

CONSTRUCTION LOAN AGREEMENT

THIS CONSTRUCTION LOAN AGREEMENT (this "**Agreement**") is made as of June 19, 2019, by and between LIXI HOSPITALITY REVERE, INC., a Delaware corporation ("**Borrower**"), and HALL REVERE, LLC, a Texas limited liability company, its designee, successors and assigns ("**Lender**").

RECITALS

A. Borrower is the owner of a fee simple estate in land located in Revere, Massachusetts and legally described in Exhibit A attached hereto (the "**Land**").

B. Borrower has requested Lender to extend credit to Borrower in the aggregate amount of up to \$43,300,000.00 (the "**Loan**") to finance the construction and development in accordance with this Agreement, the Budget and the Plans and Specifications of a 168-room Springhill Suites and certain other facilities and amenities in and appurtenant to the hotel (as constructed and developed, collectively, the "**Improvements**"), and Lender is willing to make the Loan on the terms and conditions hereinafter set forth.

AGREEMENTS

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE 1

INCORPORATION OF RECITALS AND EXHIBITS

1.1. Incorporation of Recitals. The foregoing preambles and all other recitals set forth herein are made a part hereof by this reference.

1.2. Incorporation of Exhibits and Schedules. Exhibits A through F and all Schedules to this Agreement, attached hereto are incorporated in this Agreement and expressly made a part hereof by this reference.

ARTICLE 2

DEFINITIONS

2.1. Defined Terms. The following terms as used herein shall have the following meanings:

Affiliate: With respect to a specified person or entity, any individual, partnership, corporation, limited liability company, trust, unincorporated organization, association or other entity which, directly or indirectly, through one or more intermediaries, Controls or is Controlled by, or is under common control with such person or entity, including, without limitation, any general or limited partnership in which such person or entity is a partner.

Agreement: This Construction Loan Agreement, as may be amended from time to time.

Anti-Money Laundering Laws: All applicable BSA (herein defined) laws, regulations and government guidance on BSA compliance and on the prevention and detection of money laundering violations under 18 U.S.C. §§ 1956 and 1957, as amended.

Appraisal: An MAI certified appraisal of the Project performed in accordance with FIRREA and Lender's appraisal requirements by an appraiser selected and retained by Lender.

Authorized Representative: Shen Xiao or another representative approved by Lender in writing from time to time.

Bankruptcy Code: 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.

Beneficial Ownership Certification: A certification regarding beneficial ownership required by the Beneficial Ownership Regulation (herein defined), which certification shall be substantially in form and substance satisfactory to Lender.

Beneficial Ownership Regulation: 31 C.F.R. § 1010.230.

Borrower Parties: Collectively, the Borrower, any Guarantor and any Pledgor (including, in each case, any predecessors and successors-in-interest).

BSA: The Bank Secrecy Act (31 U.S.C. §§ 5311 et. seq. and 31 CFR Part 103 et. seq.), as amended, and as further amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the USA Patriot Act), as the same was restored and amended by Uniting and Strengthening America by Fulfilling Rights and Ensuring Effective Discipline Over Monitoring Act (USA FREEDOM Act) of 2015 and as the same may be further amended, extended, replaced or otherwise modified from time to time, and any corresponding provisions of future laws.

Budget: The budget for the Project specifying all costs and expenses of every kind and nature whatsoever to be incurred by Borrower in connection with the Construction and Project prior to the Maturity Date.

Budget Line Items: As such term is defined in Section 10.2.

Business Day: A day of the year on which banks are not required or authorized to close in Dallas, Texas.

Capital Expenditures: For any period, the amount expended for items capitalized under GAAP (including expenditures for building improvements or major repairs, leasing commissions and tenant improvements).

Cash Equity: As such term is defined in Section 8.1(a).

Change Order: Any request for changes in the Plans and Specifications (other than minor field changes involving no extra cost), or an extension of the Completion Date.

Commencement Date: On or before August 19, 2019 (but not prior to the date hereof).

Commitment Fee: \$866,000.00.

Completion: Means the satisfaction of all of the following requirements with respect to the Project: (i) receipt by Lender of a certificate of substantial completion executed by Borrower, General

Contractor and the architect stating that all of the Improvements are substantially complete in accordance with the Plans and Specifications and all Laws; (ii) receipt by Lender of a final contractor's affidavit signed by the General Contractor stating that all amounts associated with the Construction have been paid and releasing all of its liens on the Project, and receipt by Lender of evidence that the Project is lien free which affidavit may be conditional pending receipt of final payment from Lender; (iii) receipt by Lender of a satisfactory final certificate of occupancy (or its equivalent) issued by the applicable Governmental Authorities, in Lender's sole discretion, free and clear of mechanics' liens and security interests, and provided Borrower can take occupancy and the Project is fully operational; (iv) receipt by Lender of evidence of Franchisor's approval and acceptance of the Project as being complete and being included on Franchisor's reservation system; and (v) receipt by Lender of all items set forth under that certain Post-Closing Agreement executed by Borrower of even date herewith.

Completion Date: The earlier of (i) April 30, 2021, or (ii) the date set forth in the Franchise Agreement for completion and opening of the hotel.

Construction or construction: The construction and equipping of the Improvements and the purchase and installation of all personal property, fixtures and equipment in accordance with the Plans and Specifications.

Construction Schedule: A schedule satisfactory to Lender and Lender's Consultant, establishing a timetable for Completion of the Construction, showing, on a monthly basis, the anticipated progress of the Construction and also showing that the Improvements can be completed on or before the Completion Date.

Control: As such term is used with respect to any person or entity, including the correlative meanings of the terms "controlled by" and "under common control with", shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such person or entity, whether through the ownership of voting securities, by contract or otherwise.

Default or default: Any event, circumstance or condition, which, if it were to continue uncured, would, with notice or lapse of time or both, constitute an Event of Default hereunder.

Default Interest Rate: A rate per annum, compounded monthly, equal to the Maximum Lawful Rate.

Deficiency Deposit: As such term is defined in Section 11.1.

DSCR: Shall have the meaning as set forth in the Note.

Environmental Laws: Shall mean any federal, state, or local law, statute, ordinance, rule or regulation, whether now or hereafter in effect, pertaining to health, safety, public welfare orders, industrial hygiene, the environment (including, without limitation, threatened or endangered species or environmentally sensitive areas) or the environmental conditions on, under, or about the Land, including, without limitation, those laws relating to the storage, handling, use, generation, processing, treatment, transport, disposal, investigation, release or remediation or other management of Hazardous Materials or waste materials. Environmental Laws also includes, without limitation the following, as now or hereafter amended: Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("**CERCLA**"), 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 ("**SARA**"), Pub. L. 99-499, 100 Stat. 1613; Resource Conservation and Recovery Act ("**RCRA**"), 42 U.S.C. § 6901 et seq.; the Toxic Substances Control Act ("**TSCA**"), 15 U.S.C. § 2601 et seq.; Emergency Planning and Community Right to Know Act of 1986 ("**EPCRA**"), 42 U.S.C. § 11001 et seq.; Clean Air Act ("**CAA**"), 42 U.S.C. § 7401 et seq.; Federal Water Pollution Control Act ("**FWPCA**"),

33 U.S.C. § 1251 et seq.; and any applicable corresponding state laws or ordinances and regulations, rules, guidelines, or standards promulgated pursuant to such laws, and violations of Massachusetts laws, statutes, rules and regulations, as such statutes, regulations, rules, guidelines, and standards are amended from time to time.

Environmental Proceedings: Any environmental proceedings, whether civil (including actions by private parties), criminal, or administrative proceedings, relating to the Project.

Environmental Report: An environmental report prepared at Borrower's expense by CBRE as Project PC90353566, dated April 4, 2019 and addressed to Lender (or subject to separate letter agreement permitting Lender to rely on such environmental report).

ERISA: The Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder from time to time.

Event of Default: As defined in Article 18.

FIRREA: The Financial Institutions Reform, Recovery And Enforcement Act of 1989, as amended from time to time.

First Advance: As defined in Section 4.1(b).

FMV: The fair market value of the Land and Improvements as set forth in the appraisal relied upon by Lender as of the date hereof or any subsequent Qualifying Appraisal.

Force Account: That certain force account established by the terms of the Force Account Agreement.

Force Account Agreement: That certain Force Account Agreement for Design Review dated October 24, 2017 between the Massachusetts Bay Transportation Authority and Borrower.

Franchise Agreement: That certain Franchise Agreement dated June 29, 2016, as amended and assigned by that certain Amendment to Springhill Suites by Marriott Franchise Agreement dated April 26, 2019, including all amendments, riders, supplemental agreements and assignments acceptable to Lender to be executed by and among Franchisor and Borrower, as may be further amended with the written consent of Lender from time to time.

Franchisor: Marriot International Inc., and its designees, successors and assigns that are approved by Lender.

General Contractor: Callahan Inc., and its successors and assigns that are approved by the Lender.

Governmental Authority: Any federal, state, county or municipal government, or political subdivision thereof, any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality, or public body, or any court, administrative tribunal, or public utility having jurisdiction over the Project or any of the Required Permits.

Gross Revenues: Shall mean for any period, all revenues of Borrower, determined on a cash basis, derived from the ownership, operation, use, and occupancy of the Project during such period; *provided, however*, that in no event shall Gross Revenues include (i) any loan proceeds; (ii) proceeds or payments under insurance policies (except proceeds of business interruption insurance); (iii)

condemnation proceeds; (iv) capital contributions; (v) income from leases and licenses (not approved by Lender); or (vi) any other extraordinary items, in Lender's reasonable discretion.

Guarantor: Shall mean collectively Shen Xiao, an individual, and the 2016 Shen Xiao Family Trust, and other any Person(s) (other than Borrower) who shall, at any time, with Lender's consent, guarantee in writing the repayment of all or any part of the indebtedness and/or the performance of all or any part of the other obligations of Borrower hereunder and under the other Loan Documents.

Guaranty: One or more guarantees executed by one or more Guarantors pursuant to which the Guarantors, jointly and severally, guarantee the amounts set forth in such Guaranty.

Hazardous Material: Any substance, product, waste, or other material which is or becomes listed, regulated, or addressed as being a toxic, hazardous, polluting, or similarly harmful substance under any Environmental Law, including, without limitation: (i) any substance included within the definition of "hazardous waste" pursuant to Section 1004 of RCRA; (ii) any substance included within the definition of "hazardous substance" pursuant to Section 101 of CERCLA; (iii) any substance included within (a) the definition of "regulated substance" under applicable Massachusetts laws, statutes, rules and regulations, as such statutes, regulations, rules, guidelines, and standards are amended from time to time; or (b) the definition of "hazardous substance" under applicable Massachusetts laws, statutes, rules and regulations, as such statutes, regulations, rules, guidelines, and standards are amended from time to time; (iv) asbestos; (v) polychlorinated biphenyls; (vi) petroleum products; (vii) underground storage tanks, whether empty, filled or partially filled with any substance; (viii) any radioactive materials, urea formaldehyde foam insulation or radon; (ix) any substance included within the definition of "waste" or "solid waste" under applicable Massachusetts laws, statutes, rules and regulations, as such statutes, regulations, rules, guidelines, and standards are amended from time to time or "pollutant" under applicable Massachusetts laws, statutes, rules and regulations, as such statutes, regulations, rules, guidelines, and standards are amended from time to time; (x) toxic mold; (xi) lead paint; (xii) any pesticide, insecticide, desiccants, herbicide, or rodenticide; and (xiii) any other chemical, material or substance, the exposure to which is prohibited, limited or regulated by any Governmental Authority on the basis that such chemical, material or substance is toxic, hazardous or harmful to human health or the environment. The term "Hazardous Materials" shall not include those chemicals at the Project that are needed for operation of the Project and kept in de minimis quantities (5 gallons or less), properly containerized and labeled for use in the Project operation, utilized according to label instructions and used and then disposed of at an off-site location, all in compliance with applicable Environmental Laws.

Hazardous Materials Indemnity: An environmental and hazardous materials indemnity from the Borrower and Guarantors, jointly and severally, indemnifying Lender with regard to all matters related to Hazardous Material and other environmental matters on the Land.

Improvements: The improvements referred to in Recital B hereto and more particularly described in the Plans and Specifications, and all other improvements to the Land.

In Balance or in balance: As such term is defined in Article 11.

Including or including: Including but not limited to.

Indebtedness: As such term is defined in Section 20.13.

Interest Reserve: As defined in Section 6.1.

Internal Revenue Code: The Internal Revenue Code of 1986, as amended from time to time.

Land: As such term is defined in Recital A.

Laws: Collectively, all federal, state and local laws, statutes, codes, ordinances, orders, rules and regulations, including without limitation any Terrorism Laws, judicial opinions or precedential authority in the applicable jurisdiction.

Leases: Any and all leases, master leases, subleases, licenses, concessions, or other agreements (whether written or oral, or 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 Project, 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.

Lender: As defined in the opening paragraph of this Agreement, and including any successor holder of the Loan from time to time.

Lender's Consultant: An independent consulting architect, inspector, and/or engineer designated by Lender in Lender's sole discretion.

Lessee: Means a tenant under a Lease.

Loan: As defined in Recital B.

Loan Documents: The collective reference to this Agreement, the documents and instruments listed in Section 4.2, and all the other documents and instruments entered into from time to time, evidencing or securing the Loan or any obligation of payment thereof or performance of Borrower's, Guarantor's, or any Pledgor's obligations in connection with the transaction contemplated hereunder, each as amended.

Loan Opening and Loan Opening Date: The date of closing of the transaction contemplated hereunder, whereby the Mortgage and other Loan Documents shall have been signed and delivered (either directly to Lender or via an escrow with the Title Insurer and the Mortgage has been delivered for recording and the Title Insurer has confirmed "closing") and all conditions to the initial disbursement of the Loan have been satisfied.

Material Adverse Change or material adverse change: Any event, circumstance, fact, condition, development or occurrence that has had or could be reasonably expected to have a Material Adverse Effect.

Material Adverse Effect: Any act, event, condition or circumstance which could be reasonably expected to materially and adversely affect (i) the business, operations, condition (financial or otherwise), prospects, liabilities, assets, results of operations, capitalization, liquidity or any properties of Borrower, Guarantor or any Pledgor; (ii) the value of the Project; (iii) the ability of Borrower or Guarantor (or any persons comprising Borrower), to pay and perform the Loan or the other Obligations; or (iv) the validity, enforceability or binding effect of any of the Loan Documents.

Maturity Date: Shall mean the Original Maturity Date, unless extended pursuant to the Note.

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 such law 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. If there is no applicable maximum lawful rate of interest, the Maximum Lawful Rate is 21% per annum.

Maximum Loan Amount: The maximum amount of the Loan as set forth in Section 4.1(a).

MGL: Massachusetts General Laws.

Mortgage: That certain Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated on or about even date herewith executed by Borrower, for the benefit of Lender securing this Agreement, the Note, the other Loan Documents, and all obligations of Borrower in connection with the Loan, granting a first priority lien on the Leases, Borrower's fee simple estate in the Land and first priority lien on the remainder of the Project, subject only to the Permitted Exceptions.

Net Operating Income: For any period, the Gross Revenues during the applicable period minus Operating Expenses during such period.

Note: The Promissory Note, dated on or about the date hereof executed by Borrower and payable to the order of Lender, evidencing the Loan.

Note Rate: As defined in the Note.

Obligations: Any and all of the covenants, conditions, warranties, representations and other obligations 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, the Leases or in any deed, lease, sublease or other form of conveyance, or any other agreement pursuant to which Borrower is granted a possessory interest in the Land.

Open the Loan: The first disbursement of Loan proceeds.

Operating Account: A deposit account opened and maintained by Borrower as set forth in Section 4.1(e).

Operating Agreement: Shall mean those certain By-Laws of the Borrower dated May 26, 2016, as amended by that Amendment to By-Laws dated June 19, 2019.

Operating Expenses: Shall mean for any period, the actual costs and expenses of owning, operating, managing, improving, repairing and maintaining the Project during such period incurred by Borrower, determined on a cash basis (except for real and personal property taxes and insurance premiums, which shall be determined on an accrual basis) (including franchise fees and costs and reserve deposits as determined by Lender in its reasonable discretion), excepting, however, (i) interest or principal due on the Loan, and (ii) Capital Expenditures. All Operating Expenses shall be related to the Project, shall be for services from arm's length third party transactions or equivalent to the same and shall exclude all expenses for debt service and depreciation and other similar non-cash items.

Optional Paydown: As such term is defined in Section 4.2(b) herein.

Optional Paydown Prepayment Premium: As such term is defined in Section 4.2(b) herein.

Original Maturity Date: July 1, 2023.

Partial Waiver of Lien: A Partial Waiver and Subordination of Lien in the form prescribed by M.G.L. c. 254, §2, a sample of which is attached hereto as Exhibit G.

Paydown: As such term is defined in Section 4.2(c) herein.

Paydown Payment: As such term is defined in Section 4.2(c) herein.

Permitted Exceptions: Those matters listed as exceptions to title insurance coverage on the Title Policy to which title to the Project may be subject on the Loan Opening Date, liens and security interests created by the Loan Documents, and hereafter such other title exceptions as Lender may reasonably approve in writing.

Permitted Transfer: means any of the following: (a) any transfer, directly as a result of the death of a natural person, of stock, membership interests, partnership interests or other ownership interests previously held by the decedent in question to the Person or Persons lawfully entitled thereto, (b) any transfer, directly as a result of the legal incapacity of a natural person, of stock, membership interests, partnership interests or other ownership interests previously held by such natural person to the Person or Persons lawfully entitled thereto, (c) any transfer of not more than forty-nine percent (49%) of the direct or indirect stock, general partnership interests, the limited partnership interests, the managing member interests or non-managing membership interests (as the case may be) in Lixi Hospitality Revere Holding, Inc. (“Holding Company”); (d) direct or indirect interests in Holding Company for estate planning purposes; provided, however, that any such transfer in (a)-(d) above, (i) does not change Control of the Borrower, (ii) such a transfer shall not result in a Material Adverse Change, (iii) Lender has received and approved background checks and confirmed that the proposed transferee is clear of OFAC and TSA-No Fly checks; and (iv) no such transfer occurs when an Event of Default exists.

Person: means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

Plans and Specifications: Detailed plans and specifications for the Construction and Improvements, as approved by Lender and as modified hereafter with Lender's prior written approval or as otherwise expressly permitted by this Agreement.

Pledge Agreement: A pledge and security agreement executed by each of the equity holders of the Borrower for the benefit of Lender securing this Agreement, the Note and all obligations of Borrower in connection with the Loan, and granting Lender a security interest in 100% of the issued and outstanding equity interests in Borrower and all rights and benefits attributable thereto and all proceeds therefrom.

Pledgors: As the context dictates, any person(s) or entity(ies) who shall, at any time, execute a Pledge Agreement in favor of Lender.

Post-Closing Agreement: The Post-Closing Agreement executed by Borrower and Lender dated as of the date of this Agreement.

Project: The collective reference to (i) the fee simple estate in the Land, together with all buildings, structures and improvements located or to be located or constructed thereon, including the Improvements, (ii) all rights, privileges, easements and hereditaments relating or appertaining thereto, and (iii) all personal property, fixtures and equipment required or beneficial for the operation thereof.

Qualifying Appraisal: An appraisal report of the applicable Land and Improvements prepared by an appraiser licensed in the State in which the Land is located and who has at least five (5) years' experience in appraising land similar to the Land and Improvements in the county in which the Land is located, which satisfies the criteria for appraisals that may be relied upon by national banks under

applicable Federal laws, rules and regulations, which contains both an "as-is" and a "stabilized value" estimate, and which is otherwise reasonably satisfactory to Lender.

Replacement Reserve: As defined in Section 6.2.

Replacement Reserve Monthly Deposit: An amount reasonably determined by Lender for replacements and repairs required to be made to the Project equal to, but in any event not less than the greater of (a) the amount required under the Franchise Agreement or (b) an amount equal to (i) 2% of the monthly Gross Revenues of the Project for the period from and after Completion of the Project until the first year anniversary of such date, (ii) 3% of the monthly Gross Revenues of the Project for the next 12 calendar month period, and (iii) 4% of the monthly Gross Revenues of the Project thereafter.

Replacements: As defined in Section 6.2.

Required Paydown: As such term is defined in Section 4.2(a) herein.

Required Paydown Exit Fee: As such term is defined in Section 4.2(a) herein.

Required Permits: Each building permit, environmental permit, utility permit, land use permit, hotel permit, pool permit, food and beverage and any alcoholic beverages licenses, wetland permit and any other permits, approvals or licenses issued by any Governmental Authority.

Reserve Fund Deposits: The amounts to be deposited into the Reserve Funds for any given month.

Reserve Funds: The Tax and Insurance Escrow Fund, the Interest Reserve, the Replacement Reserve and any other escrow or reserve fund established by Lender from time to time pursuant to the Loan Documents.

State: The state in which the Land is located.

Tax and Insurance Deposit: As defined in Section 6.1.

Tax and Insurance Escrow Fund: As defined in Section 6.1.

Terrorism Laws: Executive Order 13224 issued by the President of the United States of America, the Terrorism Sanctions Regulations (Title 31 Part 595 of the U.S. Code of Federal Regulations), the Terrorism List Governments Sanctions Regulations (Title 31 Part 596 of the U.S. Code of Federal Regulations), the Foreign Terrorist Organizations Sanctions Regulations (Title 31 Part 597 of the U.S. Code of Federal Regulations), and the Cuban Assets Control Regulations (Title 31 Part 515 of the U.S. Code of Federal Regulations), and the Terrorism Risk Insurance Program Reauthorization Act of 2015 or any replacement, reauthorization or extension thereof, and all other present and future federal, state and local laws, ordinances, regulations, policies, lists and any other requirements of any Governmental Authority (including, without limitation, the United States Department of the Treasury Office of Foreign Assets Control) addressing, relating to, or attempting to eliminate, terrorist acts and acts of war, each as hereafter supplemented, amended or modified from time to time, and the present and future rules, regulations and guidance documents promulgated under any of the foregoing, or under similar laws, ordinances, regulations, policies or requirements of other states or localities.

Title Insurer: First American Title Insurance Company, or such other title insurance company as may be approved in writing by Lender.

Title Policy: A Lender's Loan Title Insurance Policy with extended coverage issued by the Title Insurer insuring the lien of the Mortgage as a valid first, prior and paramount lien upon the Project and all appurtenant easements, and subject to no other exceptions other than the Permitted Exceptions and otherwise satisfying Lender's requirements.

Transfer: Any sale, transfer, lease (other than a Permitted Transfer or Lease approved by Lender in writing or as permitted herein), conveyance, alienation, pledge, assignment, mortgage, encumbrance hypothecation or other disposition of (a) all or any portion of the Project or any portion of any other security for the Loan, (b) all or any portion of the Borrower's right, title and interest (legal or equitable) in and to the Project or any portion of any other security for the Loan, or (c) any interest in Borrower or any interest in any entity which directly or indirectly holds an interest in, or directly or indirectly controls, Borrower.

UCC: The Uniform Commercial Code as enacted and in effect in the State of Texas, as the same may be modified from time to time.

Unavoidable Delay: Any delay in the Construction of the Project, caused by natural disaster, fire, earthquake, floods, explosion, extraordinary adverse weather conditions, inability to procure or a general shortage of labor, equipment, facilities, energy, materials or supplies in the open market, failure of transportation, strikes or lockouts or delays in acting by any Governmental Authority (except to the extent such delay results from the actions of Borrower or any of its affiliates) provided Borrower has notified Lender in writing within 15 days after such occurrence of when and what occurred and the estimated timing for when Construction of the Project will re-commence (such Unavoidable Delay will not exceed 30 consecutive days for one single occurrence and 60 days in the aggregate provided Lender will in good faith extend such timeframes if Borrower has provided the proper written notice (i) explaining the Unavoidable Delay, which has directly impacted the Project, (ii) shown that it has used commercially reasonable efforts to mitigate such Unavoidable Delay and is diligently pursuing Completion, and (iii) has or will re-commence construction as soon as reasonably practicable under the circumstances).

2.2. Other Definitional Provisions. All terms defined in this Agreement shall have the same meanings when used in the Note, Mortgage, any other Loan Documents, or any certificate or other document made or delivered pursuant hereto. The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement. Any reference in this Agreement or in the other Loan Documents to any agreement, instrument, or document shall include all alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements, thereto and thereof, as applicable (subject to any restrictions on such alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements set forth herein or therein).

ARTICLE 3

BORROWER'S REPRESENTATIONS AND WARRANTIES

3.1. Representations and Warranties. To induce Lender to execute this Agreement and perform its obligations hereunder, Borrower hereby represents and warrants to Lender as of the date hereof as follows:

- (a) Borrower has good and indefeasible title to the Land and the Improvements, subject only to the Permitted Exceptions. Upon Completion, the Project will include all property and rights which may be reasonably necessary or desirable to promote the present use of the Land and future use presently intended.

(b) Borrower owns any part of the Project which is personal property (excluding personal property owned by tenants) free and clear of any security agreements, reservations of title or conditional sales contracts, and there is no financing statement affecting such personal property on file in any public office.

(c) No litigation or proceedings are pending, or to the best of Borrower's knowledge, threatened, against Borrower, any Guarantor, or any Pledgor, which could, if adversely determined, cause a Material Adverse Change with respect to Borrower, any Guarantor, any Pledgor, or the Project. There are no pending Environmental Proceedings and Borrower has no knowledge of any threatened Environmental Proceedings or any facts or circumstances which may give rise to any future Environmental Proceedings.

(d) Borrower is a duly organized, validly existing corporation and in good standing under the laws of the State of Delaware, and is authorized to do business under the laws of and is in good standing in the Commonwealth of Massachusetts and has full power and authority to execute, deliver and perform all Loan Documents to which Borrower is a party, and such execution, delivery and performance have been duly authorized by all requisite action on the part of Borrower.

(e) No consent, approval or authorization of or declaration, registration or filing with any Governmental Authority or nongovernmental person or entity, including any creditor, partner, or member of Borrower, any Guarantor, or any Pledgor, is required in connection with the execution, delivery and performance of this Agreement or any of the Loan Documents other than the recordation of the Mortgage and the filing of UCC-1 Financing Statements, except for such consents, approvals or authorizations of or declarations or filings with any Governmental Authority, or non-governmental person or entity where the failure to so obtain would not have a Material Adverse Effect on Borrower, Guarantor, or Pledgor or which have been obtained as of any date on which this representation is made or remade.

(f) The execution, delivery and performance of this Agreement, the execution and payment of the Note and the granting of the Mortgage and other security interests under the other Loan Documents have not constituted and will not constitute, upon the giving of notice or lapse of time or both, a breach or default under any other agreement to which Borrower, any Pledgor, or Guarantor is a party or may be bound or affected, or a violation of any law or court order which may affect the Project or any part thereof, any interest therein, or the use thereof.

(g) There is no default under this Agreement or the other Loan Documents.

(h) There is (i) no condemnation proceeding of any portion of the Project, (ii) no condemnation or relocation of any roadways abutting the Project, and (iii) no proceeding to deny access to the Project from any point or planned point of access to the Project, has commenced or, to the Borrower's knowledge, is contemplated by any Governmental Authority.

(i) The amounts set forth in the Budget, a copy of which has been delivered to the Lender, present a full and complete itemization by category of all costs, expenses and fees which Borrower reasonably expects to pay or reasonably anticipates becoming obligated to pay to complete the Construction and operate the Project (until the Project achieves breakeven operations). Borrower is unaware of any other such costs, expenses or fees which are material and are not covered by the Budget.

(j) Neither the construction of the Improvements nor the use of the Project and the contemplated accessory uses will violate (except any violations which would not, in the

aggregate, be reasonably excepted to have a Material Adverse Effect) (i) any Laws (including subdivision, access, zoning, parking, building, environmental protection and wetland protection Laws), or (ii) any building permits, restrictions of record, or agreements affecting the Project or any part thereof. Neither the zoning authorizations, approvals or variances nor any other right to construct or to use the Project is to any extent dependent upon or related to any real estate other than the Land. All Government Authority approvals and Franchisor approvals required for the Construction in accordance with the Plans and Specifications have been obtained or will be obtained prior to the Loan Opening, and all Laws relating to the Construction and operation of the Improvements have been complied with and all permits and licenses required for the operation of the Project which cannot be obtained until the Construction is completed can be obtained if the Improvements are completed in accordance with the Plans and Specifications. No portion of the Project has been or will be purchased with proceeds of any illegal activity and to the best of Borrower's knowledge, there are no illegal commercial activities or commercial activities relating to controlled substances at the Project (including, without limitation, any growing, distributing and/or dispensing of marijuana for commercial purposes, medical or otherwise for so long as the foregoing is a violation of any Laws of any applicable Governmental Authority).

(k) Upon Completion, the Project will have adequate water, gas and electrical supply, storm and sanitary sewerage facilities, other required public utilities, fire and police protection, and means of access between the Project and public highways.

(l) No brokerage fees or commissions are payable by or to any person in connection with this Agreement or the Loan to be disbursed hereunder other than to 1 Financial Corporation. Borrower represents that it has dealt with no broker or finder in connection with the Loan except for 1 Financial Corporation. Borrower agrees to indemnify, defend and hold Lender harmless from any and all claims arising by, through or under Borrower for any brokerage commissions or finder fees due in connection with its application and the obtaining of the Loan contemplated hereby.

(m) All financial statements and other information previously furnished by Borrower, any Pledgor, and any Guarantor to Lender in connection with the Loan are true, complete and correct and fairly present the financial conditions of the subjects thereof as of the respective dates thereof and do not fail to state any material fact necessary to make such statements or information not misleading, and no Material Adverse Change with respect to Borrower, any Pledgor or any Guarantor has occurred since the respective dates of such statements and information. None of Borrower, any Pledgor, or any Guarantor has any material liability, contingent or otherwise, not disclosed in such financial statements.

(n) (i) Except, as disclosed in the Site Assessment, the Project is in a clean, safe and healthful condition, and, except for materials used in the ordinary course of construction, maintenance and operation of the Project, is free of all Hazardous Material in violation of Laws and is in compliance with all applicable Laws (except any violations which would not, in the aggregate, be reasonably excepted to have a Material Adverse Effect); (ii) neither Borrower nor, to the best knowledge of Borrower, any other person or entity, has ever caused or permitted any Hazardous Material to be placed, held, located or disposed of on, under, at or in a manner to affect the Project, or any part thereof, and the Project has never been used (whether by Borrower or, to the best knowledge of Borrower, by any other person or entity) for any activities involving, directly or indirectly, the use, generation, treatment, storage, transportation, or disposal of any Hazardous Material; (iii) neither the Project nor Borrower is subject to any existing, pending, or, to the best of Borrower's knowledge, threatened investigation or inquiry by any Governmental Authority, and the Project is not subject to any remedial obligations under any applicable Laws pertaining to health or the environment; and (iv) to the best knowledge of Borrower there are no

underground tanks, vessels, or similar facilities for the storage, containment or accumulation of Hazardous Materials of any sort on, under or affecting the Project.

(o) The Project is taxed separately without regard to any other property and for all purposes the Project may be mortgaged, conveyed and otherwise dealt with as an independent parcel.

(p) Borrower and its agents have not entered into any Leases, subleases or other agreements for occupancy of space within the Project.

(q) When the Construction is completed in accordance with the Plans and Specifications, the Improvements will not encroach, upon any property line, building line, setback line, side yard line or any recorded or visible easement (or other easement of which Borrower is aware or has reason to believe may exist) with respect to the Project.

(r) Borrower is not a party in interest to any plan defined or regulated under ERISA, and the assets of Borrower are not "plan assets" of any employee benefit plan covered by ERISA or Section 4975 of the Internal Revenue Code.

(s) Borrower is not a "foreign person" within the meaning of Section 1445 or 7701 of the Internal Revenue Code.

(t) Except pursuant to the terms of the Franchise Agreement, Borrower uses no trade name other than its actual name set forth herein. The principal place of business of Borrower is as stated in Article 21.

(u) Borrower's place of formation or organization is the State of Delaware.

(v) All statements set forth in the Recitals are true and correct.

(w) Borrower does not own and will not own any asset or property other than (i) the fee simple estate to the Land and title to the remainder of the Project and (ii) incidental personal property necessary for the ownership of the Project. Borrower will not engage in any business other than the ownership, management and operations of the Project. Borrower has done or caused to be done and will do all things necessary to observe organizational formalities and preserve its existence, and Borrower will not amend, modify or otherwise change the Articles of Incorporation, Articles of Organization, Certificate of Formation, Bylaws, Operating Agreement, Limited Partnership Agreement, Limited Liability Company Agreement or other organizational documents of Borrower without the prior written consent of Lender. Borrower will maintain all of its books, records, financial statements and bank accounts separate from those of its Affiliates and Borrower will file its own tax returns. Borrower shall maintain its books, records, resolutions and agreements as official records. Borrower will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any Affiliate of Borrower), shall correct any known misunderstanding regarding its status as a separate entity, shall conduct business in its own name, shall not identify itself or any of its Affiliates as a division or part of the other and shall maintain and utilize separate stationery, invoices and checks. Borrower will not commingle the funds and other assets of Borrower with those of any Affiliate, any Pledgor, any Guarantor, or any Affiliate of any Guarantor or any other person or entity.

(x) Franchisor has approved the Construction in accordance with the Plans and Specifications, and Borrower has obtained any and all other approvals with respect to the

construction, development and operation of the Project and has delivered to Lender a copy of each such approvals.

(y) No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any “margin stock” within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose that would be inconsistent with such Regulation U or any other regulation of such Board of Governors, or for any purpose prohibited by Laws or any Loan Document. To Borrower’s knowledge, Borrower is not (i) an “investment company” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended; or (ii) a “holding company” or a “subsidiary company” of a “holding company” or an “affiliate” of either a “holding company” or a “subsidiary company” within the meaning of the Public Utility Holding Company Act of 1935, as amended.

(z) The Project is not affected by any fire, explosion, accident, strike, lockout or other labor dispute or casualty.

(aa) Other than trade payables due in the ordinary course of business within 60 days (not to exceed \$500,000.00 as of any date), Borrower is not indebted to any person or entity, except for indebtedness that has been made expressly subordinate to the satisfaction of the Lender and to the extent permitted by law to the obligations of the Borrower hereunder.

(bb) Prior to the recordation of the Mortgage, no work of any kind (including the destruction or removal of any existing improvements, site work, clearing, grubbing, draining or fencing of the Land) has commenced or has been performed on the Project. No equipment or material has been delivered to or for the Project for any purpose whatsoever, and no contract (other than the construction contract with the General Contractor, which has been subordinated to the Mortgage) for the supplying of labor, materials, or services for the Construction has been executed, and no notice of contract has been recorded with the Suffolk County Registry of Deeds.

(cc) A list of all Affiliates, including any and all procurement companies, of each of the Borrower Parties is set forth in Schedule 3.1(cc) attached hereto and made a part hereof for all purposes.

(dd) The information included in the Beneficial Ownership Certification is true and correct in all respects.

(ee) The Force Account Agreement is in full force and effect and has not been amended, terminated or cancelled. As of the date hereof, there is \$20,000.00 in the Force Account. There are no defaults or an event which with the notice and/or passage of time would constitute a default under the Force Account Agreement.

(ff) Borrower has obtained all required approvals for the construction of the Project including any approvals required from the Massachusetts Bay Transportation Authority, the City of Revere and Eurovest Development, Inc. pursuant to the (i) Amended and Restated Master Development Agreement for the Sale of Land for Private Development, dated June 30, 2011, (ii) March 15, 2001 Agreement between the City of Revere and the Massachusetts District Commission, (iii) January 29, 2003 Memorandum of Agreement between the City of Revere, the Massachusetts Bay Transportation Authority and the Department of Conversation and Recreation, and (iv) the Declaration of Covenants, Restrictions, Standards and Easements dated June 30, 2017.

3.2. Terrorism Laws; Anti-Money Laundering.

(a) To Borrower's knowledge, none of the Borrower Parties, and no individual or entity owning directly or indirectly any interest in any of the Borrower Parties, is an individual or entity whose property or interests are subject to being "blocked" under any of the Terrorism Laws or is otherwise in violation of any of the Terrorism Laws. Borrower will not allow any individual or entity after the date hereof to own directly or indirectly any interest in any of the Borrower Parties whose property or interests are subject to being "blocked" under any of the Terrorism Laws or is otherwise in violation of any of the Terrorism Laws.

(b) Borrower has taken all reasonable measures, in accordance with all applicable Anti-Money Laundering Laws, with respect to each holder of a direct or indirect interest in the Borrower Parties, to assure that funds invested by such holders in the Borrower Parties are derived from legal sources. Borrower will take all reasonable measures, in accordance with all applicable Anti-Money Laundering Laws, with respect to each new holder of a direct or indirect interest in the Borrower Parties, to assure that funds invested by such holders in the Borrower Parties are derived from legal sources.

(c) To Borrower's knowledge after making due inquiry, none of the Borrower Parties nor any holder of a direct or indirect interest in the Borrower Parties (i) is under investigation by any Governmental Authority for, or has been charged with, or convicted of, any Anti-Money Laundering Laws, or drug trafficking, terrorist-related activities or other money laundering predicated crimes or a violation of the BSA, (ii) has been assessed civil penalties under these or related laws, or (iii) has had any of its funds seized or forfeited in an action under these or related laws. Borrower will not allow any individual or entity after the date hereof to own directly or indirectly any interest in any of the Borrower Parties who (x) is under investigation by any Governmental Authority for, or has been charged with, or convicted of, any Anti-Money Laundering Laws, or drug trafficking, terrorist-related activities or other money laundering predicated crimes or a violation of the BSA, (y) has been assessed civil penalties under these or related laws, or (z) has had any of its funds seized or forfeited in an action under these or related laws.

(d) Borrower has taken, and will take, reasonable steps, consistent with industry practice for comparable organizations and in any event as required by law, to ensure that the Borrower Parties, and all new Borrower Parties, are and shall be in compliance with all Anti-Money Laundering Laws and laws, regulations, and government guidance for the prevention of terrorism, terrorist financing and drug trafficking.

(e) Borrower shall adopt and maintain adequate policies, procedures and controls to ensure that all Borrower Parties are, and will be, in compliance with all Terrorism Laws ("**Borrower Terrorism Laws Policies**"), which Borrower Terrorism Laws Policies shall be satisfactory to Lender in its reasonable discretion. Borrower shall promptly notify Lender in writing if it becomes aware of any individual or entity owning directly or indirectly any interest in any of the Borrower Parties, or any director, officer, member, manager or partner of any of such holders, is an individual or entity whose property or interests are subject to being blocked under any of the Terrorism Laws or is otherwise in violation of any of the Terrorism Laws, or is under investigation by any governmental entity for, or has been charged with or convicted of, drug trafficking, terrorist-related activities or any violation of Anti-Money Laundering Laws, has been assessed civil penalties under these or related laws, or has had funds seized or forfeited in an action under these or related laws. Borrower further agrees to make the Borrower Terrorism Laws Policies, together with the information collected thereby concerning the Borrower Parties available to Lender upon its reasonable request.

3.3. Survival of Representations and Warranties. Borrower agrees that all of the representations and warranties set forth in Sections 3.1 and 3.2 and elsewhere in this Agreement are true as of the date hereof, will be true at the Loan Opening and, except for matters which have been disclosed in writing by Borrower and approved by Lender in writing, at all times thereafter and except for those representations which can no longer be true by reason of changes in facts or circumstances or the passage of time. Each request for a disbursement under the Loan Documents shall constitute a reaffirmation by Borrower of such representations and warranties, as deemed modified in accordance with the disclosures made and approved as aforesaid, as of the date of such request. It shall be a condition precedent to the Loan Opening and each subsequent disbursement that each of said representations and warranties is true and correct as of the date of such requested disbursement. Each disbursement of Loan proceeds shall be deemed to be a reaffirmation that each of the representations and warranties is true and correct as of the date of such disbursement. In addition, at Lender's request, Borrower shall reaffirm such representations and warranties in writing prior to each disbursement hereunder.

ARTICLE 4 **LOAN AND LOAN DOCUMENTS**

4.1. Agreement to Borrow and Lend; Lender's Obligation to Disburse. Subject to the terms, provisions and conditions of this Agreement and the other Loan Documents, Borrower agrees to borrow from Lender and Lender agrees to lend to Borrower the Loan, for the purposes and subject to all of the terms, provisions and conditions contained in this Agreement. Funds to be used in connection with the Project and for construction of the Improvements on the Land shall be advanced pursuant to the Budget and shall be distributed in the following order: (i) first, from the Cash Equity, and then (ii) from the Note until the Maximum Loan Amount has been advanced.

(a) The maximum aggregate amount of the Loan shall not exceed the lesser of (i) 75% of the costs approved by Lender in its sole discretion, (ii) 75% of the appraised value of the Project, on an "as completed" basis, or (iii) \$43,300,000.00. If, after the occurrence of an Event of Default and upon receipt by Lender of an Appraisal, the outstanding balance of the Loan is greater than the lesser of any amount set forth above (the "**Maximum Loan Amount**"), within 90 days after written request from Lender, Borrower shall make a principal payment to Lender for application to the Loan in an amount that would reduce the outstanding balance of the Loan to an amount equal to the Maximum Loan Amount.

(b) Lender agrees, upon Borrower's compliance with and satisfaction of all conditions precedent to the Loan Opening and, provided the Loan is In Balance, no Material Adverse Change has occurred with respect to Borrower, any Guarantor, any Pledgor, or the Project, and no default or Event of Default has occurred and is continuing hereunder, to Open the Loan to finance the construction and equipping of the Improvements, to the extent provided for in the Budget. Notwithstanding the foregoing to the contrary, Borrower has requested and Lender has agreed that Lender will fund up to \$1,000.00 (the "**Initial Funding Threshold**") prior to receipt of the Post-Closing Items (as defined in the Post-Closing Agreement) in the Post-Closing Agreement in accordance with this Agreement and the Post-Closing Agreement. In furtherance thereof and concurrently with the execution and delivery of this Agreement and the Note, Lender has made the initial advance of the proceeds of the Loan in the amount of the Initial Funding Threshold (also known as the "**First Advance**"). Borrower expressly acknowledges and agrees that Lender has no obligation to advance any funds pursuant to, or otherwise approve any draw requests submitted in accordance with this Agreement, which would cause the aggregate outstanding balance under the Note to exceed the Initial Funding Threshold unless and until the Post-Closing Items 1-2 have been received and approved by Lender in accordance with this Agreement and the Post-Closing Agreement. Borrower's failure to deliver the Post-Closing Items by their applicable Delivery Date set forth in the Post-Closing Agreement will be an Event of

Default under this Agreement allowing Lender the right, among other rights available to Lender upon the occurrence of an Event of Default pursuant to the Loan Documents, to refuse to advance any additional funds from the date of such Event of Default.

(c) After the Loan Opening, Borrower shall be entitled to receive further successive disbursements of the proceeds of the Loan in accordance with Articles 9, 12 and 13 within 10 Business Days after compliance with all conditions precedent thereto, provided that (i) the Loan remains In Balance; (ii) Borrower has complied with all conditions precedent to disbursement from time to time including the requirements of Section 3.3 and Articles 8, 9, 12, 13 and 14; (iii) no Material Adverse Change has occurred with respect to Borrower, any Pledgor, any Guarantor, or the Project, and (iv) no Event of Default and no material default exists hereunder or under any other Loan Document.

(d) To the extent that Lender may have acquiesced in noncompliance with any requirements precedent to the Loan Opening or precedent to any subsequent disbursement of Loan proceeds, such acquiescence shall not constitute a waiver by Lender, and Lender may at any time after such acquiescence require Borrower to comply with all such requirements.

(e) Borrower shall, prior to the Loan Opening and thereafter as requested by Lender from time to time, open one or more operating accounts with a financial institution, and pursuant to terms, acceptable to Lender (including upon request the execution of the deposit account control agreement or blocked account agreement) (the "**Operating Account**"). On or before the date hereof and continuing through the term of the Loan, Borrower shall (i) deposit and cause any manager of all or any portion of the Project to deposit into the Operating Account all Gross Revenues from operations, and (ii) cause all tenants and occupants under lease agreements of the Project to remit all rents payments required under any Leases to the Operating Account. Borrower agrees that the Lender will have, and Borrower hereby grants to Lender, a security interest in all items and funds from time to time in the Operating Account. Upon the occurrence of an Event of Default, the Lender shall be authorized to sweep all funds out of the Operating Account and apply any and all funds in the Operating Account at any time, and from time to time, to the indebtedness of Borrower in any order the Lender may elect. Borrower authorizes Lender to disburse Loan proceeds by crediting the Operating Account; provided, however, that Lender shall not be obligated to use such method.

4.2. Paydown.

(a) **Required Paydown.** The Loan shall be repaid as set forth in the Note. In addition, in consideration for Lender's commitment to make the Loan, Borrower shall cause to be paid to Lender \$2,000,000.00 (the "**Required Paydown**") towards the outstanding principal balance of the Loan on or before June 19, 2021, to be paid in payments as described in Section 4.2(c) below, which payments shall not cause a Prepayment Fee (as defined in the Note) under this Loan; provided, however, with each Paydown Payment (as defined in Section 4.2(c) below), Borrower shall pay a fee equal to 0.50% of such Paydown Payment (the "**Required Paydown Exit Fee**").

(b) **Optional Paydown.** Provided there is no default or Event of Default, Borrower shall also have the option to pre-pay to Lender an additional \$4,000,000.00 (the "**Optional Paydown**"; together with the Required Paydown, the "**Paydown**"), on or before June 19, 2021, to be paid in payments as described in Section 4.2(c) below, which payments shall not cause a Prepayment Fee under this Loan but which payment shall cause a fee equal to 0.50% of such Paydown Payment (the "**Optional Paydown Prepayment Premium**").

(c) **Payments.** The Paydown shall be made in no more than four (4) separate payments of no less than \$1,000,000.00 each (the "**Paydown Payment**"); unless the amount left for the Paydown is less than \$1,000,000.00, in which case Borrower shall be allowed to prepay such lower amount in full. Prior to any Paydown Payment, the Loan must be in balance and Borrower shall have paid any outstanding fees and expenses.

4.3. Loan Documents. Borrower agrees that as a condition precedent to the Loan Opening, Borrower must execute and deliver or cause to be executed and delivered to Lender the following documents in form and substance acceptable to Lender:

- (a) The Note.
- (b) The Mortgage.
- (c) A Guaranty Agreement executed by each Guarantor.
- (d) A Hazardous Materials Indemnity relating to the Project.
- (e) A deposit account control or blocked account agreement relating to the Operating Account executed by Lender, Borrower, and the bank where the Operating Account will be established.
- (f) A collateral assignment of construction documents, including, without limitation, all architecture and engineering contracts, Plans and Specifications, permits, licenses, approvals and development rights, together with consents to the assignment and continuation agreements from such parties as may be required by Lender.
- (g) A collateral assignment of licenses, permits and contracts.
- (h) A Pledge Agreement executed by each of the equity interest holders of Borrower.
- (i) Such UCC financing statements as Lender determines are advisable or necessary to perfect or notify third parties of the security interests intended to be created by the Loan Documents.
- (j) Such other documents, instruments or certificates as Lender and its counsel may reasonably require, including such documents as Lender in its sole discretion deems necessary or appropriate to effectuate the terms and conditions of this Agreement and the Loan Documents, and to comply with the laws of the State.

ARTICLE 5 **INTEREST**

5.1. Interest Rate. Interest on the Loan, at the rate or rates specified in the Note, shall be (a) computed on the unpaid principal balance which exists from time to time and shall be computed with respect to each advance only from the date of such advance (as to the portion of each advance not constituting a portion of the Deficiency Deposit) and (b) due and payable as set forth in the Note.

ARTICLE 6 **ESCROW ACCOUNTS**

6.1. Tax and Insurance Premium Escrow Fund and Interest Reserve.

(a) On the Loan Opening Date, Lender will hold back funds from the Loan in the amount of \$3,400,000.00 ("**Interest Reserve**"), which unless and until a default or Event of Default occurs, Borrower may use to make monthly interest payments (the "**Interest Reserve Payments**") to the Loan during the first 24 calendar months of the Loan; provided, however, Borrower may not use the funds from the Interest Reserve to make the Interest Reserve Payments if the Project has a positive aggregate Net Operating Income, except to the extent to cover the shortfall, if any, needed to make the monthly interest payments. For purposes of this Section 6.1(a), the aggregate Net Operating Income will be calculated from the 2 months prior to such month where the Net Operating Income is being calculated and determined. The Interest Reserve may be "rebalanced" from time to time at the reasonable discretion of Lender based on the estimated average outstanding Loan balance from the date of such estimate through the then estimated date of Completion, multiplied by the then current Note Rate.

(b) In addition, on the Loan Opening Date, Borrower will provide evidence satisfactory to Lender that the taxes and insurance applicable to the Project have been paid for or are properly accounted for in the Budget for the first 12 months. Upon Completion, Borrower shall make monthly insurance and tax escrow deposits (the "**Tax and Insurance Deposit**") to Lender into a fund for future insurance and tax obligations (the "**Tax and Insurance Escrow Fund**") on or before the 1st day of each calendar month equal to an amount (1) sufficient for payment in full of all tax obligations 30 days before they become delinquent; (2) sufficient to pay annual insurance premiums 30 days before expiration of the current year's policy or policies; and (3) as reasonably determined by Lender from time to time as being needed to pay taxes and insurance premiums when due. The Tax and Insurance Deposit, the Interest Reserve Payments, the Replacement Reserve Monthly Deposit and the payments of interest or principal or both, payable pursuant to the Note and this Agreement, shall be added together and shall be paid as an aggregate sum by Borrower to Lender. Before taxes or insurance are due, Borrower will submit to Lender evidence of the amount due and payable. Upon Lender's receipt and approval of such documentation, Lender will release the amounts necessary to pay such taxes or insurance, and Borrower shall deliver evidence of payment of such taxes or insurance within 5 Business Days of receipt of funds from Lender. Lender, at its option but with no obligation to do so, may pay the taxes or insurance directly to the appropriate payees or may apply funds from the Interest Reserve to make interest payments on behalf of Borrower. Any amount remaining in the Tax and Insurance Escrow Fund after the Indebtedness hereunder has been paid in full shall be credited to the Loan balance or returned to Borrower. If at any time Lender reasonably determines that the Tax and Insurance Escrow Fund is not or will not be sufficient to pay Taxes and Insurance Premiums by the dates set forth in (1), (2) and (3) above, or the Interest Reserve is not or will not be sufficient to make interest payments on behalf of Borrower, Lender shall notify Borrower of such determination and Borrower shall increase its monthly payments to Lender by the amount that Lender estimates is sufficient to make up the deficiency. Notwithstanding Lender's holding of the Tax and Insurance Escrow Fund, nothing herein shall obligate Lender to pay any insurance premiums or real property taxes with respect to any portion of the Project. In no event shall Lender be obligated to disburse funds from the Tax and Insurance Escrow Fund or the Interest Reserve if a default or an Event of Default exists.

6.2. Replacement Reserve. Upon Completion, Borrower shall make monthly escrow deposits to Lender on or before the 1st day of each calendar month in an amount equal to the Replacement Reserve Monthly Deposit (the "**Replacement Reserve**"). Lender shall disburse funds on deposit in the Replacement Reserve to reimburse Borrower only for replacements and repairs required to be made to the Project (the "**Replacements**"). Lender shall not be obligated to make disbursements from the Replacement Reserve to reimburse Borrower for the costs of routine maintenance to the Project. Lender shall, upon written request from Borrower in form and substance reasonably satisfactory to

Lender and satisfaction of the requirements set forth in this section, disburse to Borrower amounts from the Replacement Reserve necessary to reimburse Borrower for the actual approved costs and Replacements upon completion of such Replacements as reasonably determined by Lender. In no event shall Lender be obligated to disburse funds from the Replacement Reserve if a default or an Event of Default has occurred and is continuing. Each request for disbursement from the Replacement Reserve shall specify (i) the specific Replacements for which the disbursement is requested, (ii) the quantity and price of each item purchased, if the Replacement includes the purchase or replacement of specific items, (iii) the price of all materials (grouped by type or category) used in any Replacement other than the purchase or replacement of specific items, and (iv) the cost of all contracted labor or other services applicable to each Replacement for which the disbursement is requested. With each request Borrower shall certify that, to the best of Borrower's knowledge, all Replacements have been or will be made in accordance with all applicable Laws and requirements of any Governmental Authority having jurisdiction over the Project. Each request for disbursement shall include copies of invoices for all items or materials purchased and all contracted labor or services provided or bills for said work to be performed and each request shall include evidence reasonably satisfactory to Lender of payment of all such amounts or that such amounts will be paid from the applicable advance. Borrower shall not make a request for disbursement from the Replacement Reserve more frequently than once in any calendar month and (except in connection with the final disbursement) the reasonable total cost of all Replacements in any request shall not be less than \$10,000.00. All funds remaining in the Replacement Reserve at the time that this Loan is being paid in full shall be credited to the Loan balance or returned to Borrower.

6.3. Reserve Funds, Generally.

(a) Borrower grants to Lender a first-priority perfected security interest in each of the Reserve Funds and any and all monies now or hereafter deposited in each Reserve Funds as additional security for payment of the Indebtedness of Borrower under the Loan Documents. Until expended or applied in accordance herewith, the Reserve Funds shall constitute additional security for the indebtedness of Borrower under the Loan Documents. Lender may, from time to time, upon 10 day's prior written notice to Borrower, establish such additional reserves as Lender deems reasonably necessary, and Borrower shall make such deposits in connection therewith as required by Lender. Until expended or applied in accordance herewith, the Reserve Funds shall constitute additional security for the Indebtedness of Borrower under the Loan Documents.

(b) Upon the occurrence of an Event of Default, Lender may, in addition to any and all other rights and remedies available to Lender, apply any sums then present in any or all of the Reserve Funds to the payment of the indebtedness under the Loan Documents in any order in its sole discretion.

(c) The Reserve Funds shall not constitute trust funds and may be commingled with other monies held by Lender.

(d) Borrower shall not, without obtaining the prior written consent of Lender, further pledge, assign or grant any security interest in any Reserve Fund or the monies deposited therein or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Lender as the secured party, to be filed with respect thereto.

(e) BORROWER SHALL INDEMNIFY, DEFEND AND HOLD LENDER HARMLESS FROM AND AGAINST ANY AND ALL OUT-OF-POCKET ACTIONS, SUITS, CLAIMS, DEMANDS, LIABILITIES, LOSSES, DAMAGES, OBLIGATIONS AND COSTS AND EXPENSES (INCLUDING LITIGATION COSTS AND REASONABLE ATTORNEYS' FEES AND EXPENSES) ARISING FROM OR IN ANY WAY CONNECTED WITH THE

RESERVE FUNDS OR THE PERFORMANCE OF THE OBLIGATIONS FOR WHICH THE RESERVE FUNDS WERE ESTABLISHED, EXCEPT TO THE EXTENT ARISING FROM THE FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LENDER, ITS AGENTS OR EMPLOYEES. BORROWER SHALL ASSIGN TO LENDER ALL RIGHTS AND CLAIMS BORROWER MAY HAVE AGAINST ALL PERSONS SUPPLYING LABOR, MATERIALS OR OTHER SERVICES WHICH ARE TO BE PAID FROM OR SECURED BY THE RESERVE FUNDS; PROVIDED, HOWEVER, THAT LENDER MAY NOT PURSUE ANY SUCH RIGHT OR CLAIM UNLESS AN EVENT OF DEFAULT HAS OCCURRED AND REMAINS UNCURED.

ARTICLE 7
LOAN EXPENSE AND ADVANCES

7.1. Loan and Administration Expenses. Borrower unconditionally agrees to pay all reasonable expenses of the Loan, including all amounts payable pursuant to Sections 7.2 and 7.3 and any and all other fees owing to Lender pursuant to the Loan Documents, and also including, without limiting the generality of the foregoing, all recording, filing and registration fees and charges, mortgage or documentary taxes, all insurance premiums, title insurance premiums and other charges of the Title Insurer, printing and photocopying expenses, survey fees and charges, cost of certified copies of instruments, cost of premiums on surety company bonds and the Title Policy, charges of the Title Insurer or other escrowee for administering disbursements, all fees and disbursements of Lender's Consultant, all appraisal fees, insurance consultant's fees, travel expenses, environmental consultant's fees, and all reasonable out-of-pocket costs and expenses incurred by Lender in connection with the Loan or with a determination of whether or not Borrower has performed the obligations undertaken by Borrower hereunder or has satisfied any conditions precedent to the obligations of Lender hereunder and, if any default or Event of Default occurs hereunder or under any of the Loan Documents or if the Loan or Note or any portion thereof is not paid in full when and as due, all costs and expenses of Lender (including, without limitation, court costs and reasonable counsel's fees and disbursements and reasonable fees and costs of paralegals) incurred in attempting to enforce payment of the Loan and expenses of Lender incurred (including court costs and reasonable counsel's fees and disbursements and fees and costs of paralegals) in attempting to realize, while a default or Event of Default exists, on any security or incurred in connection with the sale or disposition (or preparation for sale or disposition) of any security for the Loan. Borrower agrees to pay all brokerage, finder or similar fees or commissions payable in connection with the transactions contemplated hereby and shall indemnify and hold Lender harmless against all claims, liabilities, costs and expenses (including reasonable attorneys' fees and expenses) incurred in relation to any claim by broker, finder or similar person. Further Borrower unconditionally agrees to reimburse the Lender and hold it harmless from any actual loss, increased costs or expense, which the Lender may sustain or incur as a consequence of the introduction of or any change in the interpretation of any law or regulation, or the compliance by the Lender with any guideline or request from any central bank or other governmental authority (whether or not having the force of law), including, without limitation, the introduction of, change of, change by any central bank or other governmental authority in the interpretation or administration of, or compliance by the Lender or corporation or other entity controlling the Lender with, any capital adequacy regulation. Notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed for purposes of this Section 7.1 to be a change in law after the date hereof, regardless of the date enacted, adopted or issued.

7.2. Commitment Fee. As of the Loan Opening, Borrower shall pay to Lender the Commitment Fee in immediately available funds. The Commitment Fee upon payment is fully earned and is non-refundable.

7.3. Lender's Attorneys' Fees and Disbursements. Borrower agrees to pay Lender's reasonable attorney fees and disbursements incurred in connection with this Loan, including (i) the preparation of this Agreement and the other Loan Documents and the preparation of the closing binders, (ii) the disbursement and administration of the Loan prior to closing and post-closing and (iii) the enforcement of the terms of this Agreement and the other Loan Documents.

7.4. Time of Payment of Fees and Expenses. Borrower shall pay all expenses and fees incurred as of the Loan Opening on the Loan Opening Date (unless sooner required herein). At the time of the Loan Opening, Lender may pay from the proceeds of the initial disbursement of the Loan (to the extent provided for in the Budget) all Loan expenses and all fees payable to Lender. Lender may require the payment of outstanding fees and expenses as a condition to any disbursement of the Loan. Lender is hereby authorized, without any specific request or direction by Borrower, to make disbursements from time to time in payment of or to reimburse Lender for all Loan expenses and fees to which Lender is entitled under the terms of the Loan Agreement (whether or not, at such time, there may be any undisbursed amounts of the Loan allocated in the Budget for the same). Borrower will otherwise pay such expenses and fees upon demand of Lender.

7.5. Expenses and Advances Secured by Loan Documents. Any and all advances or payments made by Lender under this Article 7 from time to time, and any amounts expended by Lender pursuant to Section 19.1, shall, as and when advanced or incurred, constitute additional indebtedness evidenced by the Note and secured by the Mortgage and the other Loan Documents.

7.6. Right of Lender to Make Advances to Cure Borrower's Defaults. In the event that Borrower fails to perform any of their covenants, agreements or obligations contained in this Agreement or any of the other Loan Documents (after the expiration of applicable grace periods, except in the event of an emergency or other exigent circumstances), Lender may (but shall not be required to) perform any of such covenants, agreements and obligations, and any amounts expended by Lender in so doing and shall constitute additional indebtedness evidenced by the Note and secured by the Mortgage and the other Loan Documents and shall bear interest at a rate per annum equal to the interest rate provided for in the Note (or Default Interest Rate following an Event of Default). Lender may, in Lender's discretion, whether or not an Event of Default exists, disburse Loan proceeds directly to third parties (or through intermediaries to such third parties) to pay costs or expenses (including without limitation construction costs) required to be paid by Borrower in connection with construction, renovation and/or development of the Project.

ARTICLE 8

NON-CONSTRUCTION REQUIREMENTS PRECEDENT TO THE LOAN OPENING

8.1. Non-Construction Conditions Precedent. Borrower agrees that Lender's obligation to Open the Loan and thereafter to make further disbursements of proceeds thereof is conditioned upon Borrower's delivery, performance and satisfaction of the following conditions precedent in form and substance satisfactory to Lender in its reasonable discretion:

(a) Cash Equity. Borrower shall have provided evidence reasonably satisfactory to Lender on or prior to the Loan Opening Date (subject to the Post-Closing Agreement) that Borrower's cash equity invested ("Cash Equity") in the Project shall not be less than \$14,393,901.00 (net of any fees to Affiliates). The Cash Equity must be either, at the option of the Lender, (x) contributed as security for the Loan in the form of Land, and/or (y) used to pay

direct Project costs to non-Affiliates approved by Lender with evidence of payment delivered to Lender prior to the first disbursement of Loan proceeds, including without limitation, the contribution of the Land and Borrower's expenditures of certain soft costs, all as set forth on the Budget.

(b) Title and Other Documents. Borrower shall have furnished to Lender the Title Policy (or a commitment from the Title Insurer to issue the Title Policy) together with legible copies of all title exception documents cited in the Title Policy and all other legal documents affecting the Project or the use thereof.

(c) Survey. Borrower shall have furnished to Lender an ALTA/NSPS Land Title Survey of the Project, which must be satisfactory to Lender in its sole discretion.

(d) Insurance Policies. Borrower shall have furnished to Lender not less than 10 days prior to the date of this Agreement policies or binders evidencing that insurance coverages are in effect with respect to (a) the Project and Borrower, in accordance with the Insurance Requirements attached hereto as Exhibit B (including without limitation any applicable available flood insurance), for which the premiums have been fully prepaid with endorsements satisfactory to Lender; and (b) the General Contractor, in accordance with the Insurance Requirements attached hereto as Exhibit B, for which the premiums have been fully prepaid with endorsements satisfactory to Lender. The failure of Lender to demand full compliance by Borrower with respect to their obligation to maintain the minimum coverages outlined in Exhibit B will not constitute a waiver by Lender with respect to their obligation to maintain such coverages. Borrower will purchase such additional insurance policies and/or endorsements or increase the policy limits of any policy set forth on Exhibit B, if required by Lender. Borrower's failure to obtain and maintain the required insurance will constitute a material breach of, and default under this Agreement. If Borrower fails to remedy such breach within 15 days after notice from Lender, Lender may, in addition to any other remedy available to Lender, at Lender's option, purchase such insurance, at Borrower's expense.

(e) No Litigation. Borrower shall have furnished evidence that no litigation or proceedings shall be pending or threatened which would be reasonably likely to have a Material Adverse Change with respect to Borrower, any Pledgor, any Guarantor, or the Project.

(f) Utilities. Borrower shall have furnished to Lender (by way of utility letters or otherwise) evidence establishing to the satisfaction of Lender that the Project when constructed will have adequate water supply, storm and sanitary sewerage facilities, telephone, gas, electricity, fire and police protection, means of ingress and egress to and from the Project and public highways and any other required public utilities and that the Project is benefited by insured easements as may be required for any of the foregoing.

(g) Attorney Opinions. Borrower shall have furnished to Lender an opinion from counsel for Borrower, Pledgors and Guarantors covering due authorization, execution and delivery and enforceability of the Loan Documents and also containing such other legal opinions as Lender shall reasonably require in accordance with customary market practices, including with respect to usury (but in no event shall a non-consolidation opinion be required).

(h) Intentionally Deleted.

(i) Searches. Borrower shall have furnished to Lender current bankruptcy, federal tax lien and judgment searches and searches of all Uniform Commercial Code financing

statements filed in each place UCC Financing Statements are to be filed hereunder, demonstrating the absence of adverse claims against the Borrower, any Pledgor and each Guarantor.

(j) Financial Statements. Borrower shall have furnished to Lender current annual financial statements of Borrower and the Guarantors, each in form and substance and certified by such individual as acceptable to Lender. Borrower and the Guarantors shall provide such other additional financial information Lender reasonably requires.

(k) Pro Forma Projection. Borrower shall have furnished to Lender a Pro Forma Projection covering a three year period commencing on the Completion Date.

(l) Intentionally Omitted.

(m) Franchise Agreement. Borrower shall have delivered to Lender executed copies of the Franchise Agreement, executed by Franchisor and Borrower, together with a comfort letter executed by Franchisor and such other agreements as Lender may require in form and substance acceptable to Lender.

(n) Permits. All Required Permits (other than those which cannot be obtained until the Construction is completed) shall have been obtained and be in full force and effect. A certificate of occupancy for the Project, among other Required Permits, will be obtained upon Completion. Borrower shall not allow any of the Required Permits to lapse, expire or terminate, if such Required Permits are necessary to operate and maintain the Project as contemplated by this Agreement.

(o) Flood Hazard. Lender has received evidence that a portion of the Project is located in an area designated by the Secretary of Housing and Urban Development as a special flood hazard area, and Borrower shall have furnished flood hazard insurance acceptable to Lender in its sole discretion.

(p) Zoning. Borrower shall have furnished to Lender a legal opinion or zoning letter or third party zoning report as to compliance of the Project and with zoning and similar laws, including, without limitation, parking requirements.

(q) Organizational Documents. Borrower shall have furnished to Lender proof satisfactory to Lender of authority, formation, organization and good standing in the state of its incorporation or formation and, if applicable, qualification as a foreign entity in good standing in the state of its incorporation or formation, of all corporate, partnership, trust and limited liability company entities (including Borrower, each Pledgor and each Guarantor) executing any Loan Documents, whether in their own name or on behalf of another entity. Borrower shall also provide certified resolutions in form and content satisfactory to Lender, authorizing execution, delivery and performance of the Loan Documents, and such other documentation as Lender may reasonably require to evidence the authority of the persons executing the Loan Documents.

(r) No Default. There shall be no uncured Event of Default or Default by Borrower hereunder.

(s) Easements. Borrower shall have furnished to Lender all easements reasonably required for the construction, maintenance or operation of the Project and such easements shall be insured by the Title Policy.

(t) Additional Documents. Borrower shall have furnished to Lender such other materials, documents, papers or requirements regarding the Project, Borrower, any Pledgor and any Guarantor as Lender shall reasonably request.

ARTICLE 9
CONSTRUCTION REQUIREMENTS PRECEDENT
TO THE LOAN OPENING

9.1. Required Construction Documents. Borrower shall cause to be furnished to Lender the following, in form and substance satisfactory to Lender and Lender's Consultant in all respects, for Lender's approval prior to the Loan Opening:

(a) Copies of each of the Required Permits, except for those Required Permits which cannot be issued until Completion, in which event such Required Permits will be obtained by Borrower on a timely basis in accordance with all recorded maps and conditions, and applicable building, land use, zoning and environmental codes, statutes and regulations and will be delivered to Lender at the earliest possible date. In all events the Required Permits required to be delivered prior to the Loan Opening shall include full building permits;

(b) Full and complete detailed Plans and Specifications for the Improvements in duplicate;

(c) Approval of the Plans and Specifications by Franchisor, all approvals from Franchisor which are necessary or desirable with respect to the Project, and confirmation that Completion and equipping the Project pursuant to the Plans and Specifications will comply with the requirements of the Franchise Agreement;

(d) The Construction Schedule;

(e) The Environmental Report which shall, at a minimum, (A) demonstrate the absence of any existing Hazardous Material contamination in violation of Laws or other violations of Environmental Laws at the Project, except as acceptable to Lender in its sole and absolute discretion, (B) include the results of all sampling or monitoring to confirm the extent of existing or potential Hazardous Material contamination at the Project, including the results of leak detection tests for each underground storage tank located at the Project, if any, (C) describe response actions appropriate to remedy any existing or potential Hazardous Material contamination, and report the estimated cost of any such appropriate response, (D) confirm that any prior removal of Hazardous Material or underground storage tanks from the Project was completed in accordance with applicable Laws, (E) confirm whether or not the Land is located in a wetlands district, and (F) comply with the Small Business Liability Relief and Brownfields Revitalization Act amendments effective November 1, 2006 and ASTM 1527 05.

(f) A report from Lender's Consultant which contains an analysis of the Plans and Specifications, the Budget, any construction contracts and all subcontracts then existing. Such report shall be solely for the benefit of Lender and contain an analysis satisfactory to Lender demonstrating the adequacy of the Budget to complete the Project and a confirmation that the Construction Schedule is realistic. Lender's Consultant shall monitor construction of the Project and shall visit the Project as directed by the Lender, and, as requested by the Lender, shall certify as to amounts of construction costs for all requested fundings;

(g) Executed copies of the acknowledgments and consents to assignment (in form and substance satisfactory to the Lender) executed by the General Contractor and such subcontractors and suppliers as Lender may require;

(h) Executed copies of the bondable guaranteed maximum construction contract with the General Contractor and all other construction and supplier contracts (including the initial subcontracts, with the subcontracts for subsequent subcontractors to follow during the term of the Loan) and acknowledgments and consents to assignment (in form and substance satisfactory to the Lender) executed by the General Contractor and such subcontractors and suppliers as Lender may require;

(i) Borrower will provide Lender with "hard bids" from subcontractors reasonably acceptable to Lender and Lender's Consultant, evidencing that the Construction of the Project can be completed within the Budget;

(j) Evidence of payment and performance bonds in a form acceptable to Lender with the General Contractor and each "major subcontractor" Lender requires, in Lender's sole discretion, as the case may be, as principal, with a surety company acceptable to Lender and licensed to do business in the State, as surety, with a dual obligee rider in favor of Lender. As used herein, "major subcontractor" shall mean any subcontractor whose contracts for the Project are greater than \$100,000.00;

(k) A blanket lien bond in statutory form pursuant to M.G.L. c. 254, §12.

(l) Such other papers, materials and documents as Lender may require with respect to the Construction, including without limitation, an updated list of all contractors and suppliers related to the Project (noted with bond requirements as set forth herein).

ARTICLE 10 **BUDGET**

10.1. Budget. Disbursement of the Loan shall be governed by the Budget for the Project, in form and substance acceptable to Lender. The Budget shall specify the amount of equity invested in the Project, and all costs and expenses of every kind and nature whatsoever to be incurred by Borrower in connection with the Project. The Budget shall include the Budget Line Items described in **Section 10.2** below inclusive of soft costs and other reserves, all as acceptable to Lender. The initial Budget is attached hereto as **Exhibit C** and made a part hereof. Any revised Budget will require Lender's approval in its sole discretion not to be unreasonably conditioned or delayed. Once the Budget is approved by Lender all changes to the Budget shall in all respects be subject to the prior written approval of Lender as provided herein. Delivery by Borrower to the Lender of the Budget satisfactory in all respects to the Lender and the Lender's Consultant is a condition precedent to the Loan Opening.

10.2. Budget Line Items. The Budget shall include as line items ("**Budget Line Items**") to the extent determined to be applicable by Lender, the cost of all labor, materials, equipment, fixtures and furnishings needed for the Completion of the Construction, and all other costs, fees and expenses relating in any way whatsoever to the Construction and the Improvements, soft costs, leasing commissions, tenant improvements and tenant allowances, operating deficits, real estate taxes, financing costs, interest reserve and all other sums due in connection with Construction, Improvements, and operation of the Project, the Loan, and this Agreement. Subject to **Section 10.4** herein, Borrower agrees that all Loan proceeds disbursed by Lender shall be used only for the Budget Line Items for which such proceeds were disbursed; provided that cost savings from one Budget Line Item, up to an amount not to exceed 10% of such Budget Line Item, may be transferred to another Budget Line Item upon the approval of Lender at its

reasonable discretion and provided the amounts moved from one Budget Line Item to another remain sufficient to complete each specific Budget Line Item as initially approved and the integrity and quality of the Project is not diminished or compromised. Notwithstanding the foregoing, with respect to the Budget Line Item for the guaranteed maximum construction contract, cost savings up to an amount not to exceed 10% in aggregate of such Budget Line Item total as shown in the initial Budget attached hereto, may be transferred to another Budget Line Item without the approval of Lender so long as the total guaranteed maximum contract is reduced by the same amount and is approved by General Contractor and Borrower has provided Lender with prior notice. Lender shall not be obligated to disburse any amount for any category of costs set forth as a Budget Line Item which is greater than the amount set forth for such category in the applicable Budget Line Item. Borrower shall pay as they become due all amounts set forth in the Budget with respect to costs to be paid for by Borrower.

10.3. Optional Method for Payment of Interest. For Borrower's benefit, the Budget includes a Budget Line Item for interest and Reserve Fund payments on the Loan for the first 24 calendar months of the Loan. Borrower hereby authorizes Lender from time to time, for the mutual convenience of Lender and Borrower, to disburse Loan proceeds to pay all the then accrued interest on the Note and required Reserve Fund amounts, regardless of whether Borrower shall have specifically requested a disbursement of such amount. Any such disbursement, if made, shall be added to the outstanding principal balance of the Note and shall, when disbursed, bear interest at the rate of interest specified for the Loan in the Note. The authorization hereby granted, however, shall not obligate Lender to make disbursements of the Loan for interest payments nor prevent Borrower from paying accrued interest or amounts due from its own funds.

10.4. Contingency Allocations. Borrower may upon request to Lender reallocate funds from the Budget Line Item for contingency to another Budget Line Item so long as (a) no Event of Default has occurred and is continuing, (b) the Budget Line Item amount for contingency is equal to or greater than the lesser of (i) the initial Budget Line Item for contingency, or (ii) 5% of the remaining Direct Construction Costs (as used and referenced in the Budget), which includes Lender approved Change Orders, as set forth herein, and (c) such reallocation of the percentage of such contingency would not exceed the percentage of completion of the Construction of the Improvements as reasonably determined by Lender. Furthermore, Lender and Borrower each acknowledge that such contingency shall be funded to Borrower no more than 1 time per month and will be funded at the time of a loan disbursement as set forth herein. Any amount of the contingency not yet funded by Lender may be used to fund deficits or budget overruns, in which event the remaining amount of the contingency to be funded by Lender shall be reduced accordingly.

ARTICLE 11 **SUFFICIENCY OF LOAN**

11.1. Loan In Balance. Anything contained in this Agreement to the contrary notwithstanding, it is expressly understood and agreed that the Loan shall at all times be "In Balance", on a Budget Line Item and an aggregate basis. A Budget Line Item shall be deemed to be "In Balance" only if Lender determines that the amount of such Budget Line Item is sufficient for its intended purpose or if such Budget Line Item is not sufficient that there are cost savings from other Budget Line Items that can be transferred in order to create sufficient funds. The Loan shall be deemed to be "In Balance" in the aggregate only when the total of the undisbursed portion of the Loan together with Borrower's equity equals or exceeds the aggregate of (a) the costs required to complete the construction of the Project in accordance with the Plans and Specifications and the Budget; (b) the amounts to be paid as retainages to persons who have supplied labor or materials to the Project; (c) the amount in excess of the projected Net Operating Income required to pay interest on the Loan through the Maturity Date; and (d) all other hard and soft costs not yet paid for in connection with the Project, as such costs and amounts described in clauses (a), (b), (c) and (d) may be reasonably estimated and/or approved in writing by Lender from time

to time. Borrower agrees that if for any reason the amount of such undistributed Loan proceeds shall at any time be or become insufficient for such purpose regardless of how such condition may be caused, Borrower will, within 30 days after written request by Lender, deposit the deficiency with Lender ("**Deficiency Deposit**"). The Deficiency Deposit shall first be exhausted before any further disbursement of Loan proceeds shall be made. Lender shall not be obligated to make any Loan disbursements if and for as long as the Loan is not In Balance.

ARTICLE 12

CONSTRUCTION PAYOUT REQUIREMENTS

12.1. Applicability of Sections. The provisions contained in this Article 12 shall apply to the Loan Opening and to all disbursements of proceeds during Construction.

12.2. Monthly Payouts. After the Loan Opening, further disbursements shall be made during Construction from time to time as the Construction progresses, but no more frequently than once in each calendar month. Lender's Consultant, on behalf of Lender, will monitor the construction and the related requests for disbursements. At Lender's option, disbursements may be made by Lender into an escrow and subsequently disbursed to Borrower by the Title Insurer.

12.3. Documents to be Furnished for Each Disbursement. As a condition precedent to each disbursement of the Loan proceeds (including the initial disbursement at the Loan Opening), no default or Event of Default shall have occurred and exist and Borrower shall furnish or cause to be furnished to Lender the following documents covering each disbursement, in form and substance satisfactory to Lender:

(a) A completed Borrower's Certificate in the form of Exhibit D attached hereto and made a part hereof and a completed Soft and Hard Cost Requisition Form in the form of Exhibit E attached hereto and made a part hereof, each executed by the Authorized Representative of Borrower;

(b) A completed standard AIA Form G702 and Form G703 (or other form approved by Lender) signed by the General Contractor, and the Project architect, engineer or other project professional engaged to certify payments to the General Contractor, if any, together with such invoices, contracts or other supporting data as Lender may require to evidence that all costs for which disbursement is sought have been incurred;

(c) Invoices or other evidence satisfactory to Lender that fixtures and equipment, if any, have been paid for and are free of any lien or security interest therein other than Permitted Exceptions and any notice of contract filed after the Commencement Date (provided a partial lien waiver is provided for such notice of contract);

(d) Copies of any proposed or executed Change Orders on standard AIA G701 form (or other form approved by Lender) which have not been previously furnished to Lender and which require and are not valid without the signatures of the General Contractor, the Borrower and the architect, if any;

(e) Copies of all construction and supplier contracts (including subcontracts) which have been executed since the last disbursement;

(f) Actual payment requests from the subcontractors, who are requesting payment, including any invoices provided to the General Contractor by such subcontractors;

(g) All Required Permits;

(h) Interim acknowledgements of payment and waivers of liens from all Persons who have furnished labor, materials and/or services in the construction of the Improvements, covering work performed, materials supplied and services rendered through the date of the last preceding advance as required by Lender, such waiver of lien from the General Contractor and all other contractors entitled to file notices of contract pursuant to M.G.L. c. 254, §2 to include completion of an accurate and valid Partial Waiver of Lien, which must be received by Lender no later than five (5) days after the end of the payment period covered by the requisition;

(i) Satisfactory evidence that all Government Approvals applicable to the portion of the work for which the disbursement is being sought, have been obtained for development of the Project;

(j) Such other instruments, documents and information as the Title Insurer may reasonably request in order to issue any down date endorsements;

(k) Satisfactory evidence of approval by Franchisor; and

(l) Such other instruments, documents and information as Lender may reasonably request.

In the event that Lender has not funded a requisition requested by any Soft and Hard Cost Requisition Form within twenty-five (25) days after the end of the applicable payment period date as set forth in the Partial Waiver of Lien submitted in connection with such requisition, Lender may, at its option, withhold or refuse to fund said requisition and require Borrower to resubmit an updated Soft and Hard Cost Requisition Form in accordance with this Section 12.3, together with an updated Partial Waiver of Lien. Disbursements (other than the initial disbursement at the Loan Opening) shall be made 10 days after receipt of all information required by Lender to approve the requested disbursements.

Lender shall not be obligated to make an advance of Loan proceeds if a lien for the performance of work or supplying of labor, materials or services shall have been filed against the Land and remain unsatisfied or unbonded. Notwithstanding the foregoing, this condition precedent shall not be deemed unsatisfied solely because a notice of contract, pursuant to M.G.L. c. 254, § 2, or statements pursuant to M.G.L. c. 254, § 8 in furtherance of a lien arising under M.G.L. c. 254, § 1, have been recorded with the Suffolk County Registry of Deeds; provided, however, this condition precedent shall not be deemed satisfied, and no advance of the Loan shall be made, if such documents or statements have been recorded but (i) Borrower otherwise has failed to satisfy all of the conditions precedent, (ii) Borrower has failed to provide, at the time and in the form and in the manner required hereunder, an accurately completed and valid Partial Waiver of Liens, or (iii) any other lien or encumbrance, including specifically but without limitation those arising under M.G.L. c. 254, § 4, has been recorded against the Property.

12.4. Retainages. At the time of each disbursement of Loan proceeds, 5% of the total amount then due for hard and/or soft costs due to the various contractors, subcontractors and material suppliers for costs of the Construction shall be withheld from the amount disbursed. The retained Loan amounts for the costs of Construction will be disbursed only pursuant to and subject to Section 13.1 below. Lender may decide on a case by case basis (but shall not be obligated) to permit retainages with respect to completed work or delivered materials to be released, subject to Lender's Consultant's approval of all work and materials and Lender's receipt of final waivers of lien from the General Contractor and other laborers, subcontractors and materialmen as Lender reasonably may require.

12.5. Disbursements for Materials Stored On-Site. Any requests for disbursements which in whole or in part relate to materials, equipment or furnishings which Borrower owns and which are not incorporated into the Improvements as of the date of the request for disbursement, but are to be temporarily stored at the Project, shall be made in an aggregate amount not to exceed \$250,000.00. Any such request must be accompanied by evidence satisfactory to Lender that (i) such stored materials are included within the coverages of insurance policies carried by Borrower, (ii) the ownership of such materials is vested in Borrower free of any liens and claims of third parties other than Permitted Exceptions, (iii) such materials are properly insured and protected against theft or damage, (iv) the materials used in the Construction are not commodity items but are uniquely fabricated for the Construction, (v) the Lender's Consultant has viewed and inspected the stored materials, and (vi) in the opinion of the Lender's Consultant the stored materials are physically secured and can be incorporated into the Project within 60 days. Lender may require separate Uniform Commercial Code financing statements to cover any such stored materials. Lender shall be reasonable in reviewing and approving any such requests.

12.6. Disbursements for Offsite Materials. Lender may in its sole but reasonable discretion, but shall not be obligated to, make disbursements for materials stored off site, in which event all of the requirements of Section 12.5 shall be applicable to such disbursement as well as any other requirements which Lender may, in its sole discretion, determine are appropriate under the circumstances.

ARTICLE 13 **FINAL DISBURSEMENT**

13.1. Final Disbursement. Lender will advance to Borrower the final disbursement for the cost of the Construction (including retainages) when the following conditions have been complied with, provided that all other conditions in this Agreement for disbursements have been complied with:

(a) The Improvements have been fully completed and equipped in accordance with the Plans and Specifications free and clear of mechanics' and construction liens and security interests (except in favor of Lender and the Permitted Exceptions), the Project is ready for occupancy and a final certificate of occupancy satisfactory to Lender has been issued by the appropriate governmental authority;

(b) All fixtures, furnishings, furniture, equipment and other property required for the operation of the Project shall have been installed free and clear of all liens and security interests, except in favor of Lender and the Permitted Exceptions and all equipment leases and service contracts have been entered into for the operation of the Project;

(c) Borrower shall have furnished to Lender copies of final waivers of lien from the General Contractor and other laborers, subcontractors, and materialmen as Lender reasonably may require and a satisfactory final Affidavit of Completion from the General Contractor;

(d) Lender shall have received evidence that Borrower has recorded with the Suffolk County Registry of Deeds a "Notice of Substantial Completion" in the form prescribed in M.G.L. c. 254, §2A from any contractor who has recorded, a notice of contract pursuant to M.G.L. c. 254, §2, Borrower has served written notice of the filing or recording in the manner and to the Persons required by said statute, and Lender is provided with evidence that either all lien rights under M.G.L. c. 254 have expired or have been properly waived;

(e) Lender shall have received evidence that immediately upon the termination of any contract Borrower has with any contractor who has recorded, a notice of contract pursuant to M.G.L. c. 254, §2, Borrower has obtained and recorded with the Suffolk County Registry of

Deeds a “Notice of Termination” in the form prescribed in M.G.L. c. 254, §2B, has served written notice of the recording in the manner and to the Persons required by said statute, and has provided Lender with evidence of compliance with the foregoing provision;

(f) Borrower shall have furnished to Lender evidence satisfactory to Lender dated at or about the Completion Date stating that (i) the Improvements have been completed in accordance with the Plans and Specifications, and (ii) the Improvements as so completed comply with all applicable Laws;

(g) Borrower shall have furnished to Lender satisfactory evidence of approval by Franchisor; and

(h) Lender shall have received a certificate from the Lender's Consultant for the sole benefit of Lender that the Improvements have been satisfactorily completed in accordance with the Plans and Specifications.

(i) Borrower shall have received from General Contractor the following:

(i) An accurately marked sets of Plans and Specifications for the Improvements reflecting “as built” conditions;

(ii) All maintenance and operating manuals;

(iii) All previously undelivered manufacturer and subcontractor guarantees and warranties and/or instruction manuals for appliances and equipment and any other special guarantees or warranties required by the Contract Documents;

(iv) An assignment and/or transfer of all guarantees and warranties from general contractor, subcontractors, vendors, suppliers and manufacturers;

(v) A list of the names, addresses, phone numbers and trade of all subcontractors and other persons providing guarantees or warranties

If Borrower fails to comply with and satisfy any of the final disbursement conditions contained in this Section 13.1 within 90 days after the Completion Date, subject to Unavoidable Delays, Lender may withhold any such final disbursement. Notwithstanding any provision contained herein to the contrary, in the event the available Maximum Loan Amount is not disbursed to Borrower within 30 months from the date hereof, subject to Unavoidable Delays, such amount shall not be available for disbursement.

ARTICLE 14

OTHER COVENANTS

14.1. Other Covenants. Borrower further covenants and agrees as follows:

(a) Loan Opening. All conditions precedent to the Loan Opening shall be complied with on or prior to the Loan Opening Date.

(b) Construction of Improvements. Borrower shall commence construction by the Commencement Date. The Improvements shall be constructed and fully equipped in a good and workmanlike manner with materials of high quality, substantially in accordance with the Plans and Specifications (or in accordance with any Change Orders or any changes therein that may be approved in writing by Lender or as to which Lender's approval is not required) and the Budget,

and such construction and equipping will be commenced and prosecuted with due diligence and continuity in accordance with the Construction Schedule and fully completed no later than the Completion Date subject to Unavoidable Delays.

(c) Changes in Plans and Specifications. No changes will be made in the Plans and Specifications without the prior written approval of Lender, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, that Borrower may make changes to the Plans and Specifications if (i) Borrower notifies Lender in writing of such change within 7 days thereafter; (ii) Borrower obtains the approval of all parties whose approval is required, including the Franchisor, sureties and any Governmental Authority to the extent approval from such parties is required; (iii) the structural integrity of the Improvements is not impaired; (iv) no material change in architectural appearance is effected; (v) the performance of the mechanical, electrical, and life safety systems of the Improvements is not affected; (vi) the cost of or reduction resulting from such change (x) does not exceed \$100,000.00 and (y) when added to all other changes which have not been approved in writing by Lender, the resulting aggregate cost or reduction does not exceed \$200,000.00. Changes in the scope of construction work or to any construction related contract must be documented with a Change Order on the AIA Form G701 or equivalent form.

(d) Inspection by Lender. Borrower will cooperate with Lender and Lender's Consultant in arranging for inspections by representatives of Lender of the progress of the Construction from time to time at the expense of Borrower including an examination of (i) the Improvements, (ii) all materials to be used in the Construction, (iii) all plans and shop drawings which are or may be kept at the construction site, (iv) any contracts, bills of sale, statements, receipts or vouchers in connection with the Improvements, (v) all work done, labor performed, materials furnished in and about the Improvements, (vi) all books, contracts and records with respect to the Improvements, and (vii) any other documents relating to the Improvements or the Construction. Borrower shall cooperate with Lender's Consultant to enable him to perform his functions hereunder and will promptly comply with Lender's requirements and remove any reasonable dissatisfaction regarding the Construction or the progress thereof.

(e) Liens and Encumbrances. Except for the Permitted Exceptions, Borrower will not grant or permit the filing of any lien or encumbrance on the Project or the collateral, without the prior written consent of Lender; provided, however, Borrower may, by appropriate proceeding, contest the validity or amount of any asserted lien and, pending such contest, Borrower shall not be deemed to be in default hereunder if (a) Borrower has given prior written notice to Lender of Borrower's intent to so contest, (b) such contest stays the enforcement of the contested lien, and (c) the contested lien is bonded or insured over by the title insurance company or Borrower has posted security therefor in a manner acceptable to Lender. Other than trade payables due in the ordinary course of business within 60 days (not to exceed \$500,000.00 as of any date) and any operating or capital leases that in the aggregate are less than or equal to \$25,000.00 per year, Borrower shall not be indebted to any person or entity, except for indebtedness that has been made expressly subordinate to the satisfaction of the Lender and has been approved by Lender, in its sole discretion.

(f) Mechanics' Liens and Contest Thereof. Borrower will not suffer or permit any mechanics' lien or construction lien claims to be filed or otherwise asserted against the Project or any funds, and will promptly discharge the same in case of the filing of any claims for lien or proceedings for the enforcement thereof, provided, however, that Borrower shall have the right to contest in good faith and with diligence the validity of any such lien or claim provided that Borrower posts a statutory lien bond, which removes such lien from title to the Project within 20 days of written notice by Lender to Borrower of the existence of the lien) Lender will not be

required to make any further disbursements of the proceeds of the Loan until any mechanics' lien claims have been removed, or bonded as provided above and Lender may, at its option, restrict disbursements to reserve sufficient sums to pay 150% of the lien.

(g) Settlement of Mechanics' Lien Claims. If Borrower shall fail promptly either (i) to discharge any such lien, or (ii) post a statutory lien bond in the manner provided in Section 14.1(f) Lender may, at its election (but shall not be required to), procure the release and discharge of any such claim and any judgment or decree thereon and, further, may in its sole discretion effect any settlement or compromise of the same, or may furnish such security or indemnity to the Title Insurer, and any amounts so expended by Lender, including premiums paid or security furnished in connection with the issuance of any surety company bonds, shall be deemed to constitute disbursement of the proceeds of the Loan hereunder. In settling, compromising or discharging any claims for lien, Lender shall not be required to inquire into the validity or amount of any such claim.

(h) Single Asset Entity. Borrower is a single asset entity. Borrower (a) shall not engage or be authorized to engage in any business unrelated to the Project, (b) shall not have assets other than the Project, (c) shall not have any indebtedness other than the Loan, and other amounts allowed hereunder, (d) shall have its own books and records separate and apart from any other Person, (e) shall hold itself out as being, and shall conduct all business as, a legal entity, separate and apart from any other Person, with separate stationery, invoices and checks, (f) shall not guaranty the debts or obligations of any other person or entity, and (g) shall not commingle its assets or funds with those of any other Person. Notwithstanding any provision contained in the Borrower's organizational documents to the contrary, Borrower shall at all times provide that any action to dissolve or wind up, or file any insolvency filing for Borrower requires the prior written unanimous consent of all partners, directors or members, as applicable, including the Independent Director. An "Independent Director" satisfactory to Lender shall be appointed by Borrower. Such entity shall be precluded from incurring additional debt during the term of the Loan without the prior approval of Lender.

(i) Renewal of Insurance. Borrower shall cause insurance policies to be maintained in compliance with Exhibit B at all times. Borrower shall timely pay (to the extent Lender is not reserving for same) all premiums on all insurance policies required hereunder, and as and when additional insurance is required, from time to time, during the progress of Construction, and as and when any policies of insurance may expire, furnish to Lender, premiums prepaid, additional and renewal insurance policies with companies, coverage and in amounts satisfactory to Lender in accordance with Section 8.1(d). Upon request of Lender, Borrower shall obtain additional flood hazard insurance coverage.

(j) Payment of Taxes. Borrower shall pay (to the extent Lender is not reserving for same) all real estate taxes and assessments and charges of every kind upon the Project or Borrower, before the same become delinquent, provided, however, that Borrower shall have the right to pay such tax under protest or to otherwise contest any such tax or assessment, but only if (i) such contest has the effect of preventing the collection of such taxes so contested and also of preventing the sale or forfeiture of the Project, or any parts thereof or any interest therein, (ii) Borrower has given prior written notice to Lender of Borrower's intent, to contest such taxes, and (iii) Borrower has deposited with Lender security in form and amount satisfactory to Lender, in its sole discretion (but in an amount no greater than the amount being contested), and has increased the amount of such security so deposited promptly after Lender's request therefor. If Borrower fails to commence such contest or, having commenced to contest the same, and having deposited such security required by Lender for its full amount, shall thereafter fail to prosecute such contest in good faith or with due diligence, or, upon adverse conclusion of any such contest,

shall fail to pay such tax, assessment or charge, Lender may, at its election (but shall not be required to), pay and discharge any such tax, assessment or charge, and any interest or penalty thereon, and any amounts so expended by Lender shall be deemed to constitute disbursements of the Loan proceeds hereunder (even if the total amount of disbursements would exceed the face amount of the Note). Borrower shall furnish to Lender evidence that taxes are paid at least 15 days prior to the last date for payment of such taxes and before imposition of any penalty or accrual of interest.

(k) Personal Property. All of Borrower's personal property, fixtures, attachments and equipment delivered upon, attached to or used in connection with the Construction, the Improvements or the operation of the Project shall always be located at the Project and shall be kept free and clear of all liens, encumbrances and security interests except Permitted Exceptions and except off site stored materials permitted hereby.

(l) Lender's Attorneys' Fees for Enforcement of Agreement. In case of any default or Event of Default hereunder, Borrower (in addition to Lender's attorneys' fees, if any, to be paid pursuant to Section 7.3) will pay Lender's reasonable attorneys' and paralegal fees (including, without limitation, any attorney and paralegal fees and costs incurred in connection with any litigation or bankruptcy or administrative hearing and any appeals therefrom and any post judgment enforcement action including, without limitation, supplementary proceedings) in connection with the enforcement of this Agreement; without limiting the generality of the foregoing, if at any time or times hereafter Lender employs outside counsel (whether or not any suit has been or shall be filed and whether or not other legal proceedings have been or shall be instituted) as reasonably required for advice or other representation with respect to the Project, this Agreement, or any of the other Loan Documents, or to protect, collect, lease, sell, take possession of, or liquidate any of the Project, or to attempt to enforce any security interest or lien in any portion of the Project, or to enforce any rights of Lender or Borrower's obligations hereunder, then in any of such events all of the reasonable attorneys' fees arising from such services, and any expenses, costs and charges relating thereto (including fees and costs of paralegals), shall constitute an additional liability owing by Borrower to Lender, payable on demand, which liability shall be secured by the Mortgage.

(m) Appraisals. Lender shall have the right to obtain a new or updated Appraisal of the Project from time to time. Borrower shall cooperate with Lender in this regard. If the Appraisal is obtained to comply with this Agreement or any applicable law or regulatory requirement, or policy promulgated to comply therewith, or if an Event of Default exists, Borrower shall pay for any such Appraisal upon Lender's request.

(n) Furnishing Information.

(i) Borrower shall deliver or cause to be delivered to Lender, within 15 days following the end of each month, (A) following Completion, monthly financial statements with respect to the Project for the prior month, year to date, including profit and loss statements, an accounts payable aging schedule, cash flow statements and balance sheets, (B) prior to Completion, a Construction progress report in form and substance satisfactory to Lender, including a statement detailing the variances from the Budget and Construction schedule for such month and cumulative life to date, and (C) a duly executed Certificate of Compliance in the form of Exhibit F attached hereto.

(ii) Borrower shall deliver or cause to be delivered, within 30 days after the end of each calendar quarter, quarterly financial statements of Borrower.

(iii) Borrower shall deliver or cause to be delivered, within 90 days after the end of each calendar year, (A) annual financial statements of Borrower and (B) annual financial statements of the Guarantors.

(iv) All financial statements required to be delivered to Lender hereunder shall be in a form approved by Lender in Lender's reasonable sole discretion, and, upon Lender's request following an Event of Default, shall be reviewed, at Borrower's expense, by a Lender approved accounting firm. Any time after the occurrence of a default or Event of Default, Lender may require all financial statements to be audited, at Borrower's expense. Each financial statement shall, upon delivery to the Lender, be certified as true, complete and correct by its preparer and by Borrower or, in the case of each of the Guarantors' financial statements, by the Guarantor to whom it relates.

(v) Borrower shall deliver or cause to be delivered to Lender with respect to Borrower and Guarantor annual Federal Income Tax Returns within 10 days after timely filing.

(vi) Prior to the Loan Opening and then not later than 60 days before the end of each fiscal year of Borrower, Borrower shall deliver to Lender an updated Budget for the Project for the following fiscal year, which Budget shall in all respects be subject to approval by Lender.

(vii) Borrower shall immediately deliver to Lender copies of any and all notices received in connection with the Franchise Agreement and the Force Account Agreement including any default notices received in connection therewith.

(viii) Borrower and each Guarantor shall provide such additional financial and other information as Lender reasonably requires.

(ix) If at any time Borrower shall become aware of the existence or occurrence of any condition or event that likely will have a Material Adverse Effect, Borrower shall promptly notify Lender of the existence or occurrence thereof and of Borrower's opinion as to what effects such may have on the Project or Borrower.

(x) Borrower shall upon reasonable notice during regular business hours permit Lender or any of its agents or representatives to have access to and examine all of its books and records regarding the development, construction and operation of the Project.

(o) Lost Note. Upon Lender's furnishing to Borrower an affidavit to such effect, Borrower shall, if the Note is mutilated, destroyed, lost or stolen, deliver to Lender, in substitution therefor, a new note containing the same terms and conditions as the Note. In such case, Lender will agree to indemnify and hold harmless Borrower from any loss or liability suffered by Borrower arising from a claim to be the rightful holder of such mutilated, destroyed, lost or stolen note from another person or entity.

(p) Indemnification. Borrower shall indemnify Lender, including each party owning an interest in the Loan and their respective officers, directors, employees and consultants (each, an "**Indemnified Party**") and will defend and hold each Indemnified Party harmless from and against all claims, injury, damage, loss and liability, cost and expense (including reasonable attorneys' fees, costs and expenses) of any and every kind to any persons or property by reason of (i) the Construction; (ii) the operation or maintenance of the Project; (iii) any breach of

representation or warranty, default or Event of Default under this Agreement or any other Loan Document or related document; or (iv) any other matter arising in connection with the Loan, Borrower, Guarantor, Pledgor or the Project. BORROWER SHALL INDEMNIFY EACH OF THE INDEMNIFIED PARTIES TO THIS SECTION REGARDLESS OF WHETHER THE ACT, OMISSION, FACTS, CIRCUMSTANCES OR CONDITIONS GIVING RISE TO SUCH INDEMNIFICATION WERE CAUSED IN WHOLE OR IN PART BY THE INDEMNIFIED PARTY'S NEGLIGENCE OR ALLEGED NEGLIGENCE (BUT NOT SUCH INDEMNIFIED PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT). The foregoing indemnification shall survive repayment of the Loan and shall continue to benefit Lender following any assignment of the Loan with respect to matters arising or accruing prior to such assignment. **SECTION 14.1(p) OF THIS AGREEMENT INCLUDES AN INDEMNIFICATION BY BORROWER OF AN INDEMNIFIED PARTY FROM CLAIMS OR LOSSES ARISING AS A RESULT OF SUCH INDEMNIFIED PARTY'S OWN NEGLIGENCE.**

(q) No Additional Debt. Except in favor of Lender or otherwise permitted hereby, Borrower shall not incur any indebtedness (whether personal or nonrecourse, secured or unsecured), without the prior written consent of Lender.

(r) Compliance With Laws. Borrower shall comply with all applicable requirements (including applicable Laws) of any Governmental Authority having jurisdiction over Borrower or the Project.

(s) Organizational Documents. Borrower shall not, without the prior written consent of Lender, permit or suffer (i) an amendment or modification of its organizational documents, (ii) the admission of any new member, partner or shareholder, or (iii) any dissolution or termination of its existence.

(t) Furnishing Reports. Upon Lender's request, Borrower shall provide Lender with copies of all inspections, reports, test results and other information received by Borrower, which in any way relate to the Project or any part thereof.

(u) Management Contracts and Transactions. Borrower shall not enter into, modify, amend, terminate or cancel any management contracts for the Project, agreements with agents or brokers and Borrower shall not enter into any transactions or agreements which are not terminable on 30 days' notice that involve payments, individually and in the aggregate, equal to or in excess of \$25,000.00 per year, without the prior written approval of Lender.

(v) Furnishing Notices. Borrower shall provide Lender with copies of all material notices pertaining to the Project received by Borrower, from any tenant, Governmental Authority, insurance company or any other person or entity within 10 days after such notice is received.

(w) Construction Contracts. Borrower shall not enter into, modify, amend, terminate or cancel any contracts for the Construction, without the prior written approval of Lender not to be unreasonably withheld, conditioned or delayed. Borrower will furnish Lender promptly after execution thereof executed copies of all contracts of Borrower, architects, engineers and contractors and all subcontracts and suppliers, which contracts may not have been furnished pursuant to Section 9.1 at the time of the Loan Opening and, upon request of Lender, assign one or more of such contracts to Lender.

(x) Leases and Other Transactions. Borrower shall not enter into, modify, amend, terminate or cancel any contracts or Leases, without the prior written approval of Lender, except

for any operating or capital leases that are less than or equal to \$25,000.00 per year. Borrower will furnish Lender promptly after execution thereof executed copies of all contracts and leases and, upon request of Lender, assign one or more of such contracts or leases to Lender.

(y) Correction of Defects. Within 10 days after Borrower acquires knowledge of or receives notice of a defect in the Improvements or any departure from the Plans and Specifications, or any other requirement of this Agreement, Borrower will proceed with diligence to correct all such defects and departures. Borrower shall not commit or allow any act upon or use of the Project which would violate: (i) any applicable Laws or order of any Governmental Authority, whether now existing or later to be enacted and whether foreseen or unforeseen; or (ii) any public or private covenant, condition, restriction or equitable servitude affecting the Project. Borrower shall not bring or keep any article on the Project or cause or allow any condition to exist on it, if that could invalidate or would be prohibited by any insurance coverage required to be maintained by Borrower on the Project herein. Borrower shall not commit or allow waste of the Project, including those acts or omissions characterized under the Loan Agreement as waste which arises out of hazardous material.

(z) Hold Disbursements in Trust. Borrower shall receive and hold in trust for the sole benefit of Lender (and not for the benefit of any other person, including, but not limited to, contractors or any subcontractors) all advances made hereunder directly to Borrower, for the purpose of paying costs of the Construction in accordance with the Budget. Borrower shall use the proceeds of the Loan solely for the payment of costs as specified in the Budget. Borrower will pay without using proceeds of the Loan all other costs, expenses and fees relating to the acquisition, equipping, use and operation of the Project.

(aa) Alterations. Without the prior written consent of Lender, Borrower shall not make any material alterations to the Project or make any alterations that have a material effect on the structural portions or the exterior quality of the Improvements. Borrower shall not remove or demolish the Project or any part of it, or alter, restore or add to the Project, or initiate or allow any change or variance in any zoning or other premises use classification which affects the Project or any part of it, except as permitted or required herein or with Lender's express prior written consent in each instance. For purposes of this Section, "material alterations" shall be deemed to be a Change Order in excess of \$100,000.00, or Change Orders in the aggregate, in excess of \$200,000.00. Without the prior written notice to Lender, Borrower shall not approve any Change Order that extends Construction deadlines (including without limitation, the Completion Date) for more than 30 days in the aggregate with such other extensions and except for any needed in the event of an Unavoidable Delay.

(bb) Distributions and Payments to Equity Holders. Borrower may not make any distributions or other payments to partners, members, shareholders or other direct or indirect holders of equity in the Borrower without Lender's prior written consent; provided, however, distributions of net profits and reasonable compensation may be distributed to the members or partners of Borrower on a monthly basis, so long as (a) a default or Event of Default does not exist under this Agreement or any other Loan Document, (b) Completion has occurred and the Project is in operation and is generating sufficient income to generate a DSCR equal to or in excess of 1.00:1.00 for 3 consecutive months, (c) the monthly interest payments have been made to the Loan, and (d) no such distribution would (1) cause Borrower to be in default of any covenant contained herein or in the Loan Documents or which could cause the Loan to be classified as a HVCRE, or (2) cause Borrower's net equity investment in the Project, as determined by Lender, to be less than fifteen percent (15%).

(cc) Transactions with Affiliates. Borrower shall not engage in any transaction with an Affiliate unless such transaction is (i) otherwise permitted under this Agreement, (ii) in the ordinary course of business, (iii) approved by Lender, and (iv) upon fair and reasonable terms no less favorable to the Borrower than it would obtain in a comparable arm's length transaction with a person or entity which is not an Affiliate. The Borrower shall promptly report to the Lender any transactions with any Affiliates, and, at the Lender's request, shall provide to the Lender copies of any and all documents related to any such transactions.

(dd) Franchise Agreement. Borrower shall perform and observe all of its agreements and covenants under and pursuant to the Franchise Agreement in accordance with its terms and shall not modify, amend, terminate or cancel the Franchise Agreement without the prior written approval of Lender.

(ee) Intentionally Deleted.

(ff) Defense and Notice of Claims and Actions. At Borrower's sole expense, Borrower shall protect, preserve and defend the Project and title to and right of possession of the Project, and the security of the Mortgage and the rights and powers of Lender created thereunder, against all adverse claims. Borrower shall give Lender prompt notice in writing if any claim is asserted which does or could be reasonably expected to affect any such matters, or if any action or proceeding is commenced which alleges or relates to any such claim.

(gg) Subrogation. Lender shall be subrogated to the liens of all encumbrances, whether released of record or not, which are discharged in whole or in part by Lender in accordance with the Mortgage or with the proceeds of any loan secured by the Mortgage.

(hh) HVCRE. Borrower shall at all times cause the Project to remain in full compliance with all required equity thresholds and capital retention obligations set forth in Part 217 of Chapter II of title 12 of the Code of Federal Regulations (HVCRE regulations) such that the Project would not, in the determination of Lender, need to be classified as High Volatility Commercial Real Estate. If at any time, in the determination of Lender, the net equity or capital retention of Borrower would require Lender to classify the Project as High Volatility Commercial Real Estate, then within ten (10) days after written demand being issued by Lender, Borrower shall take such actions as may be necessary, including obtaining adequate equity infusion, such that Lender is satisfied that the Project need not be classified as High Volatility Commercial Real Estate.

(ii) Sign and Publicity. Upon Lender's request, Borrower shall promptly erect a sign approved in advance by Lender in a conspicuous location on the Project during the Construction indicating that the financing for the Project is provided by Lender but only if Lender pays for all approvals necessary for such sign. Lender reserves the right to publicize the making of the Loan.

(jj) Compliance with Prompt Payment, Retainage and Other Laws Applicable to Payment of Contractors and Subcontractors. Borrower shall comply with Massachusetts Prompt Payment Act, M.G.L. c. 149, Sec. 29E, the Act Relative to Fair Retainage Payments in Private Construction, M.G.L. c. 149, Sec. 29F, and other laws governing the payment and other dealings with contractors and subcontractors to the extent applicable to the Project (the "Prompt Payment and Retainage Laws"). Whenever possible, each provision of the Loan Documents shall be interpreted and construed in such manner as to be effective and valid to the fullest extent possible under the Prompt Payment and Retainage Laws. However, in the event any provision of any Loan Document conflicts with the Prompt Payment and Retainage Laws, the provisions of such Laws shall be deemed to govern

(kk) Liquor License. Borrower shall, prior to Completion, and to the extent permitted under applicable law, obtain the appropriate all alcoholic beverages license from the Licensing Board for the City of Boston and the Massachusetts Alcoholic Beverages Control Commission (the "**Licensing Authorities**") in Borrower's name in connection with the sale of any alcoholic beverages at the Project. Borrower covenants and agrees that it will provide Lender with copies of all alcoholic beverages licenses or similar permits with respect to the sale of alcoholic beverages at the Project promptly after such are issued, whether such licenses or permits are held in the name of Borrower or otherwise. If required by Lender and to the extent permitted by applicable Laws, Borrower shall, at Borrower's sole cost and expense, execute and deliver to Lender a security agreement pledging Borrower's interest in the alcoholic beverages license as additional collateral for the Loan, and shall execute and deliver, from time to time, such further instruments (including, without limitation, any financing statements under the UCC) as may be requested by Lender to perfect the lien of such security instrument on Borrower's interest in the alcoholic beverages license. Borrower hereby irrevocably authorizes Lender to file such statements with or without Borrower's signature thereon. Borrower further covenants and agrees to fully comply at all times with all laws and requirements applicable to the alcoholic beverages licenses relating to the Project. Borrower shall provide Lender with a copy of any notice received by Borrower from any Licensing Authorities or other person with respect to any event or circumstance which could reasonably jeopardize any such license or permit.

(ll) Force Account Agreement. Borrower shall perform and observe all of its agreements and covenants under and pursuant to the Force Account Agreement in accordance with its terms.

(mm) Order of Conditions. Borrower shall comply with that certain Order of Conditions recorded under Book 58392, Page 152 in the Suffolk County Registry of Deeds and receive a Certificate of Compliance from the Massachusetts Department of Environmental Protection upon Completion.

14.2. Authorized Representative. Borrower hereby appoints each of the Authorized Representatives as their authorized representative for purposes of dealing with Lender on behalf of Borrower in respect of any and all matters in connection with this Agreement, the other Loan Documents, and the Loan. The Authorized Representative shall have the power, in his/her discretion, to give and receive all notices, monies, approvals, and other documents and instruments, and to take any other action on behalf of Borrower. All actions by the Authorized Representative shall be final and binding on Borrower. Lender may rely on the authority given to the Authorized Representative until actual receipt by Lender of a duly authorized resolution substituting a different person as the Authorized Representative.

ARTICLE 15

CASUALTIES AND CONDEMNATION

15.1. Casualty and Condemnation

(a) If the Project shall be damaged or destroyed, in whole or in part, by fire or other casualty (a "**Casualty**") or if Borrower shall have knowledge of the actual or threatened commencement of any condemnation or eminent domain proceeding that would affect any portion of the Land or Improvements (a "**Condemnation**"), Borrower shall give prompt written notice thereof to Lender and, with respect to a Condemnation, shall deliver to Lender copies of any and all papers served in connection with such Condemnation.

(b) Lender may participate in any proceedings for any taking by any public or quasi-public authority accomplished through a Condemnation or any transfer made in lieu of or in

anticipation of a Condemnation (which transfer in lieu and Condemnation are collectively referred to as a "**Taking**") to the extent permitted by law. Upon Lender's written request, Borrower shall deliver to Lender all instruments requested by it to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings, and shall consult with Lender, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. Borrower shall not consent or agree to a Taking without the prior written consent of Lender in each instance, which consent shall not be unreasonably withheld, conditioned or delayed.

(c) Subject to the terms of Section 15.2, all insurance proceeds payable under the insurance policies to be obtained hereunder and all awards or payments payable on account of a Taking ("**Award**"), and all causes of action, claims, compensation, awards and recoveries for any other damage, injury, or loss or diminution in value of the Land, are hereby assigned, transferred and set over to and shall be paid to Lender. Borrower agrees to execute and deliver from time to time such further instruments as may be reasonably requested by Lender to confirm the foregoing assignment to Lender. Borrower hereby irrevocably constitutes and appoints Lender as the attorney-in-fact of Borrower (which power of attorney shall be irrevocable so long as any of the Indebtedness is outstanding, shall be deemed coupled with an interest, and shall survive the voluntary or involuntary dissolution of Borrower), with full power of substitution, subject to the terms of Section 15.2, to settle for, collect and receive all proceeds of insurance and any Award and any other awards, damages, insurance proceeds, payments or other compensation from the parties or authorities making the same, to appear in and prosecute any proceedings therefor and to give receipts and acquittance therefor; provided that Lender shall not exercise such power of attorney except either when an Event of Default exists or when Borrower has failed to take any of the actions described in this sentence after a reasonable period of time has passed following receipt of written notice from Lender of its intent to use such power to take the action.

(d) If Lender applies an Award to the Indebtedness in accordance with Section 15.2, Lender shall be entitled to allocate out of the Award for the purpose of paying accrued unpaid interest on the Note interest at the rate or rates provided in the Note and shall not be limited to the interest paid on an Award by the condemning authority. Borrower shall use all commercially reasonable efforts to cause any Award that is payable to Borrower to be paid directly to Lender, and if any such Award is nevertheless paid to Borrower, Borrower shall promptly remit such Award to Lender to be held and applied in accordance with the terms of this Agreement. If the Land is sold, through foreclosure or deed-in-lieu thereof, prior to the receipt by Lender of the Award, Lender shall have the right, whether or not a deficiency judgment on the Note (to the extent permitted in the Note or in the Loan Documents) shall have been sought, recovered or denied, to receive the Award, or a portion thereof, to the extent sufficient to pay the unpaid portion, if any, of the Obligations.

(e) The reasonable, actual out-of-pocket expenses incurred by Lender in the adjustment and collection of the proceeds of insurance or an Award shall become part of the Indebtedness and be secured by the Mortgage and shall be reimbursed by Borrower to Lender within thirty (30) days after written demand or, at Lender's election, deducted by and reimbursed to Lender from such proceeds.

15.2. Use of Proceeds of Insurance or Award.

(a) In case of loss or damages covered by any of the insurance policies and in case of an Award for any Taking, the following provisions shall apply;

(i) In the event of a Casualty that does not exceed \$250,000.00, Borrower may settle and adjust any claim without the consent of Lender and agree with the insurance company or companies on the amount to be paid upon the loss; provided that such adjustment is carried out in a competent and timely manner. In such case, Borrower is hereby authorized to collect and receive any such insurance proceeds provided no Event of Default, or an event which with the notice and/or passage of time would constitute an Event of Default, exists.

(ii) In the event of a Casualty that exceeds \$250,000.00 but does not exceed \$750,000.00, then and in that event Lender may settle and adjust any claim, provided, however, that any final agreement with the insurance company or companies of the amount to be paid for the Casualty shall be subject to the approval of Borrower as hereinafter provided, such approval not to be unreasonably withheld, delayed or conditioned. In any such case, the proceeds under the insurance policies shall be due and payable solely to Lender and held in escrow by Lender in accordance with the terms of this Agreement. Borrower shall have the right to participate in the settlement discussions with the applicable insurance company or companies, or applicable authorities, and Lender shall keep Borrower apprised of all material settlement offers and discussions and the results thereof. Lender shall provide ten (10) Business Days advance written notice to Borrower of the terms and amount of any proposed final agreement on any such claim (such proposed final amount, the "**Lender Approved Settlement Amount**"). If Borrower disapproves of Lender's settlement of the claim on such terms and at such amount, Borrower must furnish written notice of such disapproval (any such notice, an "**Arbitration Notice**") to Lender within ten (10) Business Days after Borrower's receipt of Lender's notice, such notice of disapproval by Borrower to state Borrower's election to implement the arbitration procedure set forth in this Section 15.2. Borrower's failure to furnish notice of disapproval prior to the expiration of such ten (10) Business Day period shall constitute and be deemed Borrower's consent and approval to Lender's settlement of the applicable claim for an amount not less than the Lender Approved Settlement Amount.

(iii) In the event of a Casualty that exceeds \$750,000.00, Lender may settle and adjust any claim related thereto without the consent of Borrower and agree with the insurance company or companies on the amount to be paid on the loss, and the proceeds of any such policy shall be due and payable solely to Lender and held in escrow by Lender in accordance with the terms of this Agreement.

(iv) In the event of (A) a Taking for which the Award is equal to or less than \$500,000.00, or (B) a Casualty where the loss is in an aggregate amount equal to or less than \$750,000.00, and (1) no Event of Default or an event which with notice and/or the passage of time would constitute an Event of Default exists and (2) in the reasonable judgment of Lender (i) the Land can be restored in all material respects to the condition thereof that existed prior to the Casualty or Taking within the time period that business income interruption insurance will be payable under the coverage obtained by Borrower pursuant to Section 8.1(d) above and in all events not less than six (6) months prior to the Original Maturity Date, (ii) as restored the FMV of and the Net Operating Income from the Land will not be less than the FMV of and Net Operating Income from the Land that existed immediately prior to the Casualty, (iii) all necessary government

approvals will be obtained to allow the rebuilding and re-occupancy of the Improvements, and (iv) there are sufficient sums available (through insurance proceeds, the Award and contributions by Borrower, the full amount of which contribution shall at Lender's option have been deposited with Lender) for the Repair Work (including, without limitation, for any reasonable costs and expenses of Lender to be incurred in administering the Repair Work) and for payment of the Indebtedness as it becomes due and payable during the Repair Work, then, and only then, the proceeds of insurance or of the Award (after reimbursement of any expenses incurred by Lender) shall be applied in the manner set forth below and disbursed to Borrower for the cost of restoring, repairing, replacing or rebuilding (collectively the "**Repair Work**") the Land or part thereof subject to the Casualty or Taking. Borrower hereby covenants and agrees to commence and diligently to prosecute the Repair Work; provided however, that Borrower shall pay all costs (and if required by Lender, Borrower shall deposit the total thereof with Lender in advance) of the Repair Work in excess of the net proceeds of insurance or Award made available pursuant to the terms hereof.

(v) Except as otherwise provided in this Agreement, in the event of any Casualty or Taking Lender may elect in its absolute sole discretion and without regard to the adequacy of the security for the Indebtedness, to (A) apply the proceeds of insurance collected upon any Casualty or Award collected upon any Taking to the payment of the Indebtedness in accordance with the Note, and this Agreement with or without accelerating the Maturity Date of the Note and declaring the entire outstanding Indebtedness to be immediately due and payable, or (B) hold the insurance proceeds or Award proceeds and make them available to Borrower for the cost of the Repair Work in the manner set forth below.

(vi) In the event Borrower is either entitled to disbursements from the insurance proceeds or Award proceeds held by Lender or Lender elects to make such proceeds available to Borrower for the Repair Work, such proceeds shall be disbursed to Borrower for costs and expenses incurred by Borrower for the Repair Work following (A) the receipt by Lender of a written request from Borrower for disbursement and a certification by Borrower to Lender that the applicable portion of the Repair Work has been completed or will be completed with the proceeds of the subject disbursement, (B) the delivery to Lender of invoices, receipts or other evidence verifying the cost of performing the applicable portion of the Repair Work and all other items Lender may reasonably require, and (C) for disbursement requests in excess of \$25,000.00 with respect to any single portion of the Repair Work, or for any single portion of the Repair Work that is structural in nature, delivery to Lender of (1) affidavits, conditional lien waivers or other evidence satisfactory to Lender showing that all materialmen, laborers, subcontractors and any other parties who might or could claim statutory or common law liens and are furnishing or have furnished material or labor to the Land have been, or upon receipt of the payment described in such affidavit or conditional lien waiver will have been, paid all amounts due for labor and materials furnished to the Land through the date covered by such draw request, less any retainage, and (2) a certification from an inspecting architect or other third party reasonably acceptable to Lender describing the completed portion of the Repair Work and verifying its completion and cost. Lender shall not be required to make any such advances more frequently than

one time in any calendar month. Lender may, in any event, require that all plans and specifications for the Repair Work be submitted to and approved by Lender prior to commencement of the Repair Work, which approval shall not be unreasonably withheld, delayed or conditioned. In no event shall Lender assume any duty or obligation for the adequacy, form or content of any such plans and specifications, nor for the performance, quality or workmanship of any Repair Work. With respect to disbursements to be made by Lender, no payment made prior to the final completion of the Repair Work shall exceed ninety five percent (95%) of the cost of the Repair Work performed from time to time (except that a contractor or subcontractor may be paid its share of any retainage upon such contractor's or subcontractor's completion of its entire portion of the Repair Work and its execution and delivery to Borrower (with copies to Lender) of all applicable lien waivers and/or lien releases); funds other than proceeds of insurance or the Award shall be disbursed prior to disbursement of such proceeds; and at all times, the undisbursed balance of such proceeds remaining in the hands of Lender, together with funds deposited for that purpose or irrevocably committed to the satisfaction of Lender by or on behalf of Borrower for that purpose, shall be at least sufficient in the reasonable judgment of Lender to pay for the cost of completion of the Repair Work, free and clear of all liens or claims for lien. Any surplus which may remain out of the proceeds of insurance or Award held by Lender after payment of the costs of the Repair Work shall be paid to Borrower or, if an Event of Default exists, shall in the sole and absolute discretion of Lender, be retained by Lender and applied to payment of the Indebtedness or paid to the party or parties legally entitled to such surplus.

(vii) If Borrower delivers an Arbitration Notice to Lender, Borrower and Lender shall, within five (5) Business Days after Lender's receipt of any such notice, jointly designate an independent and unaffiliated individual who has not less than ten (10) years' experience with respect to settlement of claims resulting from casualties in respect of properties similar to the Land and Improvements. Not later than five (5) Business Days after such joint designation of such individual, Borrower and Lender shall submit to such individual their separate determinations of the commercially reasonable settlement amount for the applicable Casualty together with any documentation and other backup therefor and shall simultaneously therewith provide a copy of such submission to the other party. The individual so appointed shall review the applicable submissions and within ten (10) days after such individual's designation either select one of the submitted settlement amounts or an amount in between the submitted settlement amounts as more accurately reflective of the commercially reasonable settlement amount. Notice of such selection shall be furnished to Borrower and Lender by the applicable individual prior to the expiration of such ten-day period. Upon such selection, Lender shall be authorized to settle the applicable claim for an amount not less than the settlement amount so selected without any further right of consent of Borrower.

(viii) In the event that Borrower and Lender are unable to agree on one individual to act as arbitrator within the five (5) Business Day period following Lender's receipt of the Arbitration Notice as contemplated under Section 15.2(a)(vii) above, then, in such case, the procedure set forth in this Subsection (viii) shall be observed in lieu thereof. Not later than five (5) Business Days after Lender's receipt of an Arbitration Notice, Borrower and Lender shall each

designate an independent and unaffiliated individual who has not less than ten (10) years' experience with respect to settlement of claims resulting from casualties in respect of properties similar to the Land and Improvements and notify the other party of such appointment by identifying the appointee. Not later than five (5) Business Days after both arbitrators are appointed, the two selected arbitrators shall select a third arbitrator who shall also be an independent and unaffiliated individual who has not less than ten (10) years' experience with respect to settlement of claims resulting from casualties in respect of properties similar to the Land and Improvements, such selection to take place within five (5) Business Days after such arbitrator's appointment. Borrower and Lender shall submit to such third arbitrator their separate determinations of the commercially reasonable settlement amount together with any documentation and other backup therefor and shall simultaneously therewith provide a copy of such submission to the other party. The third arbitrator so appointed shall review the applicable submissions and within ten (10) days after such individual's designation either select one of the submitted settlement amounts or an amount in between the submitted settlement amounts as more accurately reflective of the commercially reasonable settlement amount. Notice of such selection shall be furnished to Borrower and Lender by the applicable individual prior to the expiration of such ten-day period. Upon such selection, Lender shall be authorized to settle the applicable claim for an amount not less than the settlement amount so selected without any further right of consent of Borrower.

(ix) Time shall be of the essence with respect to the performance of any and all rights and obligations under this Section 15.2. The decisions of the arbitrator(s), if any, engaged under this Section 15.2, shall be final and binding and may not be appealed to any court of competent jurisdiction or otherwise except upon a claim of fraud or corruption. All of the reasonable, actual costs and expenses of the arbitrator(s), if any, engaged under this Section 15.2, shall be the sole responsibility of Borrower.

(x) Notwithstanding anything to the contrary contained herein, the proceeds of insurance or Award disbursed to Borrower in accordance with the terms and provisions of this Agreement shall be reduced by the reasonable costs (if any) incurred by Lender in the adjustment and collection thereof and by the reasonable costs incurred by Lender of paying out such proceeds (including, without limitation, reasonable attorneys' fees and costs paid to third parties for inspecting the Repair Work and reviewing the plans and specifications therefor).

(b) If Borrower undertakes the Repair Work, Borrower shall promptly and diligently, at Borrower 's sole cost and expense and regardless of whether the insurance proceeds or Award, as applicable, shall be sufficient for the purpose, complete the Repair Work to restore the Land as nearly as possible to its value, condition and character immediately prior to the Casualty or Taking in accordance with the foregoing provisions.

(c) Any partial reduction in the Indebtedness resulting from Lender's application of any sums received by it under this Section 15.2 shall take effect only when Lender actually receives such sums and elects to apply such sums to the Indebtedness and, in any event, the unpaid portion of the Indebtedness shall remain in full force and effect and Borrower shall not be excused in the payment thereof.

ARTICLE 16
ASSIGNMENTS BY LENDER AND BORROWER

16.1. Assignments and Participations. From time to time during the term of the Loan, Lender may elect to create one or more mezzanine loans, each evidenced by its own promissory notes and secured by pledges of 100% of the equity interests in Borrower (and/or the sole member of Borrower) and such other documents reasonably required by Lender. In conjunction with any such action, Lender may redefine the interest rate; provided, however, if Lender redefines the interest rate, the weighted average of the interest rates contained in such promissory notes (whether secured by mortgages with respect to the Project or pledges of equity interests in Borrower (and/or the sole member of Borrower) taken in the aggregate shall equal the Note Rate, and Borrower shall not be responsible for any increase in the weighted average interest rate of the Loan occurring as a result of the application of principal payments to one or more notes or components with lower rates of interest before applying principal payments to one or more notes or components with higher rates of interest. Subject to the foregoing, each such promissory note, and the Loan evidenced thereby, shall be upon all of the terms and provisions contained in this Agreement and the Loan Documents, which continue in full force and effect. Lender shall also have the right to split the Loan into different tranches or notes (which might include without limitation a first mortgage loan and second mortgage loan, an A note and a B note, or a first mortgage loan and a mezzanine loan secured by the membership interest in Borrower). Lender may also from time to time hypothecate, grant participations in or collaterally assign all or a portion of the Loan and the Loan Documents (or any interest therein) without limitation. Lender may also sell the Loan and the Loan Documents to an Affiliate or non-Affiliate; provided, however, in the event of a sale to a non-Affiliate prior to Completion, if (i) there is no Event of Default existing, or (ii) only a non-monetary Event of Default existing, Lender may only sell the Loan and the Loan Documents to a purchaser that has sufficient liquidity to fund the remaining unfunded balance of the Loan. Borrower agrees to cooperate with Lender's efforts to do any of the foregoing, including without limitation, execution and prompt delivery to Lender of a severance agreement, pledge and security agreement and such other documents as Lender shall reasonably require. Borrower's failure to deliver any of the documents requested by Lender hereunder for a period of 20 days after such notice by Lender shall, at Lender's option, constitute an Event of Default.

16.2. Prohibition of Assignments and Transfers by Borrower. Borrower shall not assign or attempt to assign its rights under this Agreement and any purported assignment shall be void. Without the prior written consent of Lender, in Lender's sole discretion, Borrower shall not suffer or permit (a) except for Permitted Transfers, any change in the management (whether direct or indirect) of the Borrower or the Project, or (b) except for Permitted Transfers, any Transfer.

16.3. Prohibition of Transfers in Violation of ERISA. In addition to the prohibitions set forth in Section 16.2 above, Borrower shall not assign, sell, pledge, encumber, transfer, hypothecate or otherwise dispose of its interest or rights in this Agreement or in the Project, or attempt to do any of the foregoing or suffer any of the foregoing, nor shall any party owning a direct or indirect interest in Borrower assign, sell, pledge, mortgage, encumber, transfer, hypothecate or otherwise dispose of any of its rights or interest (direct or indirect) in Borrower, attempt to do any of the foregoing or suffer any of the foregoing, if such action would cause the Loan, or the exercise of any of Lender's rights in connection therewith, to constitute a prohibited transaction under ERISA or the Internal Revenue Code or otherwise result in Lender being deemed in violation of any applicable provision of ERISA. Borrower agrees to indemnify and hold Lender free and harmless from and against all losses, costs (including attorneys' fees and expenses), taxes, damages (including consequential damages) and expenses Lender may suffer by reason of the investigation, defense and settlement of claims and in obtaining any prohibited transaction exemption under ERISA necessary or desirable in Lender's sole judgment or by reason of a breach of the foregoing prohibitions. The foregoing indemnification shall be a recourse obligation of Borrower and

shall survive repayment of the Note, notwithstanding any limitations on recourse contained herein or in any of the Loan Documents.

16.4. Successors and Assigns. Subject to the foregoing restrictions on transfer and assignment contained in this Article 16, this Agreement shall inure to the benefit of and shall be binding on the parties hereto and their respective successors and permitted assigns.

16.5. Further Assurances and Corrections. From time to time, at the request of Lender, Borrower will (i) promptly correct any defect, error or omission which may be discovered in the contents of the Note or in any other Loan Document or in the execution or acknowledgment thereof; and (ii) execute, acknowledge, deliver, record and/or file (or cause to be executed, acknowledged, delivered, recorded and/or filed) such further documents and instruments (including without limitation, further deeds of trust, mortgages, security agreements, financing statements, continuation statements and assignments of rents) and perform such further acts and provide such further assurances as may be necessary, desirable or proper, in Lender's opinion, (A) to carry out more effectively the purposes of the Note and the Loan Documents and the transactions contemplated hereunder and thereunder, (B) to confirm the rights created under the Note and the other Loan Documents, (C) to protect and further the validity, priority and enforceability of the Note and the other Loan Documents and the mortgage interests, liens and security interests created thereby, and (D) to subject to the Loan Documents any property of Borrower intended by the terms of any one or more of the Loan Documents to be encumbered by the Loan Documents.

ARTICLE 17 **TIME OF THE ESSENCE**

17.1. Time is of the Essence. Borrower agrees that time is of the essence under this Agreement.

ARTICLE 18 **EVENTS OF DEFAULT**

18.1. Events of Default. The occurrence of any one or more of the following shall constitute an "Event of Default" as said term is used herein:

(a) Failure of Borrower (i) to make any principal payment when due, (ii) to pay any interest when due, (iii) to make the Required Paydown when due after a 10 day cure period, or (iv) to observe or perform any of the other covenants or conditions by Borrower to be performed under the terms of this Agreement or any other Loan Document concerning the payment of money when the same is due and payable.

(b) Default by Borrower in the due observance or performance of any covenant or agreement contained in Section 14.1 and Section 4.2 herein of this Agreement.

(c) Failure of Borrower to observe or perform any non-monetary covenant or condition contained in this Agreement or any other Loan Document (other than as specified in Sections 18.1(a), 18.1(b) of this Agreement, or otherwise in this Article 18); provided, however, that such a failure shall not constitute an "Event of Default" hereunder if such failure is fully cured by Borrower on or before the expiration of the Cure Period (hereinafter defined). As used in this Section 18.(c) the term "Cure Period" means a 30-day period commencing upon the date Lender gives written notice to Borrower of a default by Borrower.

(d) The disapproval by Lender or Lender's Consultant at any time of any construction work, including without limitation, failure to meet timely milestones in the

Construction process, and failure of Borrower to cause the same to be corrected to the satisfaction of Lender within the Cure Period provided in Section 18.1(c) above subject to Unavoidable Delays.

(e) A delay in the Construction of the Project or a discontinuance for a period of 15 consecutive days, or in any event a delay in the Construction so that the same is not, in Lender's judgment (giving due consideration to the assessment of Lender's Consultant), likely to be completed on or before the Completion Date or the Construction of the Project is not completed by the Completion Date subject to Unavoidable Delays.

(f) Any Transfer or other disposition in violation of Sections 16.2 or 16.3.

(g) If any warranty, representation, statement, report or certificate made now or hereafter by Borrower, any Pledgor or any Guarantor is untrue or incorrect at the time made or delivered, provided that if such breach is reasonably susceptible of cure, then no Event of Default shall exist so long as Borrower cures or causes to be cured said breach within the notice and Cure Period provided in Section 18.1(c) above for any other breach.

(h) Borrower, any Pledgor, or any Guarantor shall commence a voluntary case concerning Borrower, any Pledgor, or any Guarantor under the Bankruptcy Code; or an involuntary proceeding is commenced against Borrower, any Pledgor, or any Guarantor under the Bankruptcy Code and relief is ordered against Borrower, any Pledgor, or any Guarantor, or the petition is controverted but not dismissed or stayed within 90 days after the commencement of the case, or a custodian (as defined in the Bankruptcy Code) is appointed for or takes charge of all or substantially all of the property of Borrower, any Pledgor, or any Guarantor; or the Borrower, any Pledgor, or any Guarantor commences any other proceedings under any reorganization, arrangement, readjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar Law of any jurisdiction whether now or hereafter in effect relating to the Borrower, any Pledgor, or any Guarantor; or there is commenced against Borrower, any Pledgor, or any Guarantor any such proceeding which remains undismissed or unstayed for a period of 90 days; or the Borrower, any Pledgor, or any Guarantor fails to controvert in a timely manner any such case under the Bankruptcy Code or any such proceeding, or any order of relief or other order approving any such case or proceeding is entered; or the Borrower, any Pledgor, or any Guarantor by any act or failure to act indicates its consent to, approval of, or acquiescence in any such case or proceeding or the appointment of any custodian or the like of or for it for any substantial part of its property or suffers any such appointment to continue undischarged or unstayed for a period of 90 days.

(i) Borrower, any Pledgor, or any Guarantor shall make an assignment for the benefit of creditors (other than to Lender), or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or trustee or liquidator of all of its property or the major part thereof or if all or a substantial part of the assets of Borrower, any Pledgor, or any Guarantor are attached, seized, subjected to a writ or distress warrant, or are levied upon, or come into the possession of any receiver, trustee, custodian or assignee for the benefit of creditors.

(j) If Borrower is enjoined, restrained or in any way prevented by any court order from constructing, owning or operating the Project subject to Unavoidable Delays.

(k) Failure by Borrower to make any Deficiency Deposit with Lender within the time and in the manner required by Article 11 hereof.

(l) One or more final, unappealable judgments which will likely have a Material Adverse Effect on the Property or on Borrower's or Guarantor's net worth, including any award by an arbitrator or arbitration panel, are entered (i) against Borrower in amounts aggregating in excess of \$10,000.00, or (ii) against any Guarantor or Pledgor in amounts aggregating in excess of \$20,000.00, and said judgments or awards are not stayed, bonded over or satisfied within 30 days after entry.

(m) If Borrower, any Pledgor or any Guarantor shall fail to pay any debt owed by it or is in default under any agreement with Lender or any other party relating to the Loan (other than a failure or default for which Borrower's maximum liability does not exceed \$10,000.00 and Guarantor's and Pledgor's maximum liability does not exceed \$20,000.00) and such failure or default continues after any applicable grace period specified in the instrument or agreement relating thereto.

(n) The occurrence of any other event or circumstance denominated as an Event of Default in this Agreement or under any of the other Loan Documents and the expiration of any applicable grace or cure periods, if any, specified for such Event of Default herein or therein, as the case may be.

(o) Except for a notice of contract filed after the Loan Opening Date, if a lien for the performance of work or the supply of materials filed against the Land, or any notice of contract served on Borrower, the General Contractor or Lender, remains unsatisfied or unbonded for a period of thirty (30) days after the date of filing or service or as of any earlier date on which the lien claimant shall commence an enforcement action; provided, however, unless and until such a lien, notice of contract, attachment, judgment, execution or levy is so discharged or dissolved, Lender shall have no obligation to make any advance of the Loan to a subcontractor or to anyone else except to the extent that the withholding of sums for the funding of any advance of the Loan to the General Contractor is prohibited by the provisions of M.G.L. c. 254 §33.

(p) If any federal tax lien or state or local income tax lien is filed against Borrower, Guarantor, or the Project and, subject to Borrower's right to contest as set forth herein, same is not discharged of record within 30 days after same is filed.

(q) Borrower or any Guarantor shall dissolve, terminate, die (if an individual) or liquidate or merge with or be consolidated into any other entity; provided, however, in the case of the death of a Guarantor, such death will not be an Event of Default hereunder if within thirty (30) days from the date of such Guarantor's death, the estate of the said deceased Guarantor acknowledges in writing and does not repudiate or dispute in any manner and assumes such Guarantor's debts and obligations under the Loan Documents.

(r) A default by Borrower arises under the Franchise Agreement, the contract with the General Contractor, and such default continues after any applicable grace period specified therein or any such agreement is terminated or otherwise is no longer in full force and effect.

(s) The lapse, expiration or termination of any Required Permits that are necessary to operate and maintain the Project as contemplated by this Agreement, which are not promptly replaced.

(t) Construction has not commenced on or before the Commencement Date.

(u) Completion has not occurred by the Completion Date subject to Unavoidable Delays.

ARTICLE 19
LENDER'S REMEDIES IN EVENT OF DEFAULT

19.1. Remedies Conferred Upon Lender. Upon the occurrence of any Event of Default which has not been waived by Lender, Lender may pursue any one or more of the following remedies concurrently or successively, it being the intent hereof that none of such remedies shall be to the exclusion of any other:

(a) Take possession of the Project and complete the Construction or improvements, and do anything which is necessary or appropriate in its sole judgment to fulfill the obligations of Borrower under this Agreement and the other Loan Documents, including either the right to avail itself of and procure performance of existing contracts or let any contracts with the same contractors or others. Without restricting the generality of the foregoing and for the purposes aforesaid, Borrower hereby appoints and constitutes Lender its lawful attorney-in-fact with full power of substitution in the Project to complete their obligations in the name of Borrower; to use unadvanced funds remaining under the Note or which may be reserved, escrowed or set aside for any purposes hereunder at any time, or to advance funds in excess of the face amount of the Note, to complete the Construction; to make changes in the Plans and Specifications which shall be necessary or reasonably desirable to complete the Construction in substantially the manner contemplated by the Plans and Specifications; to retain or employ new general contractors, subcontractors, architects, engineers and inspectors as shall be required for said purposes; to pay, settle or compromise all existing bills and claims, which may be liens or security interests, or to avoid such bills and claims becoming liens against the Project; to execute all applications and certificates in the name of Borrower; prosecute and defend all actions or proceedings in connection with the Improvements or Project; and to do any and every act which the Borrower might do in its own behalf, it being understood and agreed that this power of attorney shall be a power coupled with an interest and cannot be revoked;

(b) If the Event of Default has occurred and is continuing, withhold further disbursement of the proceeds of the Loan and/or terminate Lender's obligations to make further disbursements hereunder;

(c) Lender may declare all or any portion of the Indebtedness remaining unpaid and outstanding, whether under the Note or otherwise, to be due and payable in full without presentation, demand, protest, notice of dishonor, notice of intent to accelerate, notice of acceleration or other notice of any kind, all of which are hereby expressly waived, whereupon all such Indebtedness shall immediately become due and payable;

(d) Use and apply any monies or letters of credit deposited by Borrower with Lender including the Reserve Funds, regardless of the purposes for which the same was deposited, to cure any such default or to apply on account of any indebtedness under this Agreement which is due and owing to Lender; and

(e) Exercise or pursue any other remedy or cause of action permitted under this Agreement or any other Loan Documents, or conferred upon Lender by operation of Law.

Notwithstanding the foregoing, upon the occurrence of any Event of Default under Sections 18.1(h) or 18.1(i) with respect to Borrower, all amounts evidenced by the Note shall automatically become due and payable, without any presentment, demand, protest or notice of any kind to Borrower. Further, if Borrower fails to take such action set forth in Section 14.1(hh) herein after written demand being issued by Lender, such that Lender is not satisfied that the Project need not be classified as High Volatility Commercial Real Estate, then, in addition to any other rights and remedies the Lender may

have, the Note Rate on the Loan shall immediately increase by 0.85 percent as of the 11th day after such notice and demand is issued.

19.2 Preservation of Rights; No Adverse Impact. No delay or omission of Lender to exercise any right under this Agreement or any of the Loan Documents shall impair such right or be construed to be a waiver of any Event of Default or an acquiescence therein. Any single or partial exercise of any such right shall not preclude other or further exercise thereof or the exercise of any other right. All remedies contained in the Loan Documents, or afforded by law, shall be cumulative and all shall be available to Lender until the Obligations and Indebtedness have been indefeasibly paid in full in cash. Notwithstanding anything to the contrary contained herein, Borrower will not be able to cure without Lender's prior written consent (i) any monetary Event of Default, or (ii) any Event of Default after Lender has accelerated the Maturity Date of the Note, and such Event of Default shall continue to exist until such time as such Event of Default is waived by Lender in writing, notwithstanding any attempted cure or other action by Borrower or any other Person subsequent to the occurrence of such Event of Default.

ARTICLE 20 **GENERAL PROVISIONS**

20.1. Captions. The captions and headings of various Articles, Sections and subsections of this Agreement and Exhibits pertaining hereto are for convenience only and are not to be considered as defining or limiting in any way the scope or intent of the provisions hereof.

20.2. Modification; Waiver. No modification, waiver, amendment or discharge of this Agreement or any other Loan Document shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment or discharge is sought.

20.3. Governing Law. IRRESPECTIVE OF THE PLACE OF EXECUTION AND/OR DELIVERY, THIS AGREEMENT SHALL BE DEEMED TO BE A CONTRACT ENTERED INTO PURSUANT TO THE LAWS OF THE STATE OF TEXAS AND SHALL IN ALL RESPECTS BE GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS), PROVIDED HOWEVER, THAT WITH RESPECT TO THE CREATION, PERFECTION, PRIORITY AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED BY THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, THE LAWS OF THE STATE WHERE THE LAND IS LOCATED SHALL APPLY.

20.4. Acquiescence Not to Constitute Waiver of Lender's Requirements. Each and every covenant and condition for the benefit of Lender contained in this Agreement may be waived by Lender, provided, however, that to the extent that Lender may have acquiesced in any noncompliance with any construction or non-construction conditions precedent to the Loan Opening or to any subsequent disbursement of Loan proceeds, such acquiescence shall not be deemed to constitute a waiver by Lender of such requirements with respect to any future disbursements of Loan proceeds.

20.5. Disclaimer by Lender. This Agreement is made for the sole benefit of Borrower and Lender, and no other person or persons shall have any benefits, rights or remedies under or by reason of this Agreement, or by reason of any actions taken by Lender pursuant to this Agreement. Lender shall not be liable to any contractors, subcontractors, supplier, architect, engineer, tenant or other party for labor or services performed or materials supplied in connection with the Construction. Lender shall not be liable for any debts or claims accruing in favor of any such parties against Borrower or others or against the Project. Lender, by making the Loan or taking any action pursuant to any of the Loan Documents, shall not be deemed a partner or a joint venture with Borrower or fiduciary of Borrower. No payment of funds

directly to a contractor or subcontractor or provider of services shall be deemed to create any third-party beneficiary status or recognition of same by the Lender. Without limiting the generality of the foregoing:

(a) Lender shall have no liability, obligation or responsibility whatsoever with respect to the Construction. Any inspections of the Construction made by or through Lender are for purposes of administration of the Loan only and neither Borrower nor any third party is entitled to rely upon the same with respect to the quality, adequacy or suitability of materials or workmanship, conformity to the Plans and Specifications, state of Completion or otherwise;

(b) Lender neither undertakes nor assumes any responsibility or duty to Borrower to select, review, inspect, supervise, pass judgment upon or inform Borrower of any matter in connection with the Project, including matters relating to the quality, adequacy or suitability of: (i) the Plans and Specifications, (ii) architects, contractors, subcontractors and material suppliers employed or utilized in connection with the Construction, or the workmanship of or the materials used by any of them, or (iii) the progress or course of Construction and its conformity or nonconformity with the Plans and Specifications; Borrower shall rely entirely upon its own judgment with respect to such matters, and any review, inspection, supervision, exercise of judgment or supply of information to Borrower by Lender in connection with such matters is for the protection of Lender only, and neither Borrower nor any third party is entitled to rely thereon; and

(c) Lender owes no duty of care to protect Borrower, any Pledgor or any Guarantor against negligent, faulty, inadequate or defective building or construction.

20.6. Partial Invalidity; Severability. If any of the provisions of this Agreement, or the application thereof to any person, party or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision or provisions to persons, parties or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and every provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

20.7. Definitions Include Amendments. Definitions contained in this Agreement which identify documents, including, but not limited to, the Loan Documents, shall be deemed to include all amendments and supplements to such documents from the date hereof, and all future amendments, modifications, and supplements thereto entered into from time to time to satisfy the requirements of this Agreement or otherwise with the consent of Lender. Reference to this Agreement contained in any of the foregoing documents shall be deemed to include all amendments and supplements to this Agreement.

20.8. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by facsimile shall be equally as effective as delivery of an executed original counterpart and shall constitute a covenant to deliver an executed original counterpart, but the failure to do so shall not affect the validity, enforceability and binding effect of this Agreement. At the request of any party, any faxed counterpart shall be re-executed by each signatory party in an original form. The foregoing shall apply to each other Loan Document *mutatis mutandis*.

20.9. Entire Agreement. This Agreement, taken together with all of the other Loan Documents and all certificates and other documents delivered by the Borrower Parties to Lender, embody the entire agreement and supersede all prior agreements, written or oral, relating to the subject matter hereof.

20.10. Waiver of Damages. In no event shall Lender be liable to Borrower, any Pledgor or Guarantor for punitive, exemplary or consequential damages, including, without limitation, lost profits, whatever the nature of a breach by Lender of its obligations under this Agreement or any of the Loan Documents, and Borrower for itself and its Guarantors and Pledgors waive all claims for punitive, exemplary or consequential damages. Further, while Borrower shall be liable for, without limitation, principal, interest, the Prepayment Fee, the Paydown, the Make Whole Amount (as defined in the Note), and the Loan Exit Fee (as defined in the Note), and for all other damages, costs and expenses (including reasonable attorney's fees) set forth in this Agreement, whatever the nature of a breach by Borrower of its obligations under this Agreement, in no event shall Borrower be liable to Lender for lost profits from other business arrangements or contracts or any other consequential damages not otherwise set forth in this Agreement.

20.11. Claims Against Lender. Lender shall not be in default under this Agreement, or under any other Loan Documents, unless a written notice specifically setting forth the claim of Borrower shall have been given to Lender within 6 months after Borrower first had knowledge of the occurrence of the event which Borrower alleges gave rise to such claim and Lender does not remedy or cure the default, if any there be, promptly thereafter. Borrower waives any claim, set-off or defense against Lender arising by reason of any alleged default by Lender as to which Borrower does not give such notice timely as aforesaid. Borrower acknowledges that such waiver is or may be essential to Lender's ability to enforce its remedies without delay and that such waiver therefore constitutes a substantial part of the bargain between Lender and Borrower with regard to the Loan. No Guarantor or Pledgor is intended to have any rights as a third-party beneficiary of the provisions of this Section 20.11.

20.12. Jurisdiction. TO THE GREATEST EXTENT PERMITTED BY LAW, BORROWER HEREBY WAIVES ANY AND ALL RIGHTS TO REQUIRE MARSHALLING OF ASSETS BY LENDER. WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDINGS RELATING TO THIS AGREEMENT (EACH, A "PROCEEDING"), BORROWER AND LENDER IRREVOCABLY (A) SUBMIT TO THE NONEXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS HAVING JURISDICTION IN THE COUNTY OF DALLAS AND STATE OF TEXAS, AND (B) WAIVE ANY OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY PROCEEDING BROUGHT IN ANY SUCH COURT, WAIVES ANY CLAIM THAT ANY PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM AND FURTHER WAIVE THE RIGHT TO OBJECT, WITH RESPECT TO SUCH PROCEEDING, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER SUCH PARTY. NOTHING IN THIS AGREEMENT SHALL PRECLUDE LENDER FROM BRINGING A PROCEEDING IN ANY OTHER JURISDICTION NOR WILL THE BRINGING OF A PROCEEDING IN ANY ONE OR MORE JURISDICTIONS PRECLUDE THE BRINGING OF A PROCEEDING IN ANY OTHER JURISDICTION.

20.13. Controlling Agreement. It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply with the applicable Texas law governing the maximum rate or amount of interest payable on the Note and the other indebtedness owing under the Loan Documents (the "Indebtedness") (or applicable United States Federal law to the extent that it permits Lender to contract for, charge, take, reserve or receive a greater amount of interest than under Texas law). If the applicable law is ever judicially interpreted so as to render usurious any amount called for under the Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved or received with respect to the Indebtedness, or Lender's exercise of the option to accelerate the maturity of the Note, or any prepayment by Borrower results in Borrower having paid or Lender having received any interest in excess of that permitted by applicable law, then it is Borrower's and Lender's express intent that all excess amounts theretofore collected by Lender be credited on the principal balance of the Note and all other Indebtedness (or, if the Note and all other Indebtedness have been or would thereby be paid in full,

refunded to Borrower), and the provisions of the Note and the other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder; provided, however, if the Note has been paid in full before or after the end of the stated term of the Note, then Borrower and Lender agree that Lender shall, with reasonable promptness after Lender discovers or is advised by Borrower that interest was received in an amount in excess of the Maximum Lawful Rate, either refund such excess interest to Borrower or credit such excess interest against any other Indebtedness then owing by Borrower to Lender. All sums contracted for, charged or received by Lender for the use, forbearance or detention of the Indebtedness shall, to the extent permitted by applicable law, be amortized or spread, using the actuarial method, throughout the stated term of the Indebtedness until payment in full so that the rate or amount of interest on account of the Indebtedness does not exceed the Maximum Lawful Rate from time to time in effect and applicable to the Indebtedness for so long as debt is outstanding. In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving tri-party accounts) apply to the Indebtedness. To the extent that Lender is relying on Chapter 303 of the Texas Finance Code to determine the Maximum Lawful Rate payable on the Indebtedness, 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, as amended, 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, implement any other method of computing the Maximum Lawful Rate under such Chapter 303, as amended, or under other applicable law by giving notice, if required, to Borrower as provided by applicable law now or hereafter in effect.

20.14. Reliance. Borrower hereby agrees that it has no right to rely on statements from consultants of Lender including but not limited to Lender's Consultant, appraisers, attorneys, or any representatives of Lender for any matters related to the Loan and any answers to questions or matters in which Borrower would seek information or wish to rely upon must be received in writing directly from Lender.

20.15. Waiver of Consumer Rights. EACH OF THE BORROWER PARTIES HEREBY WAIVES THEIR RIGHTS UNDER THE PROVISIONS OF CHAPTER 17, SUBCHAPTER E, SECTION 17.41 THROUGH 17.63 INCLUSIVE OF THE TEXAS BUSINESS AND COMMERCE CODE, GENERALLY KNOWN AS THE "DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT," A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. AFTER CONSULTATION WITH AN ATTORNEY OF EACH OF THE BORROWER PARTIES' OWN SELECTION, EACH OF THE BORROWER PARTIES VOLUNTARILY CONSENTS TO THIS WAIVER. IT IS THE INTENT OF LENDER AND EACH OF THE BORROWER PARTIES THAT THE RIGHTS AND REMEDIES WITH RESPECT TO THIS TRANSACTION SHALL BE GOVERNED BY LEGAL PRINCIPLES OTHER THAN THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT. THE WAIVER SET FORTH HEREIN SHALL EXPRESSLY SURVIVE THE TERMINATION OF THE REFERENCED TRANSACTION. EACH OF THE BORROWER PARTIES REPRESENTS AND WARRANTS TO LENDER THAT EACH OF THE BORROWER PARTIES (I) IS A BUSINESS CONSUMER, (II) HAS KNOWLEDGE AND EXPERIENCE IN FINANCIAL AND BUSINESS MATTERS THAT ENABLE EACH OF THE BORROWER PARTIES TO EVALUATE THE MERITS AND RISKS OF THE SUBJECT TRANSACTION, (III) IS NOT IN A SIGNIFICANTLY DISPARATE BARGAINING POSITION WITH RESPECT TO THE SUBJECT TRANSACTION, AND (IV) HAS BEEN REPRESENTED BY INDEPENDENT LEGAL COUNSEL (WHO WAS

NOT, DIRECTLY OR INDIRECTLY, IDENTIFIED, SUGGESTED OR SELECTED BY LENDER OR LENDER'S AGENTS) IN CONNECTION WITH THE REFERENCED TRANSACTION.

**ARTICLE 21
NOTICES**

Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given (a) if hand delivered, when delivered; (b) if mailed by United States Certified Mail (postage prepaid, return receipt requested), three Business Days after mailing (c) if by Federal Express or other reliable overnight courier service, on the next Business Day after delivered to such courier service or (d) if by facsimile or email on the day of transmission so long as a copy is sent on the same day by overnight courier (except for any notice, demand or communication from Lender, in which case no additional copy by overnight courier shall be required), as set forth below:

If to Borrower:

LIXI HOSPITALITY REVERE, INC.
4545 Boulevard Cote-Vertu West
Saint-Laurent, Quebec H4S 1C8 Canada
Attention: Shen Xiao

With a copy to:

Sherin and Lodgen
101 Federal Street
Boston, MA 02110
Attention: Ian T. Lane
Telephone: (617) 646-2000
Facsimile: (617) 646-2222
Email: itlane@sherin.com

If to Lender:

HALL REVERE, LLC
2323 Ross Avenue, Suite 200
Dallas, Texas 75201
Attention: Mike Jaynes
Telephone: (214) 269-9540
Facsimile: (214) 269-9490
Email: mjaynes@hallfinancial.com

With a copy to:

Munsch Hardt Kopf & Harr, P.C.
3800 Ross Tower
500 N. Akard Street
Dallas, Texas 75201
Attention: Josh Botts
Telephone: (214) 855-7571
Facsimile: (214) 978-4331

Email: jbotts@munsch.com

or at such other address as the party to be served with notice may have furnished by the giving of 30 days' prior written notice to the party seeking or desiring to serve notice as a place for the service of notice. Borrower shall give Lender at least 30 days prior written notice of any change in: (a) the location of its place of business or its chief executive office if it has more than one place of business; (b) the location of any of the Project; and (c) Project's name or business structure.

ARTICLE 22
WAIVER OF JURY TRIAL AND ACKNOWLEDGMENT

EACH OF THE BORROWER PARTIES WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS OR RELATING THERETO OR ARISING FROM THE LENDING RELATIONSHIP WHICH IS THE SUBJECT OF THIS AGREEMENT AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.


EACH OF THE BORROWER PARTIES ACKNOWLEDGES AND AGREES THAT THIS AGREEMENT CONTAINS CERTAIN INDEMNIFICATION PROVISIONS (INCLUDING, WITHOUT LIMITATION, THOSE CONTAINED IN SECTIONS 14.1(p) OF THIS AGREEMENT) WHICH, IN CERTAIN CIRCUMSTANCES, COULD INCLUDE AN INDEMNIFICATION BY EACH OF THE BORROWER PARTIES OF LENDER FROM CLAIMS OR LOSSES ARISING AS A RESULT OF LENDER'S OWN NEGLIGENCE OR ALLEGED NEGLIGENCE OR WHICH ARISE IN STRICT LIABILITY.

[Signatures Follow.]

EXECUTED as a sealed instrument as of the date first set forth above.

BORROWER:

LIXI HOSPITALITY REVERE, INC.,
a Delaware corporation

By:  Shen Xiao
Name: Shen Xiao
Title: President and Treasurer

GUARANTOR:

神 shen xiao
SHEN XIAO

2016 SHEN XIAO FAMILY TRUST

By: 神 shen xiao
SHEN XIAO, as Trustee, and not individually

By: 刘玲 ling
LING LIU, as Trustee, and not individually

LENDER:

HALL REVERE, LLC,
a Texas limited liability company

By: *mf*
Name: Michael J. Jaynes
Title: President

STATE OF Texas

§

COUNTY OF Dallas

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§

The foregoing instrument was acknowledged before me this 30th day of April, 2019, by Michael J. Jaynes, President of HALL REVERE, LLC, a Texas limited liability company, on behalf of such entity, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

(SEAL) Notary Public

My Commission Expires:
05-04-2020

Megan Ellis
Notary No.: 12645022-2

EXHIBIT A

Legal Description of Land

A certain tract or parcel of land situated on the northwesterly side of Ocean Avenue, Revere, Suffolk County, Massachusetts and being shown as "Lot 6" delineated on a plan entitled "Plan of Land in Revere, MA," prepared by Hancock Associates, dated June 8, 2017 and recorded with the Suffolk County Registry of Deeds as Plan 333 of 2017.

EXHIBIT B

Insurance Requirements

BORROWER’S INSURANCE REQUIREMENTS

THROUGHOUT THE LOAN PERIOD (GL/UMBRELLA FOR 2 YEARS BEYOND)		
INSURANCE	COVERAGES/LIMITS	OTHER REQUIREMENTS
I. (a) Workers’ Compensation	Statutory Limits (if state has no statutory limit, \$1,000,000)	<ol style="list-style-type: none"> 1. No “alternative” forms of coverage will be permitted; 2. Provide a waiver of subrogation in favor of Lender Parties.
I.(b) Employer’s Liability	\$1,000,000 each accident for bodily injury by accident \$1,000,000 each employee for bodily injury by disease	
II. Owner’s Interest Liability <i>(During Construction Period)</i>	During the course of construction Owner (Borrower) will be required to purchase and maintain an Owner’s Interest Liability Policy which will be project-specific, written on an “Occurrence” basis for the term of the project with a provision for “Extended Completed Operations Coverage” after substantial completion of the project to follow the period of repose applicable to the State where the project is being built. Limit shall be a minimum of \$5,000,000 “Per Occurrence” and \$5,000,000 in the Aggregate, maximum deductible will be no more than \$5,000 for projects with Loan/Construction Values up to \$15,000,000; for loans with values greater than \$15,000,000 the requirement will be \$10,000,000 “Per Occurrence” and \$10,000,000 in the Aggregate. For large projects above \$30,000,000 limit will be determined on a	Provisions to include: <ol style="list-style-type: none"> 1) Additional Insured Status to be provided to the Lender for Ongoing and Products/Completed Operations – provided through either CG 2026 or CG 2018 2) Coverage intended to be Excess of General Contractor 3) Waiver of Subrogation in favor of the lender 4) Limits may be achieved by use of Primary and Excess Policies 5) 30-Day Notice of Cancellation (10 days for nonpayment of premium) 6) Defense in Addition to Limit

	“case-by-case” basis.	
III. Commercial General Liability <u><i>(Once Project is Completed)</i></u>	\$1,000,000 per occurrence for Bodily Injury & Property Damage \$2,000,000 General Aggregate \$2,000,000 Products-Completed Operations Aggregate Limit \$1,000,000 Personal and Advertising Injury Limit \$50,000 Damage to Premises rented to you limit \$5,000 Medical Expense Limit \$1,000,000 Liquor Liability (if and when liquor is sold on the Property)	<ol style="list-style-type: none"> 1. Occurrence based (not “claims made”) ISO form CG 00 01 12 04, or equivalent; 2. Lender named as additional insured using form GC 20 26 07/04 or equivalent; 3. Separation of insured language will not be modified; 4. Per location or per project general aggregate; 5. Defense in addition to limit; 6. Primary & non-contributory to any coverage maintained by Lender; 7. Provide a waiver of subrogation against Lender. 8. Broad form contractual liability; 9. Innkeeper’s Liability (if and when any hotel is operational); 10. This insurance will be maintained in identical coverage, form and amount, including required endorsements, <u>for at least 2 years following payoff or completion/cancellation of this loan agreement.</u>
IV. Commercial Auto Liability	\$1,000,000 Combined single limit for Bodily Injury and Property Damage	Covering hired and non-owned autos and all owned or leased autos (if any).
V. Commercial Crime	\$1,000,000	Including Employee Dishonesty, Burglary, Robbery, Forgery, Alteration and Computer Fraud.
VI. Umbrella Liability Insurance	\$5,000,000	Written on an umbrella basis in excess over and no less broad (“follow form”) than the liability coverage’s referenced in I (b), II, and III above.

CONSTRUCTION PERIOD ONLY		
INSURANCE	COVERAGES/LIMITS	OTHER REQUIREMENTS
<p>Builders Risk Property Insurance</p> <p><i>[May be maintained by General Contractor but Borrower is responsible to assure coverage is compliant]</i></p>	<ol style="list-style-type: none"> 1. Building limit amount of coverage equal to or greater than 100% of the replacement cost of all improvements located or to be located on the Land at the completion of construction. (Minimally the initial Contract Sum and subject to subsequent modification of Contract Sum). 2. Soft Cost Limit equal to <ol style="list-style-type: none"> a. 1 year estimated profit plus continuing expenses, b. Expenses that would need to be repeated in the event of an insured loss (construction period interest, marketing etc.) 3. Property covered: <ol style="list-style-type: none"> a. Entire Work at Job Site b. All structures under construction c. All property on the Job Site for installation, including materials and supplies d. All property at other locations but intended for use at the Job Site, including materials and supplies e. All property in transit to the Job Site, including materials and supplies f. All temporary structures at the Job Site, including scaffolding, falsework and temporary buildings. <i>(Alternatively, property of the contractor not intended to be part of the permanent structure can be insured by the General Contractor).</i> 	<ol style="list-style-type: none"> 1. Completed value policy form (reporting form allowed if maintained by General Contractor and approved in advance by Lender); 2. Name Lender as "mortgagee" in a mortgagee clause acceptable to Lender; 3. Policy period beginning prior to Project commencement and ending only after/concurrent with permanent property insurance (see after completion of construction); 4. "All risk" policy form specifically including Earthquake/Earth Movement with no exclusion for Sinkhole Collapse, Flood, Wind and Hail including "Named Windstorm" and Terrorism Coverage (can be provided in Builders Risk Policy or through a stand-alone Terrorism Policy); 5. Soft Cost coverage under a combined form including business income loss/rent value/extra expense; 6. Extended Period of Indemnity of no less than 180 days; 7. Damage arising from error, omission, or deficiency in design, specifications, workmanship or materials, including collapse; 8. Debris removal - Minimum limit \$1,000,000; 9. Earthquake limit (including sprinkler leakage) no less than \$5,000,000; 10. Expediting Expense minimum limit \$500,000; 11. Flood minimum limit \$2,000,000; 12. Ordinance or law minimum limit \$5,000,000; 13. Pollutant clean up and removal minimum limit \$250,000; 14. Testing - No Sublimit; 15. No protective safeguard warranty permitted; 16. Permission to occupy prior to completion; 17. Deductibles will not exceed \$25,000 per occurrence except for the following: <ol style="list-style-type: none"> a. 5 Days - Delayed opening waiting period; b. \$25,000 Flood, per occurrence or excess of NFIP if in flood zone A or V; c. \$25,000 Earthquake and earthquake sprinkler leakage, per occurrence (except 5% of insured values if in CA);

		d. 5% of insured values for “Named Windstorm” in Tier I coastal counties and FL.
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AFTER COMPLETION OF CONSTRUCTION

INSURANCE	COVERAGES/LIMITS	OTHER REQUIREMENTS
Property Insurance	<ol style="list-style-type: none"> 1. Building Limit amount of coverage equal to or greater than 100% of the replacement cost of all improvements on the Land. 2. Personal property (contents and fixtures) and all equipment and other property used in connection with the building operation equal to 100% of the replacement cost thereof. 3. Business Income and Extra Expense limit equal to 12 months net profit plus costs that would continue in the event of an insured loss. 4. Flood insurance under the National Flood Insurance Program (NFIP) if any portion of the Project is situated in a federally designated "special flood hazard area" (for example, Zones A and V) as designated by the Federal Emergency Management Agency, or any successor thereto, as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968, The Flood Disaster Protection Act of 1973, or the National Flood Insurance Reform Act of 1994, as each may be amended, (collectively the "Flood Insurance Acts"). The minimum amount of flood insurance to be carried by Mortgagor under the Flood Insurance Acts is the maximum limit of coverage available for the Improvements under the Flood Insurance Acts (currently \$500,000). Deductibles shall not exceed \$25,000.00 without Mortgagor's prior written consent. The difference between the maximum limit under the Flood Insurance Acts 	<ol style="list-style-type: none"> 1. Name Lender as "mortgagee" in a mortgagee clause acceptable to Lender; 2. "All risk" policy form specifically including Earthquake/Earth Movement with no exclusion for Sinkhole Collapse, Flood, Wind and Hail including "Named Windstorm" and Terrorism Coverage (can be provided through Property Policy or stand-alone Terrorism Policy); 3. Agreed Value (no coinsurance); 4. Soft Cost coverage under a combined form including business income loss/rent value/extra expense; 5. Extended Period of Indemnity of no less than 180 days; 6. Damage arising from error, omission, or deficiency in design, specifications, workmanship or materials, including collapse; 7. Debris removal - Minimum limit \$1,000,000 8. Earthquake limit (including sprinkler leakage) no less than \$5,000,000; 9. Expediting Expense minimum limit \$500,000; 10. Flood minimum limit \$2,000,000; 11. Ordinance or law minimum limit \$5,000,000; 12. Pollutant clean up and removal minimum limit \$250,000; 13. Testing - No Sublimit; 14. No protective safeguard warranty permitted; 15. Deductibles will not exceed \$5,000 per occurrence except for the following: <ol style="list-style-type: none"> a. 5 Days - Delayed opening waiting period; b. \$25,000 Flood, per occurrence or excess of NFIP if in flood zone A or V; c. \$25,000 Earthquake and earthquake sprinkler leakage, per occurrence (except 5% of insured values if in CA subject to a minimum of no more than \$250,000 16. 5% of insured values for "Named Windstorm" in tier I coastal counties and FL subject to a minimum of no more than \$250,000

	and the minimum total flood limit must be covered by private flood insurance.	
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General Contractor's Insurance Requirements during Construction Period.		
INSURANCE	COVERAGES/LIMITS	OTHER REQUIREMENTS
I.(a) Workers' Compensation	Statutory Limits (if State has no Statutory Limit, \$1,000,000)	<ol style="list-style-type: none"> 1. No "alternative" forms of coverage will be permitted; 2. Waiver of subrogation against Lender Parties and Borrower
I.(b) Employer's Liability	\$1,000,000 Each Accident for Bodily Injury by Accident \$1,000,000 Each Employee for Bodily Injury by Disease	
II. Commercial General Liability	\$ 1,000,000 Per Occurrence for Bodily Injury & Property Damage \$ 2,000,000 General Aggregate \$ 2,000,000 Product-Completed Operations Aggregate Limit \$ 1,000,000 Personal and Advertising Injury Limit \$50,000 Damage to Premises Rented to you Limit \$5,000 Medical Expense Limit	<ol style="list-style-type: none"> 1. Occurrence based (not "claims made") ISO form CG 00 01 12 04, or equivalent; 2. Independent contractors coverage; 3. Lender and Borrower named as additional insured using with respect to ongoing operations through form CG 20 10 10/01 or equivalent and with respect to completed operations form CG 20 37 10/01 or equivalent; 4. Separation of insured language will not be modified; 5. Primary & non-contributory to any coverage maintained by Lender and/or Borrower; 6. Waiver of subrogation in favor of Lender and Borrower; 7. Per location or per project general aggregate; 8. Defense in addition to limit; 9. Broad form contractual liability; 10. No Subsidence Exclusion 11. This insurance will be maintained in identical coverage, form and amount, including required endorsements, <u>for at least 2 years following completion.</u>
III. Commercial Auto Liability	\$ 1,000,000	<ol style="list-style-type: none"> 1. ISO form CA 00 01 10 01 or equivalent; 2. Includes liability arising out of operation of owned, hired and non-owned vehicles.
IV. Umbrella Liability Insurance	\$ 10,000,000 occurrence and in the aggregate.	Written on an umbrella basis in excess over and no less broad ("follow form") than the liability coverage's referenced in I(b), II, and III above.
V. Property and or Inland Marine Insurance	100% replacement cost, as modified below, of all of Contractor's equipment (stationary or mobile) supplies, tools and other property at the site that is not part of the permanent structure.	

<p>VI. Contractor's Pollution Liability Insurance <i>(Only required for Environmental work)</i></p>	<p>Throughout the Project, Borrower shall maintain or cause Contractors' to maintain Pollution Liability Insurance with at least a \$2,000,000.00 each Occurrence limit and in the Aggregate insuring against liability arising out of and in connection with work on the Project site or related to the Project, and which shall insure any environmental indemnity provisions contained in this Agreement.</p>	<ol style="list-style-type: none"> 1. Coverage shall specifically include clean up costs, liability to third parties, on an off-site coverage and coverage for non-owned disposal sites if applicable 2. If written on a claims made basis, coverage must be continually maintained for a minimum of two (2) years after completion of the work 3. Borrower and Lender shall be named as Additional Insureds on the Pollution Liability policy required under this Agreement. 4. Environmental work shall include, remediation of know pollution conditions (including mold) as well as pollutants brought on-site as necessitated to complete the Project.
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Architect's Insurance Requirements

<p>Professional Liability</p>	<p>\$ 2,000,000 covering financial loss to Borrower and/or Lender arising from errors and omissions committed in the performance of professional services. Professional Services shall be defined to include design/build rendered or required to be rendered by and architect or engineer.</p>	<ol style="list-style-type: none"> 1. Maintain for a period of not less than 2 years after completion of construction. 2. Architect shall be required by contract to advise Borrower and Lender if limits of insurance are impaired or could be impaired in which case Architect may be required to reinstate limits.
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General Requirements.

- a) All policies must be issued by carriers having a Best's Rating of A- or better, and a Best's Financial Size Category of Class VIII, or better, and/or *Standard & Poor Insurance Solvency Review* A-, or better, and admitted to engage in the business of insurance in the State in which the Building is located;
- b) All policies must contain a provision for 30 days' prior written notice by insurance carrier to Lender required for cancellation, nonrenewal, or substantial modification (10 days for nonpayment of premium); and
- c) **Forms** If the forms of policies, endorsements, certificates, or evidence of insurance required by this Exhibit are superseded or discontinued, Lender will have the right to require other equivalent forms; and
- d) Exceptions to these insurance requirements including any policy or endorsement form other than a form specified in this Exhibit must be approved in advance by Lender.
- e) **Evidence of Insurance.** Insurance must be evidenced as follows:

- i. ACORD™ Form 25 *Certificates of Liability Insurance* for liability coverage's;
- ii. ACORD™ Form 28 *Evidence of Commercial Property Insurance* (2003 ed.) for property coverage's;
- iii. Evidence to be delivered to Lender prior to commencing operations at the Property and prior to the expiration of current policies; and

ACORD™ forms must:

1. Show the Lender Parties as certificate holders (with Lender's mailing address);
 2. Show the insurance companies producing each coverage and the policy number and policy date of each coverage;
 3. Name the producer of the certificate (with correct address and telephone number) and have the signature of the authorized representative of the producer;
 4. Specify compliance with all the details required hereunder;
 5. State the amounts of all deductibles and self-insured retentions, if any;
 6. Be accompanied by copies of all required additional insured endorsements; and
2. **Copies of Policies.** If requested in writing by Lender, Borrower will provide to Lender a certified copy of any or all insurance policies and/or endorsements required by this Loan Agreement

EXHIBIT C

Initial Budget

[See Attached]

SPRINGHILL SUITES - BOSTON, MA - EXHIBIT C

	<u>Total</u>	<u>% of Cap</u>	<u>Per Room (168)</u>	<u>Per SF</u>
<u>Sources of Cash</u>				
HSF Senior Loan	\$43,300,000	75.05%	\$257,738.10	\$250.84
Borrower Cash Equity	\$14,393,901	24.95%	\$85,677.98	\$83.39
Total Sources of Cash	\$57,693,901	100.00%	\$343,416.08	\$334.23
 <u>Uses of Cash</u>				
Total Land Cost	\$4,366,667	7.57%	\$25,992.07	\$25.30
 Direct Construction Costs				
Hard Construction Costs - GMP	\$39,657,366	68.74%	\$236,055.75	\$229.74
FF&E / OS&E	\$3,360,000	5.82%	\$20,000.00	\$19.46
A&E	\$998,000	1.73%	\$5,940.48	\$5.78
Total Direct Construction Costs	\$44,015,366	76.29%	\$261,996.23	\$254.99
 Soft & Other Costs				
Permits/Utility Tap	\$830,000	1.44%	\$4,940.48	\$4.81
Consultant/Legal Fees	\$419,500	0.73%	\$2,497.02	\$2.43
Lender Consultant - CM&D	\$60,500	0.10%	\$360.12	\$0.35
Franchise Fee	\$100,000	0.17%	\$595.24	\$0.58
Pre-Opening	\$252,000	0.44%	\$1,500.00	\$1.46
Insurance	\$450,000	0.78%	\$2,678.57	\$2.61
Property/Other Taxes	\$100,000	0.17%	\$595.24	\$0.58
Working Capital	\$168,000	0.29%	\$1,000.00	\$0.97
Contingency	\$1,982,868	3.44%	\$11,802.79	\$11.49
Total Soft & Other Costs	\$4,362,868	7.56%	\$25,969.45	\$25.27
 Financing Costs				
HSF Origination Fee	\$866,000	1.50%	\$5,154.76	\$5.02
Mtg Broker Fee	\$433,000	0.75%	\$2,577.38	\$2.51
Closing/Other Costs	\$250,000	0.43%	\$1,488.10	\$1.45
Interest Reserve	\$3,400,000	5.89%	\$20,238.10	\$19.70
Total Financing Costs	\$4,949,000	8.58%	\$29,458.33	\$28.67
 Total Uses of Cash	 \$57,693,901	 100.00%	 \$343,416.08	 \$334.23

EXHIBIT D

Borrower's Certificate

HALL REVERE, LLC
2323 Ross Avenue, Suite 200
Dallas, Texas 75201

ATTN: Mike Jaynes

RE: Application for Disbursement or confirmation of equity contribution in connection with a loan from HALL REVERE, LLC, a Texas limited liability company ("**Lender**") to LIXI Hospitality Revere, Inc., a Delaware corporation ("**Borrower**").

1. Pursuant to that certain Construction Loan Agreement dated _____, 2019 (the "**Loan Agreement**") between and Lender Borrower, Borrower
 - (a) hereby requests a Loan disbursement as indicated on the Soft and Hard Cost Requisition attached hereto. We acknowledge that this amount is subject to inspection, verification, and available funds.
 - (b) acknowledges and confirms an equity contribution as indicated on the Soft and Hard Cost Requisition attached hereto.

Funding Instructions

2. This Borrower's Certificate is to be utilized only in satisfaction of costs and charges with respect to the Project and Improvements thereon as shown on the Soft and Hard Cost Requisition Form, dated _____, 201_ attached hereto.
3. The Borrower agrees to provide, if requested by Lender, a vendor payee listing showing the name and the amount currently due each party to whom Borrower is obligated for labor, material and/or services supplies.
4. The Borrower also certifies and agrees that:
 - (a) It has complied with all duties and obligations required to date to be carried out and performed by it pursuant to the terms of the Loan Agreement;
 - (b) No Event of Default or Default as defined in the Loan Agreement has occurred and is continuing and;
 - (c) All Change Orders or changes to the schedule of values and invoices have been submitted to and approved by Lender to the extent required under the Loan Agreement;
 - (d) All funds previously disbursed have been used for the purposes as set forth in the Loan Agreement;
 - (e) All outstanding claims for labor, materials and/or services furnished prior to this draw period have been paid or will be paid from the proceeds of this disbursement;

- (f) All construction prior to the date of this Borrower's Certificate has been accomplished in accordance with the Plans and Specifications approved by Lender;
 - (g) All sums advanced by Lender will be used solely for the purpose of paying costs of the Project owing as shown on the attached Soft and Hard Cost Requisition and no disbursement requested hereunder has been the basis for any prior disbursement of the Loan;
 - (h) There are no liens outstanding against the subject project or its equipment except for Lender's liens and security interests as agreed upon in the Loan Agreement and Permitted Exceptions;
 - (i) No notice of contract, pursuant to M.G.L. c. 254, § 2, or statements pursuant to M.G.L. c. 254, § 8 in furtherance of a lien arising under M.G.L. c. 254, § 1, have been recorded with the Suffolk County Registry of Deeds except as set forth herein:
_____;
 - (j) The amount of undisbursed Loan proceeds and/or approved equity requirement remaining is sufficient to pay the cost of completing the Project in accordance with the Plans and Specifications and Budget approved by Lender as modified by Lender in approved Changed Orders;
 - (k) All representations and warranties contained in the Loan Agreement are true and correct as of the date hereof except as previously disclosed to Lender and except for those representations which can no longer be true by reason of changes in facts or circumstances or the passage of time.
 - (l) The undersigned understands that this certification is made for the purpose of inducing Lender to make a disbursement to Borrower and that, in making such disbursement, Lender will rely upon the accuracy of the matters stated in this Certificate.
 - (m) All costs incurred to date compared to the total cost under the Budget do not exceed the percentage of work completed, except for pre-ordered steel, lumber or other lead-time items.
 - (n) To Borrower's reasonable opinion the construction can be completed on or prior to the Completion Date and within the Budget subject to Unavoidable Delays.
 - (o) Construction can be completed on time and pursuant to the Budget subject to Unavoidable Delays.
5. Disbursement of the loan proceeds hereby requested are subject to the receipt by Lender, in those states where applicable, of a certificate from the issuing title company stating that no claims have been filed of record which adversely affects the title of Borrower to the Project, subsequent to the filing of the Lender's Mortgage.
6. The terms used in this Borrower's Certificate have the same meaning and definitions as those set forth in the Loan Agreement.
7. The Borrower, or authorized signer, certifies that the statements made in this Borrower's Certificate and any documents submitted herewith and identified herein are true and has duly

caused this Borrower's Certificate to be signed on its behalf by the undersigned Authorized Representative.

DATE: _____

By: _____
Authorized Representative

EXHIBIT E

Soft and Hard Cost Requisition Form

[see attached]

SOFT AND HARD COST REQUISITION

OWNER/BORROWER:
PROJECT:

APPLICATION: 1
APPLICATION DATE:

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE (Budget)	D Changes	E Revised Value (Budget) (C + D)	F Loan	G Borrower's Equity & Other Source of Funds	H WORK COMPLETED		J MATERIALS PRESENTLY STORED (NOT IN USE D O R E)	K TOTAL COMPLETED AND STORED TO DATE (H + I + J)	L Percent of Completion	M BALANCE TO FINISH (E-K)	N RETAINAGE 0%
							FROM PREVIOUS APPLICATION	THIS PERIOD					
Sources of Cash													
	HSF Senior Loan	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		\$0.00	0.00
	Borrower Equity	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		\$0.00	0.00
	Total Sources of Cash	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$0.00	\$ -
Construction and Related													
									D O R E)	(H + I + J)			
1	Land/Acquisition Cost	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		\$0.00	0.00
2	FF&E	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		\$0.00	0.00
3	Hard Cost	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		\$0.00	0.00
4		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		\$0.00	0.00
5		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		\$0.00	0.00
	Total Construction and Related	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Soft Costs													
5	A&E	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		\$0.00	0.00
6	Consultant/Legal Fees	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		\$0.00	0.00
7	Permits/Utility Tap	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		\$0.00	0.00
8	Insurance	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		\$0.00	0.00
9	Property/Other Taxes	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		\$0.00	0.00
10	Developer Fee	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		\$0.00	0.00
11	Pre-opening	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		\$0.00	0.00
12	Working Capital	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		\$0.00	0.00
13	Technology Systems	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		\$0.00	0.00
14	Miscellaneous	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		\$0.00	0.00
15	Contingency	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		\$0.00	0.00
	Total Soft Costs	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Financing Costs													
16	HSF Origination Fee	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		\$0.00	0.00
17	Broker Fees	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		\$0.00	0.00
18	HSF Interest Reserve	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		\$0.00	0.00
	Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	Total Uses of Cash	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

Signature
Title
Company

Date

EXHIBIT F

Certificate of Compliance

HALL REVERE, LLC
2323 Ross Avenue, Suite 200
Dallas, Texas 75201

ATTN: Mike Jaynes

Re: Construction Loan Agreement dated as of _____, 2019 (as amended, modified, supplemented, restated, or renewed, from time to time, the "**Agreement**"), between LIXI Hospitality Revere, Inc., a Delaware corporation (the "**Borrower**"), and HALL REVERE, LLC, a Texas limited liability company ("**Lender**").

Reference is made to the Agreement. Capitalized terms used in this Certificate (including schedules and other attachments hereto, this "**Certificate**") without definition have the meanings specified in the Agreement.

Pursuant to applicable provisions of the Agreement, the undersigned, being the Authorized Representative designated in the Agreement, hereby certifies to the Lender that the information furnished in the attached schedules, including, without limitation, each of the calculations listed below are true, correct and complete in all material respects as of the last day of the fiscal periods subject to the financial statements and associated covenants being delivered to the Lender pursuant to the Agreement together with this Certificate (such statements the "**Financial Statements**" and the periods covered thereby the "reporting period") and for such reporting periods.

The undersigned hereby further certifies to the Lender that:

1. **Review of Condition.** The undersigned has reviewed the terms of the Agreement, including, but not limited to, the representations and warranties of the Borrower and Guarantors set forth in the Agreement and the other Loan Documents and the covenants of the Borrower set forth in the Agreement, and has made, or caused to be made under his or her supervision, a review in reasonable detail of the transactions and condition of the Borrower and Guarantors through the reporting periods.
2. **Representations and Warranties.** To the undersigned's actual knowledge, the representations and warranties of the Borrower and Guarantors contained in the Loan Documents, including those contained in the Agreement, are true and accurate in all material respects as of the date hereof and were true and accurate in all material respects at all times during the reporting period except as expressly noted on Schedule A hereto.
3. **Covenants.** To the undersigned's actual knowledge, during the reporting period, the Borrower observed and performed all of the respective covenants and other agreements under the Agreement and the Loan Documents, and satisfied each of the conditions contained therein to be observed, performed or satisfied by the Borrower, except as expressly noted on Schedule A hereto.
4. **No Event of Default.** To the undersigned's actual knowledge, no Event of Default exists as of the date hereof or existed at any time during the reporting period, except as expressly noted on Schedule A hereto.

IN WITNESS WHEREOF, this Certificate is executed by the undersigned this _____ day of _____.

By: _____
Authorized Representative

EXHIBIT G

PARTIAL WAIVER OF LIEN

[SEE ATTACHED]

Partial Waiver and Subordination of Lien

COMMONWEALTH OF MASSACHUSETTS:

Date: _____

_____ COUNTY

Application for Payment No.: _____

OWNER: _____

CONTRACTOR: _____

LENDER/MORTGAGEE: _____

1.	Original Contract Amount:	\$ _____
2.	Approved Change Orders:	\$ _____
3.	Adjusted Gross Contract Amount: (line 1 plus 2)	\$ _____
4.	Completed to Date:	\$ _____
5.	Less Retainage:	\$ _____
6.	Total Payable to Date: (line 4 less line 5)	\$ _____ \$ _____
7.	Less Previous Payments:	\$ _____
8.	Current Amount Due: (line 6 less line 7)	\$ _____
9.	Pending Change Orders:	\$ _____
10.	Disputed Claims:	\$ _____

The undersigned who has a contract with _____ for furnishing labor or materials or both labor and materials or rental equipment, appliances or tools for the erection, alteration, repair or removal of a building or structure or other improvement of real property known and identified as _____, MA, and owned by Borrower, upon receipt of _____ (\$ _____) in payment of an invoice/requisition/application for payment dated _____ does hereby:

(A) waive any and all liens and right of lien on such real property for labor or materials, or both labor and materials, or rental equipment, appliances or tools, performed or furnished through the following date: _____ (payment period), except for retainage, unpaid agreed or pending change orders, and disputed claims as stated above; and

(B) subordinate any and all liens and right of lien to secure payment for such unpaid, agreed or pending change orders and disputed claims, and such further labor or materials, or both labor and materials, or rental equipment, appliances or tools, except for retainage, performed or furnished at any time through the twenty-fifth day after the end of the above payment period, to the extent of the amount actually advanced by the above lender/mortgagee through such twenty-fifth day.

Signed under the penalties of perjury this _____ day of _____, 20____.

By _____

STATE OF _____/COMMONWEALTH OF MASSACHUSETTS

_____ County, ss.

On this _____ day of _____, 20____ before me, the undersigned Notary Public, personally appeared the above-named _____, proved to me by satisfactory evidence of identification, being (check whichever applies): driver's license or other state or federal governmental document bearing a photographic image, oath or affirmation of a credible witness known to me who knows the above signatory, or my own personal knowledge of the identity of the signatory, to be the person whose name is signed above, and acknowledged the foregoing to be signed by _____ voluntarily for its stated purpose, as the duly-authorized _____ of _____.

(Print Name of Notary Public): _____

My commission expires: _____

Qualified in the _____

[Seal]

SCHEDULE 3.1(C)(C)

LIST OF AFFILIATES

[SEE ATTACHED]

SCHEDULE 3.1(c)(c)-- Entities controlled directly/indirectly by Mr. Shen Xiao:

❖ CANADA

- 7524927 Canada Inc. (Headquarter)
- 7526075 Canada Inc.
- 7526202 Canada Inc.
- 7526032 Canada Inc.
- 7526059 Canada Inc.
- 7526016 Canada Inc.
- 7922981 Canada Inc.
- 7758367 Canada Inc.
- Canada LIXI Lexington Holding Inc.

- Canada LIXI Hospitality Holding Company, Inc.

- 10002232 Canada Inc. (Personal Holding Corporation)

❖ USA

- LIXI Holding USA LLC
- Lixi Poughkeepsie Hotel Inc.
- Lixi Nanuet Inc.
- Lixi South Jersey Inc.
- Lixi Restaurant LLC

- Lixi Hospitality Andover Holdings Inc.
- Lixi Hospitality Andover LLC, Residence Inn
- Lixi Hospitality Andover FB MGT LLC

- Lixi Holding USA Two Inc.
- Lixi Hospitality Group Holding Inc.
- Lixi Hospitality Tarrytown LLC
- Lixi Hospitality White Plains LLC
- Lixi Hospitality Shelton LLC
- Lixi Hospitality Norwalk LLC

- Lixi Hospitality Pittsburgh Holdings Inc.
- Lixi Hospitality Pittsburgh LP, LLC
- Lixi Hospitality Pittsburgh SHS, LLC (GP)
- Lixi Hospitality Pittsburgh RIMB, LLC (GP)
- General Robinson Associates, LP
- North Shore Hospitality Associates, LP

- Lixi Hospitality Lexington Holding, Inc.
- Lixi Hospitality Lexington, Inc.

- Lixi Hospitality Revere Holding, Inc.
- Lixi Hospitality Revere, Inc.

- Lixi USA Hotel Management Inc.
- LIXI Hotel Management Sub. II, Inc.
- LIXI Hospitality Lexington FB MGT, Inc.
- LIXI Hotel Management Sub. III, Inc.
- LIXI Revere Management, Inc.
- Lixi Hospitality Revere FB MGT, Inc,

- ASHM, LLC (Personnal Holding Entity)
- Terry Real Estate, LLC (Personnal Holding Entity)