

11-06-2003

Form PTO-1594 (Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005) Tab settings

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S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Pivotal Century Plaza Hotel, LLC

- Individual(s) Association General Partnership Limited Partnership Corporation-State Other limited liability company - Delaware

Additional name(s) of conveying party(ies) attached? Yes No

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: October 2, 2003

2. Name and address of receiving party(ies)

Name: Citigroup Global Markets Realty Corp.

Internal

Address:

Street Address: 388 Greenwich Street, 11th Fl.

City: New York State: NY Zip: 10013

- Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State New York Other

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? Yes No

4. Application number(s) or registration number(s):

A. Trademark Application No.(s) See attached Schedule A

B. Trademark Registration No.(s) See attached Schedule A

Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Rosalind Rodburg

Internal Address:

Street Address: Latham & Watkins

885 3rd Avenue, 10th Floor

City: New York State: NY Zip: 10022

6. Total number of applications and registrations involved:

8

7. Total fee (37 CFR 3.41) \$ 215.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature.

Rosalind Rodburg

Name of Person Signing

Rosalind Rodburg

Signature

10/13/03

Date

Total number of pages including cover sheet, attachments, and document:

Mail documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231



10-14-2003

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #64

11/05/2003 ECOOPER 0000098 7626 739 40.00 OP 175.00 OP

TRADEMARK REEL: 002858 FRAME: 0548

<u>TRADEMARK NAME</u>	<u>CLASS</u>	<u>FILE DATE/#</u>	<u>REG DATE/#</u>	<u>STATUS</u>
Spa Mystique	42	5-23-01 76/261739	8-05-03 2,748,127	6 yr Affs due 8-5-09 10 yr Affs due 8-5-13
Spa Mystique	25	5-23-01 76/261740	6-24-03 2,730,097	6 yr Affs due 6-24-09 10 yr Affs due 6-24-13
Spa Mystique	3	5-23-01 76/261742		Not of Suspension recd 7-30-03 because of conflicting mark

SCHEDULE A
to the Trademark Security Agreement
Debtor: Pivotal Century Plaza Hotel, LLC

U.S. Trademarks of Debtor

TRADEMARK NAME	CLASS	FILE DATE/#	REG DATE/#	STATUS
Breeze (and design)	43	5-21-02 76/410378		Response to Notice of Opposition filed 8-8-03 with Trial & Appeal Board
Century Plaza	42	12-24-69 72/347061	6-08-71 914,506	10 yr Affs due 6-8-11
Century Plaza	42	12-24-69 72/347064	6-08-71 914,509	10 yr Affs due 6-8-11
E (and design)	43	5-21-02 76/419301	02-18-03 2,688,582	6 yr Affs due 2-18-09 10 yr Affs due 2-18-13
Encore (and design)	42	05-21-02 76/410379		Response to Final Office Action due 11-19-03

TRADEMARK SECURITY AGREEMENT

TRADEMARK SECURITY AGREEMENT (the "Agreement"), dated as of October 2, 2003, between Pivotal Century Plaza Hotel, LLC, a Delaware limited liability company (the "Debtor"), and Citigroup Global Markets Realty Corp. (f/k/a Salomon Brothers Realty Corp.), a New York corporation (the "Secured Party").

Debtor and Secured Party hereby agree as follows:

SECTION 1. Definitions; Interpretation.

(a) **Terms Defined in Mortgage.** All capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings assigned to them in the Mortgage.

(b) **Certain Defined Terms.** As used in this Agreement, the following terms shall have the following meanings:

"Collateral" has the meaning set forth in § 2.

"Loan Documents Collateral" means all "Collateral" as defined in the Contract Assignment and the Loan Agreement.

"Mortgage" means that certain Amended and Restated Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated October 2, 2003, granted by Debtor to or for the benefit of Lawyers Title Insurance Corporation (the "Trustee") for the benefit of Secured Party.

"PTO" means the United States Patent and Trademark Office.

"UCC" means the Uniform Commercial Code as in effect in the State of New York.

(c) **Terms Defined in UCC.** Where applicable in the context of this Agreement and except as otherwise defined herein, terms used in this Agreement shall have the meanings assigned to them in the UCC.

(d) **Construction.** In this Agreement, the following rules of construction and interpretation shall be applicable: (i) no reference to "proceeds" in this Agreement authorizes any sale, transfer, or other disposition of any Collateral by Debtor; (ii) "includes" and "including" are not limiting; (iii) "or" is not exclusive; and (iv) "all" includes "any" and "any" includes "all." To the extent not inconsistent with the foregoing, the rules of construction and interpretation applicable to the Mortgage shall also be applicable to this Agreement and are incorporated herein by this reference.

SECTION 2. Security Interest.

(a) **Grant of Security Interest.** As security for the payment and performance of the Obligations, Debtor hereby grants to Secured Party a security interest in, and a mortgage upon, all

of Debtor's right, title and interest in, to and under the following property, in each case whether now or hereafter existing or arising or in which Debtor now has or hereafter owns, acquires or develops an interest and wherever located (collectively, the "Collateral"):

(i) all state (including common law), federal and foreign trademarks, service marks and trade names, and applications for registration of such trademarks, service marks and trade names (but excluding any application to register any trademark, service mark or other mark prior to the filing under applicable law of a verified statement of use (or the equivalent) for such trademark, service mark or other mark to the extent the creation of a security interest therein or the grant of a mortgage thereon would void or invalidate such trademark, service mark or other mark), all licenses relating to any of the foregoing and all income and royalties with respect to any licenses (including such marks, names and applications as described in Schedule A), whether registered or unregistered and wherever registered, all rights to sue for past, present or future infringement or unconsented use thereof, all rights arising therefrom and pertaining thereto and all reissues, extensions and renewals thereof;

(ii) the entire goodwill of or associated with the businesses now or hereafter conducted by Debtor connected with and symbolized by any of the aforementioned properties and assets;

(iii) all general intangibles and all intangible intellectual or other similar property of Debtor of any kind or nature, associated with or arising out of any of the aforementioned properties and assets and not otherwise described above; and

(iv) all proceeds of any and all of the foregoing Collateral (including license royalties, rights to payment, accounts receivable and proceeds of infringement suits) and, to the extent not otherwise included, all payments under insurance (whether or not Secured Party is the loss payee thereof) or any indemnity, warranty or guaranty payable by reason of loss or damage to or otherwise with respect to the foregoing Collateral.

(b) **Continuing Security Interest.** Debtor agrees that this Agreement shall create a continuing security interest in the Collateral which shall remain in effect until terminated in accordance with Section 11.

SECTION 3. Supplement to Mortgage. This Agreement has been entered into in conjunction with the security interests granted to Secured Party under the Mortgage or other security documents referred to therein. The rights and remedies of Secured Party with respect to the security interests granted herein are without prejudice to, and are in addition to those set forth in the Mortgage or any other security documents referred to therein, all terms and provisions of which are incorporated herein by reference.

SECTION 4. Representations and Warranties. Debtor represents and warrants to Secured Party that:

(a) **Trademarks.** A true and correct list of all of the existing Collateral consisting of U.S. trademarks, trademark registrations or applications owned by Debtor, in whole or in part, is set forth in Schedule A.

SECTION 5. Further Acts. On a continuing basis, Debtor shall make, execute, acknowledge and deliver, and file and record in the proper filing and recording places, all such instruments and documents, and take all such action as may be necessary or advisable or may be requested by Secured Party to carry out the intent and purposes of this Agreement, or for assuring, confirming or protecting the grant or perfection of the security interest granted or purported to be granted hereby, to ensure Debtor's compliance with this Agreement or to enable Secured Party to exercise and enforce its rights and remedies hereunder with respect to the Collateral, including any documents for filing with the PTO or any applicable state office. Secured Party may record this Agreement, an abstract thereof, or any other document describing Secured Party's interest in the Collateral with the PTO, at the expense of Debtor. In addition, Debtor authorizes Secured Party to file financing statements describing the Collateral in any UCC filing office deemed appropriate by Secured Party. If the Debtor shall at any time hold or acquire a commercial tort claim arising with respect to the Collateral, the Debtor shall immediately notify Secured Party in a writing signed by the Debtor of the brief details thereof and grant to the Secured Party in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance satisfactory to the Secured Party.

SECTION 6. Authorization to Supplement. If Debtor shall obtain rights to any new trademarks, the provisions of this Agreement shall automatically apply thereto. Debtor shall give prompt notice in writing to Secured Party with respect to any such new trademarks or renewal or extension of any trademark registration. Without limiting Debtor's obligations under this Section 6, Debtor authorizes Secured Party to modify this Agreement by amending Schedule A to include any such new patent or trademark rights. Notwithstanding the foregoing, no failure to so modify this Agreement or amend Schedule A shall in any way affect, invalidate or detract from Secured Party's continuing security interest in all Collateral, whether or not listed on Schedule A.

SECTION 7. Binding Effect. This Agreement shall be binding upon, inure to the benefit of and be enforceable by Debtor, Secured Party and their respective successors and assigns. Debtor may not assign, transfer, hypothecate or otherwise convey its rights, benefits, obligations or duties hereunder except as specifically permitted by the Mortgage.

SECTION 8. Governing Law. This Agreement shall be governed by, and construed in accordance with, the law of the State of New York, except as required by mandatory provisions of law or to the extent the validity, perfection or priority of the security interests hereunder, or the remedies hereunder, in respect of any Collateral are governed by the law of a jurisdiction other than New York.

SECTION 9. Entire Agreement; Amendment. This Agreement and the Mortgage, together with the Schedules hereto and thereto, contains the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior drafts and communications relating to such subject matter. Neither this Agreement nor any provision hereof may be modified, amended or waived except by the written agreement of the parties, as provided in the Mortgage. Notwithstanding the foregoing, Secured Party unilaterally may re-execute this Agreement or modify, amend or supplement the Schedules hereto as provided in Section 6 hereof. To the extent that any provision of this Agreement conflicts with any provision of the Mortgage, the provision giving Secured Party greater rights or remedies shall govern, it being understood that the purpose of this Agreement is to add to, and not detract from, the rights granted to Secured Party under the Mortgage.

SECTION 10. 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 but one and the same agreement. Delivery of an executed counterpart of this Agreement by facsimile shall be equally as effective as delivery of a manually executed counterpart. Any party hereto delivering a counterpart of this Agreement by facsimile shall also deliver a manually executed counterpart, but the failure to so deliver a manually executed counterpart shall not affect the validity, enforceability, or binding effect hereof.

SECTION 11. Termination. Upon payment and performance in full of all Obligations, the security interests created by this Agreement shall terminate and Secured Party (at Debtor's expense) shall promptly execute and deliver to Debtor such documents and instruments reasonably requested by Debtor as shall be necessary to evidence termination of all such security interests given by Debtor to Secured Party hereunder, including cancellation of this Agreement by written notice from Secured Party to the PTO.

SECTION 12. No Inconsistent Requirements. Debtor acknowledges that this Agreement and the other documents, agreements and instruments entered into or executed in connection herewith may contain covenants and other terms and provisions variously stated regarding the same or similar matters, and Debtor agrees that all such covenants, terms and provisions are cumulative and all shall be performed and satisfied in accordance with their respective terms.

SECTION 13. Severability. If one or more provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect in any jurisdiction or with respect to any party, such invalidity, illegality or unenforceability in such jurisdiction or with respect to such party shall, to the fullest extent permitted by applicable law, not invalidate or render illegal or unenforceable any such provision in any other jurisdiction or with respect to any other party, or any other provisions of this Agreement.

SECTION 14. Notices. All notices and other communications hereunder shall be in writing and shall be mailed, sent or delivered in accordance with the Mortgage.

SECTION 15. Remedies. If an Event of Default shall occur as defined in the Mortgage, Secured Party shall be entitled to exercise any or all rights and remedies it has under the Loan Agreement, the Contract Assignment, and all other Loan Documents, as if the Collateral defined herein were Loan Documents Collateral.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, Debtor has duly executed this Agreement, as of the date first above written.

DEBTOR:

PIVOTAL CENTURY PLAZA HOTEL, LLC, a Delaware limited liability company

By: **PIVOTAL CENTURY PLAZA HOTEL HOLDINGS, LLC**, a Delaware limited liability company
Its: Managing Member

By: **PIVOTAL CPH I, L.L.C.**, an Arizona limited liability company
Its: Administrative Member

By: **PIVOTAL GROUP X, L.L.C.**, an Arizona limited liability company
Its: Managing Member

By: **F. FRANCIS NAJAFI**, as Trustee of the F. Francis Najafi Family Trust
Its: Administrative Member

By: _____

F. Francis Najafi, Trustee

GRANTOR'S ACKNOWLEDGMENT

State of Arizona)
) ss
County of Maricopa)

On October 2, 2003, before me, Jackie A. Reed, a Notary Public in and for said State, personally appeared F. Francis Najafi, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

My Commission Expires:

6-15-07

Jackie A. Reed
Signature of Notary

