveyance, transfer, pledge, collateral assignment, trade or other disposition of all or any part of the Mortgaged Property (or any interest therein) or all or any part of the beneficial ownership interest, held directly or indirectly, in Borrower (if Borrower is a corporation, limited liability company, limited liability partnership, general partnership, limited partnership, joint venture, trust, or other type of business association or legal entity).

DRA: That certain Disposition and Redevelopment Agreement, dated May 25, 2010, executed by and between the City of Phoenix, as lessor, and Hhluhrs, as lessee, with respect to the Land, which was recorded on May 28, 2010 as Recorder's No. 20100456003 in of the Public Records of Maricopa County, as such agreement has been modified by that certain First Amendment to Disposition and Redevelopment Agreement dated May 30, 2012, which was recorded on May 30, 2012 as Recorder's No. 20120518561 in of the Public Records of Maricopa County, and that certain Second Amendment to Disposition and Redevelopment Agreement dated September 16, 2013, and subject to assignment by Hhluhrs to Borrower pursuant to Assignment and Assumption of Disposition and Redevelopment Agreement dated November 20, 2013, as further amended by that certain Third Amendment to Disposition and Redevelopment Agreement dated September 16, 2014, which was recorded on September 24, 2014 as Recorder's No. 20140633014 in of the Public Records of Maricopa County, and as further amended pursuant to such modifications and amendments as may be properly entered into pursuant to the terms of this Agreement and with Lender's consent.

Draw Request: A request by Borrower to Lender for an Advance.

Draw Request Form: The form of Draw Request containing such information as Lender may require.

Earn-Out Conditions: As defined in Section 3.5(g) hereof.

Earn-Out Proceeds: As defined in Section 3.5(g) hereof.

EB-5 Equity: Up to **Twenty Seven Million Five Hundred Thousand and No/100 Dollars (\$27,500,000.00)** of Borrower's equity required pursuant to Section 2.6 from an investor in Borrower obtaining such funds from a program soliciting investments resulting in the issuance of EB-5 visas for immigrant investors pursuant to the Immigration Act of 1990.

Economic Incentive Agreements: Any and all agreements or understandings, if any, with any Governmental Authorities, whether now existing or hereafter in effect pursuant to which any Economic Incentives are provided or are to be provided to Borrower or relative to the Mortgaged Property or any portion thereof to any Affiliate of Borrower including, without limitation, the DRA or any agreements relative to Tax Increment Financing.

Economic Incentive Payments: Any payments paid or to be paid to Borrower or any Affiliate of Borrower pursuant to any of the Economic Incentive Agreements.

Economic Incentives: Collectively, the right, title and interest of Borrower (or any Affiliate of Borrower) in the Economic Incentive Agreements, but only to the extent assignable, and all of Borrower's rights (or such Affiliate's rights) to receive tax abatements, payments, receipts, refunds, revenues, interest, municipal personnel or services or other rights whatsoever under any of the Economic Incentive Agreements, including, without limitation, (i) any and all rights to payments or reimbursements, and (ii) any and all exemptions from ad valorem taxation as well as all abatements,

benefits and privileges attributable to the Mortgaged Property's inclusion in the program associated with the Government Property Lease Excise Tax all as described in the Economic Incentive Agreements.

Encroachment Agreement: That certain easement or license agreement by and between Hhluhrs and the City of Phoenix granting Hhluhrs an easement, over, upon and across that portion of the Land where the existing Parking Garage encroaches onto or over the Land, such encroachment as more particularly depicted on Exhibit B of the Encroachment Agreement, which Encroachment Agreement shall be filed of record.

Environmental Indemnity Agreement: That certain Environmental Indemnity Agreement of even date herewith executed by Borrower and Guarantor for the benefit of Lender.

ERISA: The Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., as amended, and any and all successor statutes thereof.

Event of Default: Any happening or occurrence described in Section 7.1 hereof.

Extension Fee: A fee to be paid by Borrower to Lender in order to exercise the Extension Option in the amount equal to the product of **one-quarter of one percent (0.25%)** multiplied by the sum of (i) the Outstanding Principal Balance and (ii) any then unadvanced portions of the Loan Amount.

Extension Option: As defined in Section 2.3 hereof.

Extension Period: A single period of **one (1) year** commencing on the day after the Original Maturity Date.

Extension Request: As defined in Section 2.3(a) hereof.

Fee Release Date: The date that Lender determines the Mortgaged Property has achieved a Debt Service Coverage Ratio greater than **1.25** for a period of **six (6)** consecutive months.

FF&E and OS&E Costs Allocation: As defined in Section 3.5 hereof.

FF&E Cost Items: As defined on Exhibit B hereto under "Additional Reserves".

FF&E Monthly Deposit: As defined on Exhibit B hereto under "Additional Reserves".

FF&E Reserve: As defined on Exhibit B hereto under "Additional Reserves".

Financing Statement: The financing statement or financing statements (on Standard Form UCC-1 or otherwise) identifying Borrower as "debtor" or as "borrower" or similar in connection with the Loan Documents.

Fixtures: All materials, supplies, equipment, systems, apparatus, and other items now owned or hereafter acquired by Borrower and now or hereafter attached to, installed in, or used in connection with (temporarily or permanently) any of the Improvements or the Land, which are now owned or hereafter acquired by Borrower and are now or hereafter attached to the Land or the Improvements, including, but not limited to, any and all partitions, dynamos, window screens and shades, draperies, rugs and other floor coverings, awnings, motors, engines, boilers, furnaces, pipes, cleaning, call and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, swimming pools, heating, ventilating, refrigeration, plumbing, laundry, lighting, generating, cleaning, waste disposal, transportation (of people or things, including but not limited to, stairways, elevators, escalators, and conveyors), incinerating, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, lighting, traffic control, waste disposal, raw and potable water,

gas, electrical, storm and sanitary sewer, telephone and cable television facilities, and all other utilities whether or not situated in easements, together with all accessions, appurtenances, replacements, betterments, and substitutions for any of the foregoing and the proceeds thereof.

Franchise Agreement: Collectively, (i) that certain Residence Inn By Marriot Hotel Franchise Agreement, dated December 27, 2010, between HHLuhrs and Franchisor, with respect to the Mortgaged Property, the interest of Hhluhrs therein having been assigned to Borrower by Assignment and Assumption of Franchise Documents dated November 27, 2013, and (ii) that certain Courtyard By Marriot Hotel Franchise Agreement, dated December 27, 2010, between HHLuhrs and Franchisor, with respect to the Mortgaged Property, the interest of Hhluhrs therein having been assigned to Borrower by Assignment and Assumption of Franchise Documents dated November 27, 2013.

Franchisor: **MARRIOT INTERNATIONAL, INC.**, a Delaware corporation.

Franchisor Comfort Letter: That certain letter of assurance, whether one or more, between Lender, Franchisor and Borrower relating to the Loan and Franchise Agreement.

GAAP: Generally accepted accounting principles, applied on a consistent basis, as set forth in Opinions of the Accounting Principles Board of the American Institute of Certified Public Accountants or in statements of the Financial Accounting Standards Board or their respective successors and which are applicable in the circumstances as of the date in question. Accounting principles are applied on a "consistent basis" when the accounting principles applied in a current period are comparable in all material respects to those accounting principles applied in preceding periods.

Governmental Authority: Any and all applicable courts, boards, agencies, commissions, offices or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) or for any quasi-governmental units (development districts or authorities).

Ground Lease: That certain Development Lease (City Contract No. 128632-___), dated October 1, 2010, executed by and between the City of Phoenix, as landlord, and Hhluhrs, as tenant, with respect to the Land, a memorandum of which was recorded on October 11, 2011 in of the Public Records of Maricopa County, Arizona as Recorder's No. 20110841111, as Amended by that certain First Amendment to Development Lease dated May 30, 2012, and by that certain Second Amendment to Development Lease dated as of September 16, 2013, a memorandum of which was recorded on September 18, 2013 in the Official Records of Maricopa County, Arizona as Recorder's No. 2013-0836493, and as the interest of Hhluhrs therein has been assigned to Borrower pursuant to Assignment and Assumption of Development Lease dated November 20, 2013, and as further amended pursuant to that certain Third Amendment to Development Leases dated September 16, 2014, a memorandum of which was recorded on September 24, 2014 in the Official Records of Maricopa County, Arizona as Recorder's No. 20140633064, and as further amended pursuant to modification and amendments properly entered into pursuant to this Agreement and with the consent of Lender.

Ground Rent: Such rent or other financial obligations due and payable by Borrower to the City of Phoenix pursuant to the Ground Lease.

Guarantor (individually and/or collectively, as the context may require): **RAJAN HANSJI**, an individual, **SHIRISH PATEL**, an individual, and any other party guaranteeing the repayment of all or any part of the Indebtedness, the satisfaction of, or continued compliance with, all or any part of the Obligations, or both.

Guarantor Financial Covenants: Those certain covenants of Guarantor provided in: (i) Section 3.9 of the Guaranty-Carve-Out, (ii) Section 3.9 of the Guaranty-Completion, (iii) Section 3.9 of that certain Guaranty-Repayment or (iv) Section 3.9 of the Guaranty-Debt Service.

Guaranty (individually and/or collectively as the context may require): That or those instruments of guaranty, if any, now or hereafter in effect from Guarantor to Lender guaranteeing the repayment of all or any part of the Indebtedness, the satisfaction of, or continued compliance with, all or any portion of the Obligations or both, including, without limitation, that certain Guaranty-Carve-Out, Guaranty-Completion, Guaranty-Repayment and Guaranty-Debt Service.

Guaranty-Carve-Out: That certain Guaranty (Carveout) of even date herewith executed by Guarantor for the benefit of Lender with respect to certain specified recourse obligations of Guarantor thereunder.

Guaranty-Debt Service: That certain Guaranty (Debt Service) of even date herewith executed by Guarantor for the benefit of Lender.

Guaranty-Completion: That certain Guaranty (Completion) of even date herewith executed by Guarantor for the benefit of Lender with respect to certain construction and related obligations all as more particularly described therein.

Guaranty-Repayment: That certain Guaranty (Repayment) of even date herewith executed by Guarantor for the benefit of Lender.

Hhluhrs: **HHLUHRS, LLC**, an Arizona limited liability company.

Impositions: (i) All real estate and personal property taxes, charges, assessments, standby fees, excises and levies and any interest, costs or penalties with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which at any time prior to or after the execution hereof may be assessed, levied or imposed upon the Mortgaged Property or the ownership, use, occupancy or enjoyment thereof, or any part thereof, or the sidewalks, streets or alleyways adjacent thereto; (ii) any charges, fees, license payments or other sums payable for or under any easement, license or agreement maintained for the benefit of the Mortgaged Property; (iii) water, gas, sewer, electricity and other utility charges and fees relating to the Mortgaged Property; (iv) assessments and charges arising under any subdivision, condominium, planned unit development or other declarations, restrictions, regimes or agreements affecting the Mortgaged Property; and (v) the tax payments contemplated under the Ground Lease, including the PILOT (as defined in the Ground Lease).

Impositions and Ground Rent Reserve: As defined in Section 6.6 hereof.

Improvements: Any and all improvements of any kind or nature all as more particularly described in the Plans, and any and all additions, alterations, betterments or appurtenances thereto, now or at any time hereafter situated, placed or constructed upon the Land or any part thereof, including, without limitation, that certain 19-story, dual-branded 120-room Courtyard by Marriot and 200-room Residence Inn by Marriot hotel project, totaling approximately 230,000 square feet.

Indebtedness: (i) The principal, interest and other sums evidenced by the Note or the Loan Documents; (ii) any other amounts, payments or premiums payable under the Loan Documents; (iii) such additional or future sums (whether or not obligatory), with interest thereon, as may hereafter be borrowed or advanced from Lender, its successors or assigns, by the then record owner of the Mortgaged Property, when evidenced by a promissory note which, by its terms, is secured hereby (it being contemplated by Borrower and Lender that such future indebtedness may be incurred); (iv) any and all other indebtedness, obligations and liabilities of any kind or character of Borrower to Lender, now or hereafter existing, absolute or contingent, due or not due, arising by operation of law or otherwise, direct or indirect, primary or secondary, joint, several, joint and several, fixed or contingent, secured or unsecured by additional or different security or securities, including indebtedness, obligations and liabilities to Lender of Borrower as a member of any partnership, joint venture, trust or other type of business association or other legal entity, and whether incurred by Borrower as principal,

surety, endorser, guarantor, accommodation party or otherwise; and (v) any and all renewals, modifications, amendments, restatements, rearrangements, consolidations, substitutions, replacements, enlargements and extensions thereof, it being contemplated by Borrower and Lender that Borrower may hereafter become indebted to Lender in further sum or sums.

Initial Advance: The Advance to be made at the time Borrower satisfies the conditions set forth in Section 3.2 of this Agreement.

Initial Origination Fee: The sum of **THREE HUNDRED NINETY-FIVE THOUSAND AND NO/100 DOLLARS (\$395,000.00)** to be paid by Borrower to Lender pursuant to the applicable provisions of this Agreement.

Inspecting Person: A Person designated by Lender from time to time who may inspect the Improvements from time to time for the benefit of Lender.

Insured Casualty: As defined in Section 6.4 hereof.

Interest Allocation: As defined in Section 3.5 hereof.

Land: The real property or interest therein described in Exhibit A attached hereto and incorporated herein by reference, together with all rights, titles, interests and privileges of Borrower in and to (i) all streets, ways, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining to such real property or the improvements thereon; (ii) any strips or gores of real property between such real property and abutting or adjacent properties; (iii) all water, water rights and water courses which are appurtenant to, located on, under or above or used in connection with the Mortgaged Property, or any part thereof, whether adjudicated or unadjudicated, conditional or absolute, tributary, or non-tributary, surface or underground, designated or undesignated; (iv) timber, crops, pertaining to such real property; and (v) all appurtenances and all reversions and remainders in or to such real property.

Leases: The right, title and interest of Borrower in any and all leases, master leases, subleases, licenses, concessions, or other agreements (whether written or oral, now or hereafter in effect) which grant to third parties a possessory interest in and to, or the right to use or occupy, all or any part of the Mortgaged Property, together with all security and other deposits or payments made in connection therewith, whether entered into before or after the filing by or against Borrower of any petition for relief under the United States Bankruptcy Code, 11 U.S.C. §101, et seq., as amended, including, as applicable, any guest room agreements, banquet or conference room and related service agreements and any lease approved by lender with respect to any onsite restaurant, gift shop or similar accommodating use to the Improvements.

Legal Requirements: Any and all (i) present and future judicial decisions, statutes (including Architectural Barrier Laws, environmental laws and Prescribed Laws), laws, rulings, rules, regulations, orders, writs, injunctions, decrees, permits, certificates or ordinances of any Governmental Authority in any way applicable to Borrower, any Constituent Party, Guarantor or the Mortgaged Property, including, without limiting the generality of the foregoing, the ownership, use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction thereof; (ii) covenants, conditions and restrictions contained in any deeds, other forms of conveyance or in any other instruments of any nature that relate in any way or are applicable to the Mortgaged Property or the ownership, use or occupancy thereof; (iii) presently or subsequently effective bylaws and articles of incorporation, operating agreement and articles of organization or partnership, limited partnership, joint venture, trust or other form of business association agreement of Borrower or Guarantor; (iv) Leases; (v) Contracts; and (vi) leases, other than those described in (iv) above, and other contracts (written or oral), other than those described in (v) above, of any nature that relate in any way to the Mortgaged Property and to which Borrower or Guarantor may be bound, including, without limiting the generality of the

foregoing, any lease or other contract pursuant to which Borrower is granted a possessory interest in and to the Land and/or the Improvements.

Lien Instrument: That certain Leasehold Deed of Trust, Security Agreement and Fixture Financing Statement of even date herewith executed by Borrower for the benefit of Lender to secure the payment of the Indebtedness and performance of the Obligations.

Loan: The loan evidenced by the Note and governed by this Agreement.

Loan Amount: **FORTY THREE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$43,500,000.00)**; provided, however, absent Borrower's qualification for an Advance from the Earn-out Proceeds pursuant to Section 3.5(h), the maximum portion of the Loan Amount that shall be available for Advance (subject to Borrower's compliance with all other requirements and conditions hereof) shall be **THIRTY NINE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$39,500,000.00)**.

Loan Documents: This Agreement, the Note, the Lien Instrument, the Environmental Indemnity Agreement, the Guaranty and any and all other agreements, documents and instruments now or hereafter executed by Borrower, Guarantor or any other Person or party in connection with the Loan evidenced by the Note or in connection with the payment of the Indebtedness or the performance and discharge of the Obligations, together with any and all renewals, modifications, amendments, restatements, consolidations, substitutions, replacements, extensions and supplements hereof and thereof.

Loan-to-Value Ratio: The quotient of (i) the sum of the Outstanding Principal Balance plus any as yet unadvanced amounts (including, without limitation, the Earn-Out Proceeds), divided by (ii) the Appraised Value.

Material Adverse Change: Any event, circumstance, fact, condition, development or occurrence that has had or could be expected to have a material and adverse effect on any of: (i) the business, operations, condition (financial or otherwise), prospects, liabilities, assets, results of operations, capitalization, liquidity or any properties of Borrower, Guarantor or any Constituent Party; (ii) the value of the Mortgaged Property; (iii) the ability of Borrower or Guarantor (or any Persons comprising Borrower or Guarantor), to pay and perform the Indebtedness or the other Obligations; or (iv) the validity, enforceability or binding effect of any of the Loan Documents.

Maturity Date: The Original Maturity Date as such may have been extended pursuant to Section 2.3 hereof, subject, however, to the right of acceleration as herein provided and as provided elsewhere in the Loan Documents.

Maximum Lawful Rate: The maximum lawful rate of interest which may be contracted for, charged, taken, received or reserved by Lender in accordance with the applicable laws of the State of Texas (or applicable United States federal law to the extent that it permits Lender to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law), taking into account all charges made in connection with the transaction evidenced by the Note and the other Loan Documents. To the extent that Lender is relying on Chapter 303 of the Texas Finance Code to determine the Maximum Lawful Rate payable on the Note and/or the Loan, Lender will utilize the weekly ceiling from time to time in effect as provided in such Chapter 303, as amended. To the extent United States federal law permits Lender to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law, Lender will rely on United States federal law instead of such Chapter 303 for the purpose of determining the Maximum Lawful Rate. Additionally, to the extent permitted by applicable law now or hereafter in effect, Lender may, at its option and from time to time, utilize any other method of establishing the Maximum Lawful Rate under such Chapter 303 or under other applicable law by giving notice, if required, to Borrower as provided by applicable law now or hereafter in effect.

Minerals: All right, title and interest of Borrower in and to all substances in, on, under or above the Land which are now, or may become in the future, intrinsically valuable and which now or may be in the future enjoyed through extraction or removal from the Land, including, without limitation, oil, gas, all other hydrocarbons, coal, lignite, carbon dioxide, all other non-hydrocarbon gases, uranium, all other radioactive substances, gold, silver, copper, iron and all other metallic substances or ores.

Mortgaged Property: The Land, Minerals, Fixtures, Improvements, Personalty, Economic Incentives, Contracts, Leases, Rents, Reserves, Plans and Construction Contracts, and any interest of Borrower now owned or hereafter acquired in and to the foregoing, together with any and all other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the Indebtedness or the performance and discharge of the Obligations, together with any and all proceeds of any of the foregoing. As used in this Agreement, the term "Mortgaged Property" shall be expressly defined as meaning all or, where the context permits or requires, any part of the above and all or, where the context permits or requires, any interest therein.

Net Cash Flow: Borrower's net cash flow from the Mortgaged Property for any particular calendar month calculated on a cash basis inclusive of all cash or cash equivalent revenue of any nature whatsoever collected by Borrower in such calendar month and net of (i) all payments by Borrower to Lender during such month of principal and interest on the Loan pursuant to the Note, and (ii) all bona fide, third party, ordinary operating expenses paid by Borrower with respect to the Mortgaged Property during such month. Payment of interest or other costs by Borrower using monies from an Advance shall not serve as a deduction pursuant to items (i) or (ii) above. Net Cash Flow shall be verified by Lender in Lender's sole discretion.

Note: That certain Promissory Note of even date herewith in the principal sum of the Loan Amount (together with any and all renewals, modifications, reinstatements, enlargements or extensions thereof) executed and delivered by Borrower payable to the order of Lender, evidencing the Loan.

Obligations: Any and all of the covenants, conditions, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by Borrower, Guarantor or any other Person or party to the Loan Documents to Lender or others as set forth in the Loan Documents.

Operating Account: As defined in Section 5.31 hereof.

Operations Commencement Date: That date when one or both of the hotels open for business at the Mortgaged Property.

Operating Loss Allocation: As defined in Section 3.5 hereof.

Original Maturity Date: The date that is **four (4) years** from the effective date hereof.

Outstanding Principal Balance: The amount of principal then Advanced and outstanding and payable by Borrower to Lender in accordance with the Note and this Agreement.

Parking Agreement: That certain easement or license agreement by and between Hhluhrs and Borrower providing Borrower the right to use no fewer than **one hundred twenty-five (125)** full size parking stalls in the Parking Garage, which Parking Agreement shall be filed of record and shall be a senior priority encumbrance against the Parking Garage (i.e., any mortgage lender with a lien against the Parking Garage shall be required to provide a subordination with respect to the Parking Agreement such that the Parking Agreement is senior in priority to any such lien).

Parking Garage: That certain 435-space parking garage located adjacent to the Mortgaged Property and owned by Hhluhrs, to which Borrower enjoys easement rights (including use of no less than **125** parking spaces at all times) pursuant to the Parking Agreement.

Payment Date: The first (1st) day of each and every calendar month during the term of the Loan; provided, however, to the extent any Payment Date should fall on a day which is not a Business Day, such Payment Date shall be deemed to be the immediately succeeding Business Day.

Permitted Change: A modification to the Plans, a Construction Contract or both which (i) is not structural in nature; (ii) does not decrease the rentable area of the Improvements or otherwise diminish the revenue generation capabilities of the Improvements; (iii) modifies the aggregate cost of the Mortgaged Property (or causes a reallocation of costs within the Budget) by less than Twenty Five Thousand and No/100 Dollars (\$25,000.00) in the singular and less than Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) in the aggregate with all prior Permitted Changes; provided, however, to the extent any such change increases the aggregate Project Costs, the cash equity requirement described in Section 2.6 hereof shall be increased by a like amount and a deposit in such amount shall be provided by Borrower into the Borrower's Deposit as a condition to such item being deemed a Permitted Change; (iv) does not cause the Improvements to be in violation of any Legal Requirements; (v) is described by written notice to Lender (including a copy of any change order) no later than five (5) days following its implementation; and (vi) has been approved by, to the extent applicable, any tenant as to such part of the Improvements or from whom consent is otherwise required, all sureties under payment or performance bonds, if any, covering such Construction Contract and all required Governmental Authority.

Permitted Disposition: The transfer of an interest in Borrower that:

(i) occurs by inheritance, devise, bequest or by operation of law upon the death of a natural person who is the owner of a direct or indirect ownership interest in Borrower; or

(ii) is to a trust, partnership or other entity for family estate planning purposes; or

(iii) constitutes an assignment of limited partner interests or other non-management beneficial ownership interests in Borrower so long as (a) the general partner or managing member, as applicable, of Borrower, the ultimate ownership of such general partner and/or managing member of Borrower and the day-to-day management of Borrower do not change, (b) such assignment does not result in (taking into consideration any previous assignments) a change in excess of forty-nine percent (49%) of the ultimate beneficial ownership interest in Borrower (subject to Lender's credit review process described hereinbelow);

provided, however, in order for any such transfer of an interest to qualify as a Permitted Disposition such a transfer must further (1) not constitute a Material Adverse Change, (2) not result (either singularly or in the aggregate with prior assignments) in any party as to which Lender has not undertaken its normal credit review process becoming an owner, directly or indirectly, in twenty percent (20%) or more of Borrower and (3) be the subject of written notice to Lender within ten (10) days of such assignment together with copies of all applicable assignment documents.

Permitted Exceptions: Has the meaning set forth in the Lien Instrument.

Person: Any corporation, limited liability company, limited liability partnership, general partnership, limited partnership, firm, association, joint venture, trust or any other association or legal entity, including any public or governmental body, quasi-governmental body, agency or instrumentality, as well as any natural person.

Personal Property Leases: Any lease, pay-to-own or similar arrangement whereby Borrower or any Affiliate of Borrower, as lessee, obtains effective possession or control of an item or system used with respect to the Mortgaged Property (including, without limitation, any telephone systems, vehicles,

televisions, furniture or any equipment used in the operation of the Improvements) pursuant to a contractual arrangement other than unencumbered free and clear ownership of such item by Borrower.

Personalty: All of the right, title and interest of Borrower in and to (i) furniture, furnishings, equipment, machinery, tangible personal property, and goods located within, used in the operation of or derived from the Improvements, specifically including those within the definition of "Property" or "Equipment" or "Inventories" under the Uniform System of Accounts including, as applicable, all linen, china, glassware, tableware, uniforms, guest ledgers, telephone systems, televisions and television systems, and computer systems; (ii) crops, farm products, timber and timber to be cut and extracted Minerals; (iii) general intangibles (including payment intangibles), money, insurance proceeds, accounts, contract and subcontract rights, trademarks, trade names, copyrights, monetary obligations, chattel paper (including electronic chattel paper), instruments, investment property, documents, letter of credit rights, inventory and commercial tort claims; (iv) all cash funds, fees (whether refundable, returnable or reimbursable), deposit accounts or other funds or evidences of cash, credit or indebtedness deposited by or on behalf of Borrower with any governmental agencies, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs, any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to the Land, Improvements, Fixtures, Contracts, or Personalty, including but not limited to those for any vacation of, or change of grade in, any streets affecting the Land or the Improvements and those for municipal utility district or other utility costs incurred or deposits made in connection with the Land; (v) the Construction Contracts, Plans and all building and construction materials and equipment; and (vi) all other personal property of any kind or character as defined in and subject to the provisions of the Code (Article 9 - Secured Transactions); any and all of which are now owned or hereafter acquired by Borrower, and which are now or hereafter situated in, on or about the Land or the Improvements, or used in or necessary to the complete and proper planning, design, development, construction, financing, use, occupancy or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use in or on the Land or the Improvements, together with all accessions, replacements and substitutions thereto or therefor and the proceeds thereof.

Plans: Collectively, the plans and specifications, shop drawings or other technical descriptions prepared for the development of the Land or construction or rehabilitation of the Improvements, as applicable, prepared by Borrower or the Design Professional and approved by Lender as required herein, by all applicable Governmental Authorities and by any party to a purchase or Construction Contract with a right of approval, all amendments and modifications thereof approved in writing by the same, and all other design, engineering or architectural work, test reports, surveys, shop drawings and related items.

Prescribed Laws: Any and all present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates, orders and ordinances of any Governmental Authority relating to terrorism or money laundering, including, without limiting the generality of the foregoing, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Pub. L. No. 107-56); the Trading with the Enemy Act (50 U.S.C.A. App. 1 *et seq.*); the International Emergency Economic Powers Act (50 U.S.C.A. § 1701-06); Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (relating to "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism") and the United States Treasury Department's Office of Foreign Assets Control list of "Specifically Designated Nationals and Blocked Persons" (as published from time to time in various mediums.)

Project Costs: The sum of the following: (i) the hard and soft costs to construct and complete the Improvements, (ii) all other costs incurred relative to the Mortgaged Property including all costs of

the character identified on the Budget, and (iii) the amount of the costs necessary to close the Loan, including, without limitation, attorneys' fees and title costs.

Property Management Agreement: As defined in Section 5.32 hereof.

Property Manager. As defined in Section 5.32 hereof.

Regulatory Authority: As defined in Section 2.5 hereof.

Rents: All of the rents, revenues, royalties, income, issues, proceeds, bonus monies, profits, security and other types of deposits (after Borrower acquires title thereto) and other benefits paid or payable by parties to the Leases and/or Contracts (other than Borrower) for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying all or any portion of the Mortgaged Property.

Reserves: All sums on deposit or due under any of the Loan Documents now or hereafter executed by Borrower for the benefit of Lender including (i) the accounts into which the Reserves have been deposited (including, without limitation, the Impositions and Ground Rent Reserve, FF&E Reserve, Cash Flow Reserve and the Borrower's Deposit); (ii) all insurance on said accounts; (iii) all accounts, contract rights and general intangibles or other rights and interests pertaining thereto; (iv) all sums now or hereafter therein or represented thereby; (v) all replacements, substitutions or proceeds thereof; (vi) all instruments and documents now or hereafter evidencing the Reserves or such accounts; and (vii) all powers, options, rights, privileges and immunities pertaining to the Reserves (including the right to make withdrawals therefrom).

Restoration Casualty: An Insured Casualty which (i) has a likely cost of full restoration of the Improvements as determined by Lender not exceeding Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00); (ii) relates to damage to the Improvements that is less than twenty-five percent (25%) of the net rentable square feet of the Mortgaged Property; (iii) occurs when no Event of Default has occurred and is then continuing; (iv) does not allow any of the existing tenants to terminate their respective Leases; and (v) is such that in the reasonable judgment of Lender (1) the Mortgaged Property can be restored within six (6) months to an economic unit no less valuable than the same was prior to the Insured Casualty, (2) such restoration can be substantially completed no later than six (6) months preceding the Maturity Date, and (3) the Mortgaged Property shall continue, throughout the period of restoration, to adequately secure the outstanding balance of the Loan.

RevPar: Means the revenue per available room for the Hotel calculated in accordance with Acceptable Accounting Standards and the Uniform System of Accounts and certified and approved by Lender.

Security Agreement: All security agreements, whether contained in the Lien Instrument, this Agreement, a separate security agreement or otherwise creating a security interest in all personal property and fixtures of Borrower (including replacements, substitutions and after-acquired property) now or hereafter situated in or upon the Land or Improvements, or used or intended to be used in the operation thereof, to secure the Loan.

Stabilization: Lender's written verification that (i) Completion has occurred and all conditions specified in Section 3.4 hereof are satisfied, and (ii) the Debt Service Coverage Ratio is greater than **1.25**.

Subordinate Lien Instrument: Any mortgage, deed of trust, lien instrument, pledge, lien (statutory, constitutional or contractual), security interest, encumbrance or charge, conditional sale or other title retention agreement, covering all or any part of the Mortgaged Property executed and delivered by Borrower, the lien of which is subordinate and inferior to the lien of the Lien Instrument.

Survey: As defined in Section 5.15 hereof.

Tax, Ground Rent and Insurance Allocation: As defined in Section 3.5 hereof.

Tax Increment Financing: The right, title and interest of Borrower in any Economic Incentive which provides partial payment for or reimbursement of any and all infrastructure improvements based upon incremental real estate tax value increases within a designated area and during a certain period of time with respect to all or any portion of the Land, whether for the benefit of Borrower or any Affiliate of Borrower, and whether now in existence or hereafter in effect.

Title Company: Chicago Title Insurance Company (and its issuing agent, if applicable) issuing the Title Insurance, which shall be acceptable to Lender in its sole and absolute discretion.

Title Insurance: One or more title insurance commitments, binders or policies, as Lender may require, issued by the Title Company, on a coinsurance or reinsurance basis (with direct access endorsement or rights) if and as required by Lender, in the maximum amount of the Loan insuring or committing to insure that the Lien Instrument constitutes a valid lien covering the Land and Improvements subject only to those exceptions which Lender may approve.

Uniform System of Accounts: The Uniform System of Accounts for Hotels as published by the American Hotel Association of the United States and Canada, as such may be amended from time to time.

Section 1.2. Additional Definitions. As used herein, the following terms shall have the following meanings: (i) "Hereof," "hereby," "hereto," "hereunder," "herewith" and similar terms mean of, by, to, under and with respect to this Agreement or to the other documents or matters being referenced; (ii) "heretofore" means before, "hereafter" means after, and "herewith" means concurrently with the date of this Agreement; (iii) all pronouns, whether in masculine, feminine or neuter form, shall be deemed to refer to the object of such pronoun whether same is masculine, feminine or neuter in gender, as the context may suggest or require; (iv) "including" means including without limitation; (v) and all terms used herein, whether or not defined in Section 1.1 hereof, and whether used in singular or plural form, shall be deemed to refer to the object of such term whether such is singular or plural in nature, as the context may suggest or require.

ARTICLE II

THE LOAN

Section 2.1. Agreement to Lend. Lender hereby agrees to lend up to but not in excess of the Loan Amount to Borrower, and Borrower hereby agrees to borrow such sum from Lender, all upon and subject to the terms and provisions of this Agreement, such sum to be evidenced by the Note. Borrower's liability for repayment of the interest on account of the Loan shall be limited to and calculated with respect to Loan proceeds actually disbursed to Borrower pursuant to the terms of this Agreement and the Note and only from the date or dates of such disbursements. Lender may, in Lender's discretion, disburse Loan proceeds by journal entry to pay interest and financing costs and disburse Loan proceeds directly to third parties to pay costs or expenses required to be paid by Borrower pursuant to this Agreement. Loan proceeds disbursed by Lender by journal entry to pay interest or financing costs, and Loan proceeds disbursed directly by Lender to pay costs or expenses required to be paid by Borrower pursuant to this Agreement, shall constitute Advances to Borrower.

Section 2.2. Promise to Pay and Perform; Time of Essence. Borrower will pay the Indebtedness as and when specified in the Note and the other Loan Documents, and will perform and discharge all of the Obligations, in full and on or before the date same are to be performed. Time is of the essence with respect to each and every promise, covenant or obligation of Borrower specified in the Loan Documents.

以上内容仅为本文档的试下载部分，为可阅读页数的一半内容。如要下载或阅读全文，请访问：<https://d.book118.com/747122121015006105>