

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

Assignment ID: TMI74485

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	ASSIGNMENT OF THE ENTIRE INTEREST AND THE GOODWILL		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Hotel Lotte Co., Ltd.		08/20/2015	Corporation: KOREA, REPUBLIC OF
<b>RECEIVING PARTY DATA</b>			
<b>Company Name:</b>	LOTTE Hotel New York Palace, LLC		
<b>Street Address:</b>	455 Madison Avenue		
<b>City:</b>	New York		
<b>State/Country:</b>	NEW YORK		
<b>Postal Code:</b>	10022		
<b>Entity Type:</b>	Limited Liability Company: DELAWARE		
<b>PROPERTY NUMBERS Total: 2</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Registration Number:</b>	2093034	NEW YORK PALACE	
<b>Registration Number:</b>	5923854	LOTTE NEW YORK PALACE	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	2123707889		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
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<b>ATTORNEY DOCKET NUMBER:</b>	17590.001		
<b>NAME OF SUBMITTER:</b>	ATUL SINGH		
<b>SIGNATURE:</b>	ATUL SINGH		
<b>DATE SIGNED:</b>	03/06/2024		
<b>Total Attachments: 199</b>			
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SECOND AMENDMENT TO AGREEMENT OF PURCHASE AND SALE

This SECOND AMENDMENT TO AGREEMENT OF PURCHASE AND SALE (this "Amendment") dated as of August 20, 2015 is entered into by and between NWPB LLC, a Delaware limited liability company ("Seller"), and LOTTE Hotel New York Palace, LLC, a Delaware limited liability company, as successor-in-interest to Hotel Lotte Co., Ltd., a company incorporated in the Republic of Korea ("Buyer"). All capitalized terms used but not defined herein shall have the meanings set forth in the Agreement (as defined below).

WITNESSETH:

WHEREAS, Seller and Buyer have entered into that certain Agreement of Purchase and Sale, dated as of May 14, 2015, as amended by that certain First Amendment to Agreement of Purchase and Sale dated as of July 27, 2015 (as amended, the "Agreement");

WHEREAS, Buyer has requested an extension of the Closing Date; and

WHEREAS, Seller is willing to agree to an extension of the Closing Date on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. The Agreement is hereby amended by adding the following definitions to Section 1.1 of the Agreement:

[REDACTED]

2. Second Deposit. The Agreement is hereby amended to add the following Section 2.2(a)(vii):

“(vii) If the Second Deposit is not deposited by Buyer with Escrow Agent by 5:00 PM Eastern Daylight Time on or before August 24, 2015, then Seller shall have the right to terminate this Agreement, and the Escrow Agent shall immediately disburse the Earnest Money to Seller, which Earnest Money shall constitute and be deemed to be the agreed and liquidated damages of Seller, and upon such disbursement, Seller and Buyer shall have no further obligation under this Agreement except those obligations that expressly survive the termination of this Agreement. Upon the Escrow Agent’s receipt of the Second Deposit, the same will be deemed part of the “Earnest Money” for all purposes under this Agreement.”

3. Closing. The Agreement is hereby amended by deleting Section 2.3(a) of the Agreement in its entirety and replacing it with the following:

“(a) Subject to extension pursuant to the express terms of this Agreement, the closing of the sale and purchase of the Assets (the “Closing”) shall take place August 28, 2015 (the “Closing Date”), TIME BEING OF THE ESSENCE with respect to such obligations hereunder on the Closing Date.”

4. Allocated Purchase Price. Set forth as Schedule A to this Amendment is the Allocated Purchase Price.

5. Closing Statement. Seller shall prepare a closing statement reflecting the adjustments and prorations contemplated under and in accordance with Article X of the Agreement and deliver the same to Buyer on the Closing Date and such closing statement shall be the “Closing Statement” contemplated by Section 6.1(j) and Section 6.2(m) of the Agreement. The Closing Statement shall be in the form attached to this Amendment as Schedule B, with (i) the amounts updated as necessary to reflect any changes in the state of facts since the date of this Amendment, (ii) such additional line items as may be necessary to reflect any additional adjustment and prorations contemplated by Article X of the Agreement. In the event Buyer disagrees with any of the adjustments or prorations reflected on the Closing Statement prepared by Seller, it shall nonetheless complete the Closing based on such Closing Statement but such adjustments and prorations shall be subject to re-adjustment based on the post-closing statement contemplated by Section 10.19 of the Agreement.

6. Ratification. Except as modified hereby, the Agreement shall remain unmodified and in full force and effect, and is hereby ratified and confirmed in all respects. To the extent there is any conflict between the terms of this Amendment and the Agreement, the terms of this Amendment shall govern.

7. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall constitute an original and all of which when taken together shall constitute one and the same instrument. An executed facsimile or .pdf of this Amendment may be relied upon as having, and shall be deemed to have, the same force and effect as an original.

8. GOVERNING LAW. THIS AMENDMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ANY PRINCIPLES REGARDING CONFLICT OF LAWS.

[Signatures on the following page]



IN WITNESS WHEREOF, Seller and Buyer have executed this Amendment as of the date first above written.

BUYER:

Hotel Lotte Co., Ltd.,  
a company incorporated in the Republic of Korea

By: \_\_\_\_\_

Name:

Title:

SELLER:

NWPH LLC,  
a Delaware limited liability company

By: \_\_\_\_\_

Name:

Title:

  
Jonathan Wang  
Managing Director


and Assistant Treasurer

*[Signature Page to Second Amendment to Purchase and Sale Agreement]*

IN WITNESS WHEREOF, Seller and Buyer have executed this Amendment as of the date first above written.

BUYER:

LOTTE Hotel New York Palace, LLC,  
a Delaware limited liability company

By:   
Name: Hynk Bum Kwon  
Title: CFO

SELLER:

NWPH LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Title:

*[Signature Page to Second Amendment to Purchase and Sale Agreement]*

TRADEMARK

REEL: 008362 FRAME: 0633

Schedule A to the Second Amendment to Agreement of Purchase and Sale

Allocated Purchase Price

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Schedule B to the Second Amendment to Agreement of Purchase and Sale

Preliminary Closing Statement

[See Attached]

**FIRST AMENDMENT TO AGREEMENT OF PURCHASE AND SALE**

This FIRST AMENDMENT TO AGREEMENT OF PURCHASE AND SALE (this "Amendment") dated as of July \_\_, 2015 is entered into by and between NWPH LLC, a Delaware limited liability company ("Seller"), and Hotel Lotte Co., Ltd., a company incorporated in the Republic of Korea ("Buyer"). All capitalized terms used but not defined herein shall have the meanings set forth in the Agreement.

WITNESSETH:

WHEREAS, Seller and Buyer have entered into that certain Agreement of Purchase and Sale, dated as of May 14, 2015, (the "Agreement");

WHEREAS, pursuant to section 2.3(a) of the Agreement, Buyer has elected to extend the Closing Date beyond July 30, 2015 by depositing with Escrow Agent on or before July 30, 2015 an additional deposit in the amount of [REDACTED], and

WHEREAS, Seller and Buyer desire to amend the Agreement in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. The Agreement is hereby amended by adding the following definitions to Section 1.1 of the Agreement:

"Extension Deposit" shall mean cash in the amount of [REDACTED] funded to the Escrow Agent by Buyer in addition to the Initial Deposit and the Additional Deposit.

[REDACTED]

[REDACTED]

[REDACTED]

Agreement.

2. Consumables. The Agreement is hereby amended by deleting Section 2.1(b)(iii) of the Agreement in its entirety and replacing it with the following:

"all food and non-alcoholic beverages; engineering, maintenance, and housekeeping supplies, including, without limitation, soap, cleaning materials and matches, stationery and printing; and other supplies of all kinds, in each case whether partially used, unused, or held in reserve storage for future use in connection with the maintenance or operation of the Property (including, but not limited to, all open or un-open cases thereof), which

are owned by Seller and on hand at the Property or are held off-site on the date of this Agreement or as of the Closing Date subject to such depletion and restocking as shall occur and be made in the normal course of business but in accordance with present standards and the terms of this Agreement, excluding, however, the Personal Property (collectively, the “Consumables”);”

3. Extension Deposit. The Agreement is hereby amended to add the following Section 2.2(a)(vi):

“If the Extension Deposit is not deposited by Buyer with Escrow Agent by 5:00 PM Eastern Daylight Time on or before July 30, 2015, then Seller shall have the right to terminate this Agreement, and the Escrow Agent shall immediately disburse the Earnest Money to Seller, which Earnest Money shall constitute and be deemed to be the agreed and liquidated damages of Seller, and upon such disbursement, Seller and Buyer shall have no further obligation under this Agreement except those obligations that expressly survive the termination of this Agreement. Upon the Escrow Agent’s receipt of the Extension Deposit, the same will be deemed part of the “Earnest Money” for all purposes under this Agreement.”

4. Closing. The Agreement is hereby amended by deleting Section 2.3(a) of the Agreement in its entirety and replacing it with the following:

“(a) Subject to extension pursuant to the express terms of this Agreement, the closing of the sale and purchase of the Assets (the “Closing”) shall take place on the earlier of (a) August 31, 2015 or (b) five (5) Business Days after receipt by Buyer or Liquor Licensee of approval for a temporary replacement to the Liquor License (the “Closing Date”), **TIME BEING OF THE ESSENCE with respect to such obligations hereunder on the Closing Date.**”

5. [REDACTED]

6. Estoppels. Buyer acknowledges that the condition set forth in Section 5.2(e) of the Agreement has been satisfied in full.

7. Buyer Closing Deliveries. The Agreement is hereby amended by adding the following to Section 6.1 of the Agreement as clause (m):

“[REDACTED]”

8. Holdback. The Agreement is hereby amended by deleting Section 11.6 of the Agreement in its entirety and replacing it with the following:

“Holdback. At Closing, Seller shall deposit with Escrow Agent an amount equal to Cap Limitation less, as applicable, an amount equal to the original balance of the Liquor Promissory Note (the “Holdback”) to be retained in escrow for nine months following the Closing Date to secure payment and performance of Seller’s obligations which survive Closing (including, without limitation, the indemnification obligations set forth herein)

pursuant to and in accordance with that certain Holdback Agreement between the Parties and Escrow Agent in the form attached hereto as Exhibit L (the "Holdback Agreement"); provided, however, unless Buyer elects in its sole and absolute discretion, the Holdback shall not be used to pay Seller's obligations (a) under Section 9.1 and Article X with respect to prorations and adjustments, (b) under Section 11.1(c) with respect to Excluded Employee Liabilities and Excluded Taxes, (c) under Section 15.2 with respect to Seller's Broker, and (d) under Article XIV, all of which shall be Seller's obligation to pay in addition to the Holdback; provided, further, upon the timely payment of all or any portion of the original balance of the Liquor Promissory Note pursuant to the terms thereof, such amount shall be immediately deposited by Seller into the Holdback to be held in accordance with the Holdback Agreement. Seller's obligations under this Section 11.6 shall survive the Closing.

9. [REDACTED]

10. Ratification. Except as modified hereby, the Agreement shall remain unmodified and in full force and effect, and is hereby ratified and confirmed in all respects. To the extent there is any conflict between the terms of this Amendment and the Agreement, the terms of this Amendment shall govern.

11. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall constitute an original and all of which when taken together shall constitute one and the same instrument. An executed facsimile or .pdf of this Amendment may be relied upon as having, and shall be deemed to have, the same force and effect as an original.

12. GOVERNING LAW. THIS AMENDMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ANY PRINCIPLES REGARDING CONFLICT OF LAWS.

*[Signatures on the following page]*

IN WITNESS WHEREOF, Seller and Buyer have executed this Amendment as of the date first above written.

BUYER:

Hotel Lotte Co., Ltd.,  
a company incorporated in the Republic of Korea

By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SELLER:

NWPH LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*[Signature Page to First Amendment to Purchase and Sale Agreement]*

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**TRADEMARK**  
**REEL: 008362 FRAME: 0639**



Exhibit A to the First Amendment to Agreement of Purchase and Sale



AGREEMENT OF PURCHASE AND SALE

by and between

NWPH LLC, Seller

and

Hotel Lotte Co., Ltd., Buyer

Dated as of May 14, 2015

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## AGREEMENT OF PURCHASE AND SALE

AGREEMENT OF PURCHASE AND SALE (this “Agreement”), made as of the 14 day of May, 2015, by and between NWPB LLC, a Delaware limited liability company (“Seller”), and Hotel Lotte Co., Ltd., a company incorporated in the Republic of Korea (“Buyer”).

### Background

A. Seller is (i) the ground lessee under the Ground Lease, and holds a leasehold interest in the property, located at 455 Madison Avenue, New York, New York, as more particularly described on Schedule A attached hereto and made a part hereof (the “Land”) and (ii) the owner of the improvements constructed on the Land known (the “Improvements”, and collectively with the Land, the “Property”) pursuant and subject to the terms of the Ground Lease. The Property, together with the Asset-Related Property (as defined below), shall collectively be referred to as the “Assets”.

B. Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the Assets, on the terms and conditions hereinafter set forth.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

### ARTICLE I

#### DEFINITIONS

Section 1.1 Defined Terms. The capitalized terms used herein will have the following meanings.

“Accounts Payable” shall mean all accrued amounts owed by Seller as of the Cut-Off Time and arising out of the lease and operation of the Property; provided, however, the term Accounts Payable does not include any Booking Deposits.

“Accounts Receivable” shall mean all accrued amounts owed to Seller as of the Cut-Off Time and arising out of the lease or operation of the Property, whether or not past due and whether or not a bill or statement has been presented to the Person owing such amount, including, without limitation, the following: room, food and beverage charges; telephone or telecopy charges; valet charges; charges for other services or merchandise; charges for banquets, meeting rooms, catering and the like; sales, use and occupancy taxes due from the consumers of goods and services; and amounts owed from credit card companies pursuant to signed credit card receipts, whether or not such credit card receipts have been delivered by Seller to the applicable credit card companies.

“Additional Deposit” shall have the meaning assigned thereto in Section 2.2(a)(ii).

“Additional Rent” shall have the meaning assigned thereto in Section 10.1(a).

“Additional Title Matters” shall have the meaning assigned thereto in Section 8.2(a).

8.2(a). “Additional Title Matter Notice” shall have the meaning assigned thereto in Section

“Affiliate” shall mean any Person (as defined below) that directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with another Person. The term “control” shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and shall in any event include the ownership or power to vote fifty percent (50%) or more of the outstanding equity or voting interests, respectively, of such other Person.

“Agreement” shall mean this Agreement of Purchase and Sale, together with the exhibits and schedules attached hereto, as the same may be amended, restated, supplemented, assigned or otherwise modified, from time to time in accordance with the terms hereof.

“Allocated Purchase Price” shall have the meaning assigned thereto in Section 2.4.

“Applicable Law” shall mean all statutes, laws, common law, rules, regulations, ordinances, codes or other legal requirements of any Governmental Authority, board of fire underwriters and similar quasi-governmental agencies or entities, and any judgment, injunction, order, directive, decree or other judicial or regulatory requirement of any Governmental Authority of competent jurisdiction affecting or relating to the Person or property in question.

“Asset File” shall mean the materials with respect to the Assets delivered to Buyer or its representatives by or on behalf of Seller or made available to Buyer on the online data website at <http://www.hwedocs.com/fileroom.php?cn=1497> to which Buyer or any of its agents, consultants, Affiliates or representatives have been provided access.

“Asset-Related Property” shall have the meaning assigned thereto in Section 2.1(b).

“Assets” shall have the meaning assigned thereto in “Background” paragraph A.

“Assigned IP” shall have the meaning assigned thereto in Section 2.1(b)(vi).

“Assignment of Contracts” shall have the meaning assigned thereto in Section 6.1(b).

“Assignment and Assumption of Ground Lease” shall have the meaning assigned thereto in Section 6.1(i).

“Assignment of Leases” shall have the meaning assigned thereto in Section 6.1(a).

“Assignment of Licenses, Permits and Warranties” shall have the meaning assigned thereto in Section 6.1(d).

“Assumed Contracts” shall mean the Contracts (other than the Management Agreement, the Sublease and any Terminated Contracts) which are (i) listed on Schedule 3.2(a) or (ii) entered into after the Effective Date and deemed to be included in the definition of “Assumed Contracts” in accordance with the terms of Section 3.4 of this Agreement.

“Assumed Employee Liabilities” shall mean any liabilities or obligations relating to Employees for which Buyer has indemnified Seller pursuant to Section 14.1.



“Assumed Taxes” shall mean (i) Taxes imposed with respect to the Property (or with respect to the operation of the Property after the Closing) for any taxable period that begins after the Closing Date or that relate to the portion of any Straddle Period on or after the Closing Date as determined in accordance with Sections 10.2 and 10.12, in each case, other than any Taxes that are the liability of Seller pursuant to Section 9.1(c) of this Agreement and (ii) any “rollback” or other Taxes imposed as a result of a change in use of the Property after the Closing and special assessments to the extent related to the time period on or after Closing.

“Assumption of Trades Council Union Agreement” shall have the meaning assigned thereto in Section 4.2(d).

“Basket Limitation” shall mean an amount equal to \$500,000.

“Benefits Credit” shall have the meaning assigned thereto in Section 10.16.

“Booking Deposit” shall mean all room reservation deposits, public function, banquet, food and beverage deposits and other deposits or fees for Bookings.

“Bookings” shall mean all bookings and reservations for guest, conference and banquet rooms or other facilities, if applicable, at the Property.

“Books and Records” shall have the meaning assigned thereto in Section 2.1(b)(ix).

“Business Day” shall mean any day other than a Saturday, Sunday or other day on which banks are authorized or required by law to be closed in the city of New York, New York or in the city of Seoul, South Korea.

“Buyer” shall have the meaning assigned thereto in the Preamble to this Agreement.

“Buyer Closing Certificate” shall have the meaning assigned thereto in Section 6.1(k).

“Buyer-Related Persons” shall have the meaning assigned thereto in Section 11.1.

“Buyer-Waived Breach” shall have the meaning assigned thereto in Section 11.3(a).

“Buyer’s Broker” shall have the meaning assigned thereto in Section 15.2(b).

“Buyer’s Designee” shall have the meaning assigned thereto in Section 15.6.

“Buyer’s Leasing Costs” shall have the meaning assigned thereto in Section 10.7.

“Buyer’s Knowledge” shall mean the actual knowledge of Buyer based upon the actual knowledge of Jung Hwan Kim (Senior Vice President, Chief Development Officer, Development Division, Hotel Lotte Co., Ltd.) or SunYoon Jang (Senior Vice President, Development Division, Hotel Lotte Co., Ltd.) with any duty of such person to conduct any independent investigation or make any inquiry of any Person the named individual shall not have any personal liability by virtue of his inclusion in this definition.

“Buyer’s Surviving Obligations” shall mean Buyer’s obligation under this Agreement that expressly survive the termination of this Agreement and/or the Closing.

“Cap Limitation” shall mean an amount equal to \$32,500,000.

“Cash on Hand” shall have the meaning assigned thereto in Section 10.17.

“Claims” shall have the meaning assigned thereto in Section 7.4(a).

“Closing” shall have the meaning assigned thereto in Section 2.3(a).

“Closing Date” shall have the meaning assigned thereto in Section 2.3(a).

“Closing Documents” shall mean any certificate, assignment, instrument or other document delivered pursuant to this Agreement, including, without limitation, each of the documents to be delivered by Seller pursuant to Section 6.2 and by Buyer pursuant to Section 6.1.

“Closing Statement” shall have the meaning assigned thereto in Section 6.1(i).

“Code” shall mean the Internal Revenue Code of 1986, as amended from time to time, or any successor statute. Any reference herein to a particular provision of the Code shall mean, where appropriate, the corresponding provision in any successor statute.

“Condition of the Assets” shall have the meaning assigned thereto in Section 7.3(a).

“Consumables” shall have the meaning assigned thereto in Section 2.1(b)(iii).

“Contracts” shall mean, collectively, all service, equipment lease and other contracts of Seller, or entered into on behalf of Seller, relating to the ownership, operation, maintenance and management of the Property, or any portion thereof (including any amendments or modifications thereof), but excluding the Bookings, the Booking Deposits, the Space Leases, the Ground Lease, the Union Agreements, the Sublease, the Management Agreement, and any documents evidencing or securing the Existing Financing.

“Corporate Employees” shall mean one or more employees of Manager that are housed at the Property but whose duties include, among other things, matters unrelated to the Property.

“Cut-Off Time” shall have the meaning assigned thereto in the introductory paragraph to Article X.

“Depositors” shall have the meaning ascribed thereto in Section 15.20(b).

“Due Diligence Period” shall mean the period of time from the Effective Date to 5:00 p.m. Eastern Daylight Time on May 29, 2015.

“Earnest Money” shall have the meaning assigned thereto in Section 2.2(a)(ii).

“Effective Date” shall mean the date of this Agreement.

“Employees” shall mean the individuals who are employed by Seller, Manager or any Affiliate thereof on a full-time or part-time basis at the Property, but excluding Corporate Employees.

“Environmental Claims” shall mean any claim for reimbursement or remediation expense, contribution, personal injury, property damage or damage to natural resources made by any Governmental Authority or other Person arising from or in connection with the presence or release of any Hazardous Materials over, on, in or under the Property, or the violation of any Environmental Laws with respect to the Property.

“Environmental Laws” shall mean any Applicable Laws which regulate or control (i) Hazardous Materials, pollution, contamination, noise, radiation, water, soil, sediment, air or other environmental media, or (ii) an actual or potential spill, leak, emission, discharge, release or disposal of any Hazardous Materials or other materials, substances or waste into water, soil, sediment, air or any other environmental media, including, without limitation, (A) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. (“CERCLA”), (B) the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. (“RCRA”), (C) the Federal Water Pollution Control Act, 33 U.S.C. § 2601 et seq., (D) the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., (E) the Clean Water Act, 33 U.S.C. § 1251 et seq., (F) the Clean Air Act, 42 U.S.C. § 7401 et seq., (G) the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., and (H) the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq. and similar state and local Applicable Law, as amended from time to time, and all regulations, rules and guidance issued pursuant thereto.

“Environmental Liabilities” shall mean any liabilities or obligations of any kind or nature imposed on the Person in question pursuant to any Environmental Laws, including, without limitation, any (i) obligations to manage, control, contain, remove, remedy, respond to, clean up or abate any actual or potential release of Hazardous Materials or other pollution or contamination of any water, soil, sediment, air or other environmental media, whether or not located on the Property and whether or not arising from the operations or activities with respect to the Property, and (ii) liabilities or obligations with respect to the manufacture, generation, formulation, processing, use, treatment, handling, storage, disposal, distribution or transportation of any Hazardous Materials.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Bond” Any bond, letter of credit, cash deposit or other similar arrangement paid or provided by Seller or Manager to or for any Union Benefit Plan pursuant to Section 4204 of ERISA in connection with Seller's acquisition of the Property.

“Escrow Account” shall have the meaning assigned thereto in Section 15.4(a).

“Escrow Agent” shall mean First American Title Insurance Company.

“Excluded Assets” shall have the meaning assigned thereto in Section 2.1(c).

“Excluded Employee Liabilities” shall mean any liabilities or obligations relating to Employees for which Seller has indemnified Buyer pursuant to Sections 14.1 and 10.16.

“Excluded Liabilities” shall have the meaning assigned thereto in Section 2.1(c)(viii).

“Excluded Litigation” shall mean the proceedings described on Schedule 1.1(b).

“Excluded Personal Property” shall have the meaning assigned thereto in Section 2.1(c)(ii).

“Excluded Taxes” shall mean Taxes imposed with respect to the Property (or with respect to the operation of the Property) for any taxable period that ends on or prior to the Closing Date and Taxes that relate to the portion of any Straddle Period prior to the Closing Date as determined in accordance with Sections 10.2 and 10.12, in each case, other than (1) any Taxes for which Buyer receives a credit under Section 10.2 or Section 10.12 of this Agreement and (2) any Taxes that are the liability of Buyer pursuant to Section 9.1(b) of this Agreement.

“Existing Financing” shall mean the loan secured by the Existing Mortgage.

“Existing Mortgage” shall mean that certain Consolidated, Amended and Restated Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing made by Seller to Existing Mortgagee.

“Existing Mortgagee” shall mean Wells Fargo Bank, National Association.

“FF&E” shall have the meaning assigned thereto in Section 2.1(b)(ii).

“Fixed Rents” shall have the meaning assigned thereto in Section 10.1(a).

“Gift Certificates” shall have the meaning ascribed thereto in Section 10.14.

“Governmental Authority” shall mean any federal, state, or local or other political subdivision thereof, including, without limitation, any agency, court or entity exercising executive, legislative, judicial, regulatory or administrative governmental powers or functions, in each case to the extent the same has jurisdiction over the Person or property in question.

“Government List” shall mean any of the following lists: (i) the Denied Persons List and Entities List maintained by the United States Department of Commerce; (ii) the Specially Designated Nationals and Blocked Persons List, the Foreign Sanctions Evaders List, and the Sectoral Sanctions Identifications List maintained by the Office of Foreign Assets Control of the United States Department of Treasury; and (iii) the Foreign Terrorist Organizations List and the Debarred Parties List maintained by the United States Department of State.

“Ground Lease” shall mean that certain Second Agreement Restated Lease dated July 31, 1980 between Archbishopric of New York (“Original Landlord”), as landlord, and The Palace Company (“Original Tenant”), as Tenant, recorded in the Official Records of New York County on August 5, 1980 in Reel 532, Page 1949, as modified by that certain Modification of Second Amendment Restated Lease dated as of June 16, 1981 between Original Landlord and Original Tenant and recorded in the Official Records of New York County on June 30, 1981 in Reel 572, Page 96, as assigned by that certain Assignment and Assumption of Lease between Original Tenant, by W. Thomas Parrington Jr., as receiver and Amedeo Hotels Limited Partnership (“Amedeo”) dated as of December 30, 1993 and recorded in Official Records of New York County on March 7, 1994 in Reel 2065, Page 890, as further amended by that Settlement Agreement between Ground Lessor and Amedeo dated September 9, 2002, and as further assigned by that certain Assignment and Assumption of Ground Lease dated as of July 12, 2011 between Amedeo and Seller and recorded Official Records of New York County on July 16, 2011 as CRFN 2011000253635. By letter dated October 21, 2014, Seller exercised its right to extend the term of the Ground Lease to June 30, 2052.

“Ground Lessor” shall mean the Archdiocese of New York, the current ground lessor under the Ground Lease.

“Ground Lessor Estoppel” shall mean the estoppel certificate executed by Ground Lessor (i) substantially in the form of Exhibit N attached hereto or (ii) in the form required by Section 26.02 of the Ground Lease.

“Guest Ledger” shall mean any and all charges accrued to the open accounts of any guests or customers at the Property as of the Cut-Off Time for the use and occupancy of any guest, conference, meeting or banquet rooms or other facilities at the Property, any restaurant, bar or banquet

services, or any other goods or services provided to such guests or customers by or on behalf of Seller (or a Manager on behalf of Seller).

“Hazardous Materials” shall have the meaning assigned thereto in Section 7.3(b)(i).

“Holdback” shall have the meaning assigned thereto in Section 11.6.

“Holdback Agreement” shall have the meaning assigned thereto in Section 11.6.

“Improvements” shall have the meaning assigned thereto in “Background” paragraph A.

“Independent Accounting Firm” shall have the meaning assigned thereto in Section 2.4.

“Initial Deposit” shall have the meaning assigned thereto in Section 2.2(a)(i).

“Intellectual Property” shall have the meaning ascribed thereto in Section 2.1(b)(vi).

“IRS” shall mean the Internal Revenue Service.

“IRS Reporting Requirements” shall have the meaning assigned thereto in Section 15.3(c).

“Land” shall have the meaning assigned thereto in “Background” paragraph A.

“Leasing Costs” shall mean, with respect to a particular Space Lease, all capital costs, expenses incurred for capital improvements, equipment, painting, decorating, partitioning and other items to satisfy the initial construction obligations of the landlord under such Space Lease (including any expenses incurred for architectural or engineering services in respect of the foregoing), “tenant allowances” in lieu of or as reimbursements for the foregoing items, free rent periods, leasing commissions, brokerage commissions, in each case, to the extent the landlord is responsible for the payment of such cost or expense under the relevant Space Lease or any other agreement relating to such Space Lease.

“Licenses and Permits” shall have the meaning assigned thereto in Section 2.1(b)(iv).

“Liens” shall mean any mortgage, pledge, hypothecation, assignment, deposit, arrangement, encumbrance, lien (statutory or other), charge, security interest, option, restriction, arrangement, preference, priority or other security interest of any kind or nature whatsoever, including, without limitation, any conditional sale or other title retention agreement, any financing or similar statement or notice filed under the Uniform Commercial Code, any liens for real estate taxes which would be delinquent if unpaid at Closing, any mechanics’ and materialmen’s liens relating to work performed by or on behalf of Seller or Manager, judgment liens against Seller (or its predecessors that have been imputed on Seller or the Property) that encumber the Property, any liens for state or federal taxes which would be delinquent at Closing, any liens related to utilities which would be delinquent at Closing, any liens associated with the Violations or any other similar recording or notice statute, and any lease or other arrangement having substantially the same effect as any of the foregoing.

“Liquor License” shall have the meaning assigned thereto in Section 3.2(m).

“Losses” shall have the meaning assigned thereto in Section 11.1.

“Management Agreement” shall mean, with respect to the Property, that certain Management Agreement, dated as of July 12, 2011, between Seller and Manager, for the management and operation of the Property, as assigned by Seller to Sublessee pursuant to that certain Assignment and Assumption of Management Agreement dated as of May 31, 2012, and all amendments and modifications thereto.

“Manager” shall mean Northwood Hospitality LLC, a Delaware limited liability company, d/b/a Northwood Hotel Management LLC.

“Material Adverse Effect” shall mean a matter, event or condition under consideration which would reasonably be expected to, individually or in the aggregate, when considered with any other matters, events or conditions, result in a material adverse effect upon (a) Buyer’s ownership of the Property, (b) the operation of the Property on or after Closing, or (c) the value of the Property.

“Material Casualty” shall have the meaning assigned thereto in Section 9.2(b).

“Material Condemnation” shall have the meaning assigned thereto in Section 9.2(b).

“Material Contracts” shall mean those Assumed Contracts that (i) are not terminable on 30 days’ or less notice without cost or penalty or (ii) require the payment of more than \$75,000 in any calendar year.

“Named IP” shall have the meaning assigned thereto in Section 3.2(l).

“New Lease” shall have the meaning assigned thereto in Section 3.4(d).

“Ordinary Course of Business” means the ordinary course of business consistent with Seller’s past custom and practice for the operation of the Property, taking into account the facts and circumstances in existence from time to time.

“Permitted Exceptions” shall mean all of the following (i) the matters set forth on the Survey or discrepancies, conflicts in boundary lines, shortages in area, encroachments and any state of facts which an updated survey of the Property would disclose, provided the same does not have a Material Adverse Effect, (ii) the Liens, encumbrances, restrictions, exceptions and other matters set forth in the Title Commitment as exceptions or exclusions from coverage (other than liens securing the Existing Financing) and, provided the same does not have a Material Adverse Effect, any other matters disclosed on any updated title reports, (iii) Liens for real estate taxes and assessments not yet delinquent, (iv) any Liens, encumbrances or exceptions caused by Buyer, its agents, representatives or employees, (v) such other exceptions as the Title Company shall commit to omit without any additional cost to Buyer, whether such insurance is made available in consideration of payment, bonding, indemnity of Seller or otherwise, (vi) the Ground Lease, Space Leases and any Space Lease entered into after the Effective Date in accordance with the terms of this Agreement, (vii) easements and laws, regulations, resolutions or ordinances, including, without limitation, building, zoning, land use and environmental protection laws and laws governing the use, occupancy, subdivision, development, conversion or redevelopment of the Property currently or hereinafter imposed by any governmental or quasi-governmental body or authority, (viii) mechanic’s liens which are the responsibility of tenants under Space Leases which such tenants are required to remove pursuant to the terms of the applicable Space Lease not to exceed, in the aggregate under all such Space Leases, \$500,000, (ix) equipment liens and financing statements securing Seller’s obligations under the Ricoh Equipment Lease, and (x) all other matters that arise subsequent to the Effective Date that are approved (or deemed approved) by Buyer under Section 8.2 hereof.

“Personal Property” shall have the meaning assigned thereto in Section 2.1(b)(ii).

“Person” shall mean a natural person, partnership, limited partnership, limited liability company, corporation, trust, estate, association, unincorporated association or other entity.

“Plans and Specifications” shall have the meaning assigned thereto in Section 2.1(b)(x).

“Property” shall have the meaning assigned thereto in “Background” paragraph A.

“Purchase Price” shall have the meaning assigned thereto in Section 2.2(a).

“Releasees” shall have the meaning assigned thereto in Section 7.4(a).

“Rents” shall have the meaning assigned thereto in Section 10.1(a).

“Reporting Person” shall have the meaning assigned thereto in Section 15.3(c).

“Retail Merchandise” shall have the meaning assigned thereto in Section 2.1(b)(vii).

“Ricoh Equipment Lease” shall mean that certain equipment lease by and between Seller and Ricoh USA, Inc. dated November 5, 2013.

10.14. “Scheduled Gift Certificate Costs” shall have the meaning assigned thereto in Section

“Seller” shall have the meaning assigned thereto in the Preamble to this Agreement.

“Seller Closing Certificate” shall have the meaning assigned thereto in Section 6.2(o).

“Seller Title Expenses” shall have the meaning assigned thereto in Section 8.2(b).

“Seller Verification Notices” shall have the meaning assigned thereto in Section 15.20(b).

“Seller’s Broker” shall have the meaning assigned thereto in Section 15.2(a).

“Seller’s Knowledge” shall mean the actual knowledge of Seller based upon the actual knowledge of Jonathan Wang or Jordan Kornberg with respect to the Assets, without any duty on the part of any such Persons to conduct any independent investigation or make any inquiry of any Person. The named individual shall have no personal liability by virtue of inclusion in this definition.

“Seller’s Leasing Costs” shall have the meaning assigned thereto in Section 10.7.

“Seller’s Surviving Obligations” shall mean Seller’s obligations under this Agreement that expressly survive the termination of this Agreement and/or the Closing.

“Seller-Related Persons” shall have the meaning assigned thereto in Section 11.2.

“Seller-Waived Breach” shall have the meaning assigned thereto in Section 11.3(b).

“Space Leases” shall mean all leases, licenses and other agreements which allow for occupancy by a Person of a portion of the Property (other than agreements or arrangements allowing hotel guests and customers to occupy rooms and/or banquet or meeting facilities in the Ordinary Course

Business) including, but not limited to, the Trunk Club Lease, the Eurofinch Lease and the Aberer Gifts Lease, but specifically excluding the Ground Lease and the Sublease.

“Straddle Period” shall mean any taxable period that begins before and ends after the Closing Date.

“Sublease” shall mean that certain Lease Agreement dated as of July 12, 2011 between Seller, as sublandlord, and Sublessee, as subtenant.

“Sublessee” shall mean NWPH Inc., a Delaware corporation, authorized in New York under the fictitious name “The New York Palace Hotel”.

“Surety Period” shall have the meaning assigned thereto in Section 14.1(d)(i).

“Survey” shall mean the survey of the Property described on Schedule 1.1(a) hereto.

“Survival Period” shall have the meaning assigned thereto in Section 11.4(a).

“Survival Termination Date” shall mean (i) with respect to representations and warranties, the date that is nine months after the Closing Date, (ii) with respect to covenants, the date that is nine months after the Closing Date unless a longer or shorter period is expressly provided for pursuant to the terms of this Agreement, and (iii) with respect to Seller or Buyer obligations under Section 11.1(c) or Section 11.2(c), the applicable statute of limitations.

“Taxes” shall mean any and all taxes (including, without limitation, net income, alternative, unitary, alternative minimum, minimum franchise, value added, ad valorem, income, receipts, capital, excise, sales, use, leasing, fuel, excess profits, turnover, occupation (including transient occupancy), property (including, personal and real, tangible and intangible property taxes), transfer, recording and stamp taxes, intangible taxes, levies, imposts, duties, charges, assessments, or withholdings of any nature whatsoever, general or special, ordinary or extraordinary, and any transaction privileges or similar taxes) imposed by or on behalf of a Governmental Authority, together with any and all penalties, fines, additions to tax and interest thereon, whether disputed or not.

“Tenant Notices” shall have the meaning assigned thereto in Section 6.1(c).

“Tenants” shall mean the tenants, concessionaires and other occupants under the Space Leases.

“Terminated Contracts” shall have the meaning assigned thereto in Section 3.4(i).

“Title Affidavit” shall have the meaning assigned thereto in Section 8.4.

“Title Commitment” shall mean that certain owner’s title commitment, with respect to the Property, issued by Royal Abstract of New York, LLC, as agent for First American Title Insurance Company with effective date March 30, 2015, and any updates thereto.

“Title Company” shall mean, collectively, (i) National Land Tenure Company, LLC, as agent for First American Title Insurance Company, with respect to 25% of the title insurance provided under the Title Policy and (ii) Royal Abstract of New York, as agent for First American Title Insurance Company, with respect to 75% of the title insurance provided under the Title Policy.



“Title Policy” shall have the meaning set forth in Section 8.3.

“Trades Council Union” shall mean the New York Hotel and Motel Trades Council, AFL-CIO, and its permitted successors and assigns.

“Trades Council Union Agreement” shall mean the Trades Council Union Agreement identified on Schedule 1.1(d) hereto.

“Transfer Taxes” shall have the meaning set forth in Section 9.1(c).

“Transferred Employees” shall have the meaning set forth in Section 14.1(a).

“Trunk Club Estoppel” shall mean an estoppel from the tenant under the Trunk Club Lease (i) substantially in the form of Exhibit M attached hereto or (ii) in such form or containing only those matters as an estoppel is required to address pursuant to Section 6.02 of the Trunk Club Lease, without giving effect to any requirements regarding “other information as is reasonable and customary in an estoppel certificate” or words of similar import.

“Trunk Club Lease” shall mean that certain lease by and between NWP LLC and Trunk Club, Inc. d/b/a Trunk Club dated October 13, 2014.

“Underfunded Benefit Plan” shall have the meaning assigned thereto in Section 14.1(d).

“Union” shall mean each Union under a Union Agreement, including without limitation the Trade Council Union.

“Union Agreements” shall mean the Trades Council Union Agreement, and any related side letters, amendments, and memoranda of agreement or memoranda of understanding or similar agreements.

“Union Benefit Plans” shall mean all employee benefit plans provided for in any of the Union Agreements.

“URLs” shall have the meaning set forth in Section 3.6.

“Vehicles” shall have the meaning set forth in Section 2.1(b)(xii).

“Violations” shall mean all violations of Applicable Law now or hereafter issued or noted, including, without limitation, any open building permits and any fines or penalties associated with the foregoing.

“Voluntary Encumbrance” shall mean with respect to the Property, title exceptions affecting the Property that are knowingly and intentionally created by Seller through the execution by Seller of one or more instruments creating or granting such title exceptions; provided, however, that the term “Voluntary Encumbrances” as used in this Agreement shall not include the following: (i) any Permitted Exceptions; (ii) any title exceptions created pursuant to a Space Lease by a Tenant thereunder or by the Ground Lessor pursuant to the Ground Lease; or (iii) any title exceptions that are approved, waived or deemed to have been approved or waived in writing by Buyer or that are created in accordance with the express provisions of this Agreement.

“WARN Act” shall mean the Worker Adjustment and Retraining Notification Act of 1988 (29 U.S. Code Chapter 23), the New York Worker Adjustment and Retraining Notification Act (N.Y. Labor Law § 860, et seq.) and any similar state and local law applicable, as amended from time to time, and any regulations and guidance issued pursuant thereto.

“Warranties” shall have the meaning assigned thereto in Section 2.1(b)(v).

## ARTICLE II

### SALE, PURCHASE PRICE AND CLOSING

#### Section 2.1 Sale of Assets.

(a) On the Closing Date and pursuant to the terms and subject to the conditions set forth in this Agreement, Seller shall sell to Buyer, and Buyer shall purchase from Seller, all of the Assets.

(b) The transfer of the Assets to Buyer shall include the transfer of all Asset-Related Property. For purposes of this Agreement, “Asset-Related Property” shall mean:

(i) all easements, rights of way, privileges, covenants, common interests and other rights appurtenant to the Property and all of Seller’s right, title and interest, if any, in and to any land lying in the bed of any street, road, avenue or alley, open or closed, in front of or adjoining the Property;

(ii) operating equipment and furniture, fixtures, equipment (collectively “FF&E”), tools, supplies, information technology assets and other personal property (excluding any personal property leased by or on behalf of Seller except to the extent such lease is an Assumed Contract), which personal property is, or may hereafter prior to the Closing Date be, placed in or attached to the Property, in each case, excluding the Consumables, the Intellectual Property and the Excluded Personal Property (collectively, the “Personal Property”);

(iii) all food and beverages (all alcoholic beverages, to the extent transferable under Applicable Law, and all non-alcoholic beverages ); engineering, maintenance, and housekeeping supplies, including, without limitation, soap, cleaning materials and matches, stationery and printing; and other supplies of all kinds, in each case whether partially used, unused, or held in reserve storage for future use in connection with the maintenance or operation of the Property (including, but not limited to, all open or un-open cases thereof), which are owned by Seller and on hand at the Property or are held off-site on the date of this Agreement or as of the Closing Date subject to such depletion and restocking as shall occur and be made in the normal course of business but in accordance with present standards and the terms of this Agreement, excluding, however, the Personal Property (collectively, the “Consumables”);

(iv) to the extent they may be transferred under Applicable Law, all of Seller’s right, title and interest in all licenses, permits and authorizations issued by Governmental Authorities presently issued (or any renewals or replacements of any such licenses, permits and authorizations between the Effective Date and the Closing Date) in connection with the operation of all or any part of the Property as it is presently being operated, including, without limitation, those licenses and permits set forth on Schedule 2.1(b)(iv), other than the Liquor License, which is governed by Section 3.8 (collectively, “Licenses and Permits”);

(v) all warranties and guarantees, if any, issued to Seller by any manufacturer or contractor in connection with the purchase, construction or installation of any furniture, fixtures, equipment, materials, supplies or Improvements included as part of the Property, but in each case, excluding any of the foregoing which may not be assigned or conveyed by Seller to Buyer without the consent of an un-Affiliated third party (which consent Seller was unable to obtain after using commercially reasonable efforts to do so if requested by Buyer) (collectively, the “Warranties”);

(vi) all of Seller’s right, title and interest in and to URLs, logos, designs, trade names, building names, trademarks, copyrights and other intellectual property and all associated goodwill associated with the ownership or operation of the Property,(collectively, the “Intellectual Property”) and all telephone exchange numbers specifically dedicated and identified with the Property, but in each case, excluding any of the foregoing which may not be assigned or conveyed by Seller to Buyer without the consent of an un-Affiliated third party (which consent Seller was unable to obtain after using commercially reasonable efforts to do so if requested by Buyer) (collectively, the “Assigned IP”);

(vii) all merchandise located at the Property, owned by Seller and held for sale to guests and customers thereof, or ordered for future sale at the Property as of the Cut-Off -Time, but not including any such merchandise owned by any Tenant at the Property (“Retail Merchandise”);

(viii) all Space Leases and Assumed Contracts and all security and escrow deposits held by or for the benefit of Seller in connection with any such Space Lease and Assumed Contract;

(ix) all books and records of Seller, including without limitation tenant files, tenant lists and tenant marketing information relating to the Property, each to the extent in Seller’s or its Manager’s possession or reasonably obtainable by Seller (the “Books and Records”);

(x) to the extent assignable without consent (or with consent if Seller was able to obtain which Seller shall use commercially reasonable efforts to do if so requested by Buyer) all of Seller’s right, title and interest in and to (A) building permits and (B) the plans and specifications, engineering drawings and prints with respect to the Improvements, all operating manuals, and all books, data and records regarding the physical components systems of the Improvements, each in Seller’s or its agents’ possession or reasonably obtainable by Seller (the “Plans and Specifications”);

(xi) each Booking to the extent pertaining to periods from and after the Closing Date; and

(xii) all vehicles owned by Seller and listed in Schedule 2.1(b)(xii) (the “Vehicles”).

(c) Notwithstanding anything to the contrary contained in this Agreement, it is expressly agreed by the parties hereto that the following items are expressly excluded from the Assets to be sold and assumed to Buyer (collectively, the “Excluded Assets”):

(i) Cash. The balances of all cash and securities and other cash equivalent interests held by Seller or by the Manager for the benefit of Seller or the Property and deposited, held or contained in any account, bank or vault, including, without limitation, any cash held in reserves or escrow in connection with the Existing Financing, and reserves maintained by Seller or by the



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b) The Closing shall be held on the Closing Date at 12:00 P.M. (New York time) at the offices of Simpson Thacher & Bartlett LLP; provided that if Seller and Buyer elect to complete the Closing through mutually acceptable escrow arrangements there shall be no requirement that Seller and Buyer physically attend the Closing, and all funds and documents to be delivered at the Closing pursuant to this Agreement shall be delivered to the Escrow Agent on or prior to the Closing Date unless the parties hereto mutually agree otherwise in writing. Buyer and Seller hereby authorize their respective attorneys to execute and deliver to the Escrow Agent any additional or supplementary instructions as may be necessary or convenient to implement the terms of this Agreement and facilitate the closing of the transactions contemplated hereby, provided, however, that such instructions are consistent with and merely supplement this Agreement and shall not in any way modify, amend or supersede this Agreement. In the event of any conflict or inconsistency between this Agreement and any such escrow instructions, this Agreement shall prevail and govern.

Section 2.4 Allocated Purchase Price. Seller and Buyer hereby agree that the Purchase Price shall be allocated for federal, state and local tax purposes (in accordance with the rules of Section 1060 of the Code and the Treasury Regulations promulgated thereunder and any similar provision of state, local or foreign law) among the real property and other tangible and intangible property comprising the Property and Asset-Related Property, and further allocated as applicable, pursuant to an

[REDACTED]

allocation to be agreed by Seller and Buyer in writing on or before the expiration of the Due Diligence Period. In the event Buyer and Seller are unable to agree on an allocation by the expiration of the Due Diligence Period, any and all disputed items shall be referred to an independent certified public accounting firm in the United States of national recognition mutually acceptable to Buyer and Seller (the “Independent Accounting Firm”) for the resolution of such disputed items before the Closing Date and to arrive at a final allocation (such allocation as may be agreed by Buyer and Seller or as determined by the Independent Accounting Firm, the “Allocated Purchase Price”). Buyer and Seller shall (a) cooperate in the filing of any forms (including, without limitation, Form 8594 under Section 1060 of the Code) with respect to the Allocated Purchase Price, including, without limitation, any amendments to such forms required pursuant to this Agreement with respect to any adjustments to the Purchase Price and (b) file all federal, state and local tax returns and related tax documents consistent with such agreed Allocated Purchase Price, as the same may be adjusted pursuant to the terms of Article X or any other provisions of this Agreement, and not take any position (whether in audits, tax returns or otherwise) inconsistent with such allocations unless otherwise required by Applicable Law. Notwithstanding anything in this Agreement to the contrary, no amendment to the Allocated Purchase Price shall be effective without the written approval and consent of Buyer and Seller. The provisions of this Section 2.4 shall survive the Closing without limitation and will not be deemed merged into any instrument of conveyance delivered at the Closing.

### ARTICLE III

#### REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER

Section 3.1 General Seller Representations and Warranties. Seller hereby represents and warrants to Buyer as follows as of the Effective Date (with such representations and warranties to be updated as of the Closing Date by delivery of the Seller Closing Certificate):

(a) Formation; Existence. Seller is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware.

(b) Power and Authority. Seller has all requisite power and authority to enter into this Agreement and the Closing Documents to which it is a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement and the Closing Documents to which it is a party and the consummation of the transactions provided for in this Agreement and the Closing Documents to which it is a party have been duly authorized by all necessary action on its part. This Agreement has been duly executed and delivered by Seller and constitutes, and the Closing Documents to be executed and delivered by it, when executed and delivered at the Closing, will constitute, assuming due authorization, execution and delivery by the other parties hereto, Seller’s legal, valid and binding obligation, enforceable against Seller in accordance with their terms (except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors’ rights and by general principles of equity (whether applied in a proceeding at law or in equity)).

(c) No Consents. Except as set forth in Schedule 3.1(c), no consent or approval of any Governmental Authority is required to be obtained or made in connection with Seller’s execution, delivery and performance of this Agreement, the Closing Documents to which it is a party or any of the transactions required or contemplated hereby or thereby other than any consent or approval, the failure of which to obtain will not materially adversely affect (i) Seller’s ability to consummate the transactions contemplated by this Agreement, (ii) Seller’s interest in the Assets or (iii) the operation of the Property, except, in each case, for any conflict or violation which will not materially adversely affect (A) Seller’s

ability to consummate the transactions contemplated by this Agreement, (B) Seller's interest in the Assets or (C) the operation of the Property.

(d) No Conflicts. The execution, delivery and compliance with, and performance of the terms and provisions of, this Agreement and the Closing Documents to which it is a party does not and will not (with or without notice or lapse of time or both) (i) conflict with or result in any violation of its organizational documents, (ii) conflict with or result in any violation of any provision of any bond, note or other instrument of indebtedness, contract, indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which it is bound, or (iii) violate any Applicable Law relating to it or the Property.

(e) Bankruptcy. Seller is not a debtor under any bankruptcy proceedings, voluntary or involuntary, and has not made an assignment for the benefit of its creditors.

(f) Foreign Person. Seller is not a "foreign person" as defined in Section 1445 of the Code and the regulations issued thereunder.

(g) Regulatory Compliance. Seller represents that it is currently in compliance with all regulations administered by the Office of Foreign Assets Control of the United States Department of Treasury and Seller is not a country, territory, individual, or entity named on a Government List.

Section 3.2 Representations and Warranties of Seller as to the Assets. Seller hereby represents and warrants to Buyer as follows as of the Effective Date (with such representations and warranties to be updated as of the Closing Date by delivery of the Seller Closing Certificate):

(a) Contracts. Schedule 3.2(a) sets forth a correct and complete list of the Material Contracts (and any amendments or modifications thereof) affecting the Property. Seller (i) shall within three Business Days of the Effective Date, deliver or make available to Buyer in the Asset File, true and complete copies of such Material Contracts and (ii) has not given or received any written notice of any breach or default under any Assumed Contract that has not been cured and, to Seller's Knowledge, no material default exists thereunder which remain uncured.

(b) Space Leases. Schedule 3.2(b) sets forth a correct and complete list of all Space Leases affecting the Property. The Space Leases, have not been amended, supplemented or otherwise modified except as stated in Schedule 3.2(b). To Seller's Knowledge, Seller has delivered or made available to Buyer true and complete copies of such Space Leases. Seller has not given or received any written notice of any breach or default under any Space Lease that has not been cured or rescinded and to Seller's Knowledge, there are no material defaults on the part of such Seller or any other party under any Space Lease which remain uncured. No tenant under any Space Lease is more than 30 days past due on paying rent due under its respective Space Lease. Other than as set forth in the Space Leases, such Seller is not obligated to provide any allowances or perform any work with respect to the current term of any Space Lease and all brokerage commissions with respect to all Space Leases have been paid in full

(c) Condemnation. As of the Effective Date, there are no condemnation or eminent domain proceedings pending or, to Seller's Knowledge, threatened in writing against the Property.

(d) Litigation. Except as set forth in Schedule 3.2(d), there are no litigations, actions, suits, arbitrations, orders, decrees, claims, writs, injunctions, government investigations, proceedings pending or, to Seller's Knowledge, threatened in writing against Seller which, if determined adversely to Seller, would materially and adversely affect the ability of Seller to perform its obligations hereunder or materially and adversely affect Buyer's right, title and/or interest in or ownership or



operation of the Property. Seller is not a party to or subject to the provision of any judgment, order, writ, injunction, decree or award of any Governmental Authority which would materially adversely affect the ability of Seller to perform its obligations hereunder or materially and adversely affect Buyer's right, title and/or interest in or ownership or operation of the Property.

[REDACTED]

(f) Ownership of the Personal Property. Seller has good and valid title to all material Personal Property and the same is (or will be at Closing) free and clear of all Liens, charges and encumbrances, other than the rights of any vendors or suppliers under Assumed Contracts and any Permitted Exceptions.

(g) Environmental Matters. Other than as set forth in the Asset File, Seller has not received any written notice from any Governmental Authority of any violations of any Environmental Laws with respect to the Property which have not been cured and which would have a Material Adverse Effect.

(h) Employment.

(i) Employees. Schedule 3.2(h)(i) provides a true, complete and correct list of all Employees, their current annual salary or wage rate, and the amount of accrued but unused vacation, sick pay and all other paid time off, each as of the Effective Date. Seller will provide an updated list prior to the Closing Date.

(ii) Unions. Except as set forth on Schedule 1.1(d) or with respect to the pending agreements set forth on Schedule 3.2(h)(ii), neither Seller nor Manager or any Affiliates of either is a party to, or bound by, any collective bargaining agreement, union contract, or similar agreement with respect to any current or former Employees. To Seller's Knowledge, Seller has provided Purchaser with a true and correct copy of each Trades Council Union Agreement. Except as set forth on Schedule 3.2(h)(ii), Seller has received no written notice of any demand for recognition from a Union or other labor organization or a representation petition filed with the National Labor Relations Board with respect to the Employees, and to Seller's Knowledge, except with respect matters that are the subject of the agreements referenced on Schedule 3.2(h)(ii), there is no labor organization organizing activity occurring with respect to the Employees.

(iii) Labor Laws. Seller and Manager are in compliance with all Applicable Laws respecting the employment of the Employees and their terms and conditions of employment, including, without limitation, wages, compensation, hours, overtime, leaves, vacation, disability, workers compensation, occupational health and safety, plant closings, mass layoffs, discrimination, privacy, unemployment insurance, benefits, taxes, labor relations, immigration laws and regulations, and equal opportunity, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Except with respect to items referenced in Schedule 3.2(h)(ii), to Seller's Knowledge, neither Seller nor Manager or any Affiliate of either has received written notice of any charge of unfair labor practices with respect to the Employees, and to Seller's Knowledge, no such charge is currently threatened, except as

would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(iv) Labor Disputes. As of the Effective Date, there is no work stoppage, strike, lockout or picketing involving any Employees pending or, to Seller's Knowledge, threatened. Except as set forth on Schedule 3.2(h)(ii), there are no pending grievances or demands for arbitration from any Union, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(v) No Claims. Except as set forth on Schedule 3.2(h)(ii), to Seller's Knowledge, as of the Effective Date, neither Seller nor Manager or any Affiliate of either has received written notice of any (i) Government Authority investigating whether Seller has failed to comply with any law concerning Employees' terms and conditions of employment, including, but not limited to, fair employment practices laws and occupational safety and health standards or (ii) material lawsuit or administrative charge by Employees concerning the terms and conditions of their employment, employment discrimination, harassment, failure to accommodate or retaliation.

[REDACTED]

(i) Violations. Except as set forth in Schedule 3.2(i) as of the Effective Date, neither Seller nor Manager has received written notice from any Governmental Authority of any Violations with respect to the Property (including violation of any zoning law) which have not been cured.

(j) Financial Statements. Seller has delivered or made available to Buyer as part of the Asset File true and complete copies of the profit and loss statements for the Property for the 2013 and 2014 calendar years and balance sheet as of March 31, 2015 for the Seller and Sublessee, all of which fairly present, in all material respects, operations at the Property for the periods presented.

(k) Property Tax Appeals. Other than as set forth on Schedule 3.2(k), Seller is not currently contesting any real property taxes payable with respect to the Property or seeking an abatement of any such real property taxes.

(l) Intellectual Property. Seller owns the U.S. trademark and domain name registrations that are included in the Intellectual Property and set forth on Schedule 3.2(l) (collectively, the "Named IP"), and none of the Named IP has been or is now involved in any cancellation proceeding,

dispute in writing or litigation and, to Seller's Knowledge, no such action is threatened in writing. Seller has not received written notice of (i) any violation of any legal requirements related to such registrations or (ii) any claims that Seller does not have ownership of the Named IP.

[REDACTED]

[REDACTED]

Section 3.3 Amendments to Schedules; Limitations on Representations and Warranties of Seller. Notwithstanding anything in this Agreement to the contrary, if the representations and warranties relating to the Space Leases and Contracts set forth in Section 3.2 and the status of tenants and contract parties thereunder (other than Seller or its Affiliates) were true and correct in all material respects as of the Effective Date, no change in circumstances or status of tenants or any contract parties (e.g., defaults, bankruptcies or other adverse matters relating to such tenants or contract parties, or a party's exercise following the date hereof of any contractual termination rights not caused by the actions of Seller) occurring after the Effective Date hereof shall permit Buyer to terminate this Agreement or constitute grounds for Buyer's failure to close or otherwise constitute a breach of any representation or warranty by Seller.

Section 3.4 Covenants of Seller Prior to Closing. From the Effective Date until the Closing or earlier termination of this Agreement, Seller or Seller's agents shall:

(a) Insurance. Keep the Property insured against fire and other hazards covered by the insurance policies maintained by Seller on the Effective Date, or policies that are similar in all material respects.

(b) Operation. Conduct the operations of the Property in the Ordinary Course of Business, including, without limitation (i) maintaining the inventories of Consumables and Retail Merchandise at the Property at levels maintained in the Ordinary Course of Business, (ii) maintaining all Personal Property in the same condition as the Personal Property existed as of the Effective Date (reasonable wear, tear and loss excepted) and not trading, substituting or removing any Personal Property from the Property, except in the Ordinary Course of Business, (iii) performing maintenance and repairs for the Property in the Ordinary Course of Business, (iv) using commercially reasonable efforts to renew all Licenses and Permits prior to their expiration, (v) not making any material structural alterations or improvements at the Property, or demolishing any of the Property and (vi) not selling, transferring, removing or otherwise disposing of any of the Property, other than in the Ordinary Course of Business; provided, however, the foregoing shall not require Seller to make any capital improvements to the Property.

(c) New Contracts. Except for agreements substantially consistent with the pending agreements described on Schedule 3.2(h)(ii), not enter into any new third party Contracts relating to the Assets, nor amend, supplement, terminate or otherwise modify any Contract without the prior written consent of Buyer, which consent may be granted or withheld in Buyer's reasonable discretion prior to the expiration of the Due Diligence Period and in Buyer's sole discretion after the expiration of the Due

Diligence Period; provided, however, if Buyer does not reject or approve a new Contract (or an amendment or modification to a Contract) within five Business Days after receipt of a copy thereof and Seller's request for approval, then Buyer shall be deemed to have disapproved such Contract or amendment or modification; provided, further:

(i) Buyer's consent shall not be required with respect to any Contract that (A) will not be assumed by Buyer or burden the Property following the Closing or (B) (x) is entered into by Seller or Manager in the Ordinary Course of Business at, or for the benefit of, the Property, (y) is terminable on 30 days' or less notice without cost or penalty to Buyer and (z) requires the payment of no more than \$75,000 in any calendar year; and

(ii) Buyer's consent shall not be required with respect to any Contract which does not meet the requirements of clauses (A) through (B) of clause (i) above but is entered into by Seller in connection with emergency maintenance or repairs at a Property to be completed prior to the Closing Date; provided, however, that Seller shall pay all of the costs of such emergency maintenance or repairs on or prior to the Closing Date.

If Seller enters into amends, supplements or modifies any third party Contract prior to Closing with the prior written approval of Buyer or as permitted in clause (i) or (ii) above, then, Seller shall deliver a true, correct and complete copy of such Contract (or any applicable amendment or modification) to Buyer within five Business Days after entering into such Contract and such Contract shall be included in the definition of "Assumed Contract" and deemed added to Schedule 3.2(a), and shall be assigned to and assumed by Buyer at the Closing in accordance with this Agreement. Nothing in this Section 3.4(c) shall be deemed to restrict Seller's ability to enter into Bookings in the Ordinary Course of Business.

(d) New Space Leases. Not (i) execute any new Space Lease, (ii) amend, supplement, terminate, accept the surrender of, renew or otherwise modify any existing Space Lease or (iii) approve any assignment or sublease of any existing Space Lease without the prior consent of Buyer, which consent may be granted or withheld in Buyer's sole discretion. If Seller enters into any new Space Lease, or renews any existing Space Lease (each such new Space Lease or renewal, a "New Lease") with the written approval of Buyer (which approval shall be granted, withheld or conditioned by Buyer in Buyer's sole and absolute discretion), then each such New Lease shall be included in the definition of "Space Leases" herein and deemed added to Schedule 3.2(b), and shall be assigned to and assumed by Buyer at the Closing in accordance with this Agreement. If Buyer does not reject or approve in writing a New Lease, license, occupancy agreement, renewal or a Space Lease amendment within five Business Days after receipt of a copy thereof and Seller's request for approval, then Buyer shall be deemed to have disapproved such New Lease, license, occupancy agreement, renewal or Space Lease amendment. Notwithstanding the foregoing, Seller is authorized to accept the termination of Space Leases at the end of their existing terms or amendments memorializing extensions of any Space Leases as required thereunder so long as no other obligations or liabilities are incurred by Buyer after the Closing other than an extension of said Space Lease on the terms and conditions thereof (all of which would have been approved by Buyer to the extent required by the terms and conditions of this Agreement).

(e) Litigation. Advise Buyer promptly of any litigation, arbitration proceeding or administrative hearing (including, without limitation, condemnation) before any Governmental Authority that is instituted after the Effective Date against Seller or Manager and that is likely to adversely affect Seller's ability to perform its obligations hereunder or the Property or Buyer after the Closing.

(f) Ground Lease. From and after expiration of the Effective Date until Closing or earlier termination of this Agreement, Seller shall not amend, assign, supplement, terminate, accept the

surrender of, renew or otherwise modify any of the Ground Lease without the prior consent of Buyer, which consent may be granted or withheld in Buyer's sole discretion.

(g) Charges, Contracts, etc. From the date hereof until Closing, (i) Seller shall continue to pay or cause to be paid all water, sewer and other utility charges, (ii) perform all material obligations under the Contracts (including, without limitation, payment obligations) in the Ordinary Course of Business and (iii) promptly notify Buyer of any notices of default given or received by (or on behalf of Seller) with respect to the Contracts.

(h) Excluded Assets. Nothing in this Section 3.4 shall restrict Seller's rights with respect to any of the Excluded Assets or give Buyer any approval or other rights with respect thereto.

(i) Terminated Contracts. No later than five days prior to the expiration of the Due Diligence Period, Buyer shall have the right to send to Seller a written notice identifying which Contracts, if any, Buyer desires, if any, to have Seller terminate and, provided any such Contract permits the termination thereof by Seller, Seller shall cause such Contract to be terminated effective no later than the Closing at Buyer's sole cost and expense (collectively, "Terminated Contracts").

(j) Estoppels. Seller shall use commercially reasonable efforts to obtain the Trunk Club Estoppel and the Ground Lessor Estoppel and estoppels for the other tenants under the Space Leases promptly after the Additional Deposit has been delivered to the Escrow Agent and the expiration of the Due Diligence Period.

(k) Violations. Advise Buyer promptly of any Violations with respect to the Property (including violation of any zoning law) which Seller receives written notice of after the Effective Date.

(l) Corporate Employees. On or prior to the Closing Date, cause all Corporate Employees to vacate the Property at Seller's sole cost and expense.

[REDACTED]

Section 3.6 Trademarks and URLs. The parties acknowledge and agree that, solely upon the Closing, Buyer shall acquire all right, title and interest of Seller and its Affiliates in and to the domain names included in the Assigned IP (the "URLs") and any website content accessed through such URLs, in each case, to the extent assignable without consent (or, if consent is required, which consent Seller was able to obtain after using commercially reasonable efforts to do so if requested by Buyer). Buyer shall contact the administrator(s) of the URLs promptly following the Closing and shall at its sole cost provide such administrator(s) with such information as the administrator(s) shall reasonably require to effectuate a transfer of the URLs to Buyer. Seller shall (and shall cause its Affiliates to) reasonably cooperate with Buyer and the administrator(s) to effectuate such URLs transfer to Buyer, including the execution and delivery of such consents, transfer instruments and other documents as the URLs administrator may reasonably require. Buyer shall pay any costs or fees of the administrator in connection with the foregoing transfers. If the Closing occurs, the provisions of this Section 3.6 shall survive the Closing without limitation and will not be deemed merged into any instrument of conveyance delivered at the Closing.

Section 3.7 Exclusivity. From the Effective Date until the Closing or earlier termination of this Agreement, Seller shall not actively negotiate with any independent third parties for the sale, assignment or other transfer, of the Property or any portion thereof or an interest in Seller which would be substantially equivalent to selling an interest in the Property.

[REDACTED]

#### ARTICLE IV

#### REPRESENTATIONS, WARRANTIES AND COVENANTS OF BUYER

Section 4.1 Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller as follows:

(a) Formation; Existence. Buyer is a company incorporated in the Republic of Korea duly formed, incorporated, validly existing and in good standing under the laws of the Republic of Korea.

(b) Power and Authority. Buyer has all requisite power and authority to enter into this Agreement and the Closing Documents to which it is a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement and the Closing Documents to which it is a party and the consummation of the transactions provided for in this Agreement and the Closing Documents to which it is a party have been duly authorized by all necessary action on its part. This Agreement has been duly executed and delivered by it and constitutes, and the Closing Documents to be executed and delivered by it, when executed and delivered at the Closing and assuming due authorization, execution and delivery by Seller, will constitute, its legal, valid and binding obligation, enforceable against it in accordance with their terms (except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights and by general principles of equity (whether applied in a proceeding at law or in equity)).

(c) No Consents. No consent, license, approval, order, permit or authorization of, or registration, filing or declaration with, any court, administrative agency or commission or other Governmental Authority is required to be obtained or made in connection with Buyer's execution, delivery and performance of this Agreement, the Closing Documents to which Buyer is a party or any of the transactions required or contemplated hereby.

(d) No Conflicts. Buyer's execution, delivery and compliance with, and performance of the terms and provisions of, this Agreement and the Closing Documents to which it is a party does not and will not (with or without notice or lapse of time or both) (i) conflict with or result in any violation of its organizational documents, (ii) conflict with or result in any violation of any provision of any bond, note or other instrument of indebtedness, indenture, mortgage, deed of trust or loan agreement to which it is a party in its individual capacity, or (iii) violate any Applicable Law relating to Buyer or its subsidiaries or its assets or properties.

(e) Bankruptcy. Buyer is not a debtor under any bankruptcy proceedings, voluntary or involuntary, and has not made an assignment for the benefit of its creditors.

(f) Litigation. There are no litigations, actions, suits, arbitrations, orders, decrees, claims, writs, injunctions, government investigations, proceedings pending or, to Buyer's Knowledge, threatened in writing against Buyer or affecting Buyer which, if determined adversely to such entity, would materially and adversely affect the ability of Buyer to perform its obligations hereunder. Buyer is not a party to or subject to the provision of any judgment, order, writ, injunction, decree or award of any Governmental Authority which would adversely affect the ability of Buyer to perform its obligations hereunder.

(g) Regulatory Compliance.

(i) None of the monies used to purchase the Assets have been or will be derived from any illegal activities, including, but not limited to, money-laundering, terrorism, or narcotics-trafficking activities.

(ii) None of Buyer, its Affiliates, or any other Person with any ownership interest in or having the power to control Buyer or its Affiliates is a country, territory, individual, or entity named on a Government List.

Section 4.2 Covenants of Buyer.

(a) Bookings. Buyer shall honor all existing Bookings as of the Effective Date and all other Bookings made in accordance with this Agreement for any period beginning on or after the Closing Date.

(b) Contracts. Buyer shall assume as of the Closing the obligations of Seller under the Assumed Contracts, to the extent first arising and accruing from and after the Closing Date.

[REDACTED]

[REDACTED]

## ARTICLE V

### CONDITIONS PRECEDENT TO CLOSING

Section 5.1 Conditions Precedent to Seller's Obligations. The obligation of Seller to consummate the transfer of the Assets to Buyer on the Closing Date is subject to the satisfaction (or waiver in writing by Seller) as of the Closing of the following conditions:

(a) Each of the representations and warranties made by Buyer in this Agreement shall be true and correct when made and on and as of the Closing Date as though such representations and warranties were made on and as of the Closing Date (unless such representation or warranty is made on and as of a specific date, in which case it shall be true and correct in all material respects as of such date);

(b) Buyer shall have performed or complied in all material respects with each obligation and covenant required by this Agreement to be performed or complied with by Buyer on or before the Closing;

(c) Seller shall have received all of the documents required to be delivered by Buyer under Section 6.1;

(d) Seller shall have received the Purchase Price in accordance with Section 2.2 and all other amounts due to Seller hereunder; and

(e) No order or injunction of any court or administrative agency of competent jurisdiction nor any statute, rule, regulation or executive order promulgated by any Governmental Authority of competent jurisdiction shall be in effect as of the Closing which restrains or prohibits the transfer of the Assets or the consummation of any other transaction contemplated hereby;

Section 5.2 Conditions Precedent to Buyer's Obligations. The obligation of Buyer to purchase and pay for the Assets is subject to the satisfaction (or waiver in writing by Buyer) as of the Closing of the following conditions:

(a) Each of the representations and warranties made by Seller in this Agreement shall be true and correct (without giving effect to any limitation as to "materially" or "Material Adverse Effect" or similar qualifiers) when made and on and as of the Closing Date as though such representations and warranties were made on and as of the Closing Date (unless such representation or warranty is made on and as of a specific date, in which case it shall be true and correct in all material respects as of such date), except where failure of such representations or warranties to be so true and correct would not, individually or in the aggregate, have had and would not reasonably be expected to have a Material Adverse Effect.

(b) Seller shall have performed or complied in all material respects with each obligation and covenant required by this Agreement to be performed or complied with by Seller on or before the Closing;

(c) No order or injunction of any court or administrative agency of competent jurisdiction nor any statute, rule, regulation or executive order promulgated by any Governmental Authority of competent jurisdiction shall be in effect as of the Closing which restrains or prohibits the transfer of the Assets or the consummation of any other transaction contemplated hereby;



(d) Seller's interest in the Property shall be delivered to Buyer in the manner required under Section 8.1;

(e) Buyer shall have received (i) the Trunk Club Estoppel and (ii) the Ground Lessor Estoppel;

(f) Subject to the Buyer's payment of all title insurance premiums and expenses as provided herein, Buyer shall have received or the Title Company shall be irrevocably committed to issue the Title Policy to Buyer;

(g) Seller shall have terminated the Hotel Management Agreement and the Sublease and Manager shall have vacated the Property in accordance with Sections 3.5; and

(i) Buyer shall have received all of the documents required to be delivered by Seller under Section 6.2.

Section 5.3 Waiver of Conditions Precedent. The Closing shall constitute conclusive evidence that Seller and Buyer have respectively waived any conditions which are not satisfied as of the Closing.

## ARTICLE VI

### CLOSING DELIVERIES

#### Section 6.1 Buyer Closing Deliveries.

Buyer shall deliver the following documents to Escrow Agent on or before the Closing Date:

(a) an assignment and assumption of Seller's interest in the Space Leases (the "Assignment of Leases"), duly executed by Buyer in substantially the form of Exhibit B hereto;

(b) an assignment and assumption of the Assumed Contracts (the "Assignment of Contracts") duly executed by Buyer in substantially the form of Exhibit C hereto;

(c) a notice letter to the Tenants at the Property (collectively, the "Tenant Notices") duly executed by Buyer, in substantially the form of Exhibit D attached hereto;

(d) an assignment of all Asset-Related Property except for the Assumed Contracts, Liquor License and Personal Property (including, without limitation, the warranties, permits, licenses and intangibles with respect to the Property), duly executed by Buyer in substantially the form of Exhibit E attached hereto (the "Assignment of Licenses, Permits and Warranties");

(e) Such other assignments, instruments of transfer and other documents as Seller and Title Company may reasonably require in order to complete the Transactions contemplated hereunder, in each case, duly executed by Buyer (provided the same does not increase the liability or obligations of Buyer in a manner not otherwise provided for in this Agreement);

(f) a duly executed officer's certificate from Buyer certifying that Buyer has taken all necessary action to authorize the execution of all documents being delivered hereunder and the

consummation of all of the transactions contemplated hereby and that such authorization has not been revoked, modified or amended;

(g) all transfer tax returns, to the extent required by law and the regulations issued pursuant thereto, in connection with the payment of all state or local real property transfer taxes that are payable or arise as a result of the consummation of the transactions contemplated by this Agreement, in each case, as prepared by Seller and Buyer and duly executed by Buyer, including, without limitation, the New York State Department of Taxation and Finance Form TP-584 and the return required by Title 11, Chapter 21 of the New York City Administrative Code and the regulations issued pursuant to the authority thereof, and Form RP-5217-NYC;

(h) an executed incumbency certificate from Buyer certifying the authority of the officers of Buyer to execute this Agreement and the other documents delivered by Buyer to Seller at the Closing;

(i) an assignment and assumption of the Ground Lease (the "Assignment and Assumption of Ground Lease"), duly executed by Buyer in substantially the form of Exhibit F hereto;

(j) a closing statement prepared and approved by Seller and Buyer, consistent with the terms of this Agreement (the "Closing Statement") duly executed by Buyer;

(k) a certificate duly executed by Buyer in the form of Exhibit G (the "Buyer Closing Certificate"); and

(l) the Holdback Agreement, duly executed by Buyer.

#### Section 6.2 Seller Closing Deliveries.

Seller shall deliver the following documents to Escrow Agent on or before the Closing Date:

(a) the Assignment of Leases, duly executed by Seller;

(b) the Assignment of Contracts, duly executed by Seller;

(c) a bill of sale with respect to the Personal Property located at the Property, duly executed by Seller in substantially the form of Exhibit H hereto;

(d) the Assignment of Licenses, Permits and Warranties, duly executed by Seller;

(e) the Assignment and Assumption of Ground Lease, duly executed by Seller;

(f) a termination of the Management Agreement and Sublease duly executed by Seller and Manager and a termination of the Sublease duly executed by Seller and Sublessee;

(g) the Tenant Notices, duly executed by Seller;

(h) such other assignments, instruments of transfer, and other documents as Buyer and Title Company may reasonably require in order to complete the transactions contemplated hereunder, in each case, duly executed by Seller (provided the same does not increase the liability or obligations of Seller in a manner not otherwise provided for in this Agreement);

(i) a duly executed officer's certificate from Seller certifying that Seller has taken all necessary action to authorize the execution of all documents being delivered hereunder and the consummation of all of the transactions contemplated hereby and that such authorization has not been revoked, modified or amended;

(j) an executed incumbency certificate from Seller certifying the authority of the officers of Seller to execute this Agreement and the other documents delivered by Seller to Buyer at the Closing;

(k) all transfer tax returns which are required by law and the regulations issued pursuant thereto in connection with the payment of all state or local real property transfer taxes that are payable or arise as a result of the consummation of the transactions contemplated by this Agreement, in each case, as prepared by Seller and Buyer, and duly executed by Seller, including, without limitation, the New York State Department of Taxation and Finance Form TP-584 and the return required by Title 11, Chapter 21 of the New York City Administrative Code and the regulations issued pursuant to the authority thereof, and Form RP-5217-NYC;

(l) an affidavit that the owner of the Property for U.S. federal income tax purposes is not a "foreign person" within the meaning of the Foreign Investment in Real Property Tax Act of 1980, as amended, in substantially the form of Exhibit I hereto;

(m) the Closing Statement, duly executed by Seller;

(n) the Title Affidavit, duly executed by Seller;

(o) a certificate duly executed by Seller in the form of Exhibit J (the "Seller Closing Certificate"); =

(p) the Holdback Agreement, duly executed by Seller; and

(q) A certificate or registration of title for all Vehicles which requires such certification or registration, duly executed by Seller, conveying such Vehicle to Buyer;

Section 6.3 Cooperation. In the event any Asset-Related Property is not assignable without consent that Seller was unable to obtain after using commercially reasonable efforts to do so if requested by Buyer (such as a letter of credit that is not transferable), Seller shall use commercially reasonable efforts to provide Buyer, at no cost to Seller, with the economic benefits of the Property by enforcing the Asset-Related Property (at Buyer's direction) for the benefit and at the expense of Buyer. The obligations under this Section 6.3 shall survive the Closing and will not be deemed merged into any instrument of conveyance delivered at the Closing.

## ARTICLE VII

### INSPECTIONS; RELEASE

Section 7.1 General Right of Inspection. Through the earlier of Closing or the termination of this Agreement in accordance with the terms hereof, Buyer and its agents shall have the right, at reasonable times and upon reasonable prior written notice to Seller (which shall in any event be at least 24 hours in advance) and at Buyer's sole cost and expense, to inspect the Property during normal business hours; provided, however, that any such inspection shall not unreasonably impede the normal day to day business operation of the Property. Notwithstanding the foregoing, Buyer shall not have the

right to interview any tenants, hotel guests, licensees, the Ground Lessor, the Existing Mortgagee or other users or occupants of the Property, or any employees, union representatives or Governmental Authorities with respect to the Property or the Assets, in each case, without the prior written consent of Seller (which may be granted or denied in Seller's sole discretion); provided, however, (a) upon reasonable advance notice from Buyer, Seller shall arrange for meetings or teleconferences among Buyer and (i) the general manager of the Property or (ii) the regional financial controller of the Manager, provided, in each case, that Seller shall have the right to have a representative present during any such meetings or phone calls, and (b) Buyer shall have the right, without the consent of Seller, (i) to order customary searches of public records from Governmental Authorities and (ii) after Buyer's delivery of the Additional Deposit in accordance with Section 2.2(a)(ii), to contact the Ground Lessor, Existing Mortgagee, Tenants, Employees and Governmental Authorities (including for the purpose of submitting its application for a new Liquor License). In addition, Buyer shall not have the right to do any invasive testing of the Property without the prior written consent of Seller (which shall be granted or denied in Seller's sole discretion). A representative of Seller shall be entitled to accompany Buyer and its agents on any such permitted inspections, interviews or testing or participate in any permitted teleconferences. Buyer's right of inspection of the Property shall be subject to the rights of tenants under the Space Leases, the rights of Ground Lessor under the Ground Lease, and hotel guests and licensees. Prior to any such inspection, Buyer shall deliver to Seller certificates reasonably satisfactory to Seller evidencing that Buyer's consultants and agents carry and maintain commercial general liability insurance coverages of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate with such companies as are acceptable to Seller in its reasonable discretion, in all cases naming Seller and Manager as additional insureds and loss payees thereunder. Buyer hereby agrees to indemnify, defend and hold harmless Seller and all Seller-Related Persons from and against all Losses arising out of, resulting from or relating to or in connection with or from any such inspection by Buyer or its agents, except to the extent such claim or damage was caused by (A) the mere discovery of existing conditions or (B) Seller or Seller's agents. At Seller's written request, Buyer will promptly furnish to Seller copies of any environmental or engineering reports (which did not contain any proprietary information regarding Buyer) received by Buyer relating to any inspections of the Property. The provisions of this Section 7.1 shall survive the Closing and/or any termination of this Agreement and will not be deemed merged into any instrument of conveyance delivered at the Closing.

Section 7.2     **DISCLAIMER. ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE ASSETS IS SOLELY FOR BUYER'S CONVENIENCE AND WAS OR WILL BE OBTAINED FROM A VARIETY OF SOURCES. SELLER HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO (AND EXPRESSLY DISCLAIMS ALL) REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR THE CLOSING DOCUMENTS. SELLER SHALL NOT BE LIABLE FOR ANY MISTAKES, OMISSIONS, MISREPRESENTATION OR ANY FAILURE TO INVESTIGATE THE ASSETS NOR SHALL SELLER BE BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS, APPRAISALS, ENVIRONMENTAL ASSESSMENT REPORTS OR OTHER INFORMATION PERTAINING TO THE ASSETS OR THE OPERATION THEREOF, FURNISHED BY SELLER, ITS REPRESENTATIVES OR ANY OTHER PERSON OR ENTITY ACTING ON SELLER'S BEHALF EXCEPT, IN EACH CASE, AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN ANY OF THE CLOSING DOCUMENTS.**

Section 7.3     **EXAMINATION; NO CONTINGENCIES.**

(a) IN ENTERING INTO THIS AGREEMENT, BUYER HAS NOT BEEN INDUCED BY AND HAS NOT RELIED UPON ANY WRITTEN OR ORAL REPRESENTATIONS, WARRANTIES OR STATEMENTS, WHETHER EXPRESS OR IMPLIED, MADE BY SELLER, OR ANY AFFILIATE OF SELLER, OR ANY OFFICER, DIRECTOR, AGENT, EMPLOYEE, OR OTHER REPRESENTATIVE OF ANY OF THE FOREGOING OR BY ANY BROKER OR ANY OTHER PERSON REPRESENTING OR PURPORTING TO REPRESENT SELLER WITH RESPECT TO THE ASSETS, THE CONDITION OF THE ASSETS, THE RESULTS OF THE OPERATION OF THE ASSETS, OR ANY OTHER MATTER AFFECTING OR RELATING TO THE TRANSACTIONS CONTEMPLATED HEREBY, OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS **AGREEMENT OR THE CLOSING DOCUMENTS. BUYER'S OBLIGATIONS UNDER THIS AGREEMENT SHALL NOT BE SUBJECT TO ANY CONTINGENCIES, DILIGENCE OR CONDITIONS EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR THE CLOSING DOCUMENTS. BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN THE CLOSING DOCUMENTS EXECUTED AND DELIVERED BY SELLER AT CLOSING, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, WHETHER EXPRESS OR IMPLIED OR ARISING BY OPERATION OF LAW, WITH RESPECT TO THE ASSETS OR THE CONDITION OF THE ASSETS. BUYER AGREES THAT, EXCEPT AS MAY BE EXPRESSLY STATED IN THIS AGREEMENT OR ANY OF THE CLOSING DOCUMENTS EXECUTED AND DELIVERED BY SELLER AT CLOSING, THE ASSETS WILL BE SOLD AND CONVEYED TO (AND ACCEPTED BY) BUYER AT THE CLOSING IN THEIR THEN-EXISTING CONDITION, AS IS, WHERE IS, WITH ALL FAULTS, AND WITHOUT ANY WRITTEN OR VERBAL REPRESENTATIONS OR WARRANTIES WHATSOEVER, WHETHER EXPRESS OR IMPLIED OR ARISING BY OPERATION OF LAW OR STATUTE, INCLUDING, WITHOUT LIMITATION, (I) ANY AND ALL STATUTORY, EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES RELATED TO THE SUITABILITY FOR HABITATION, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, (II) ANY STATUTORY, EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES OF ANY KIND, OR (III) ANY OTHER STATUTORY, EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES BY SELLER WHATSOEVER. BUYER ACKNOWLEDGES THAT BUYER HAS KNOWLEDGE AND EXPERTISE IN FINANCIAL, REAL ESTATE AND BUSINESS MATTERS THAT ENABLE BUYER TO EVALUATE THE MERITS AND RISKS OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.**

(b) **FOR PURPOSES OF THIS AGREEMENT, THE TERM "CONDITION OF THE ASSETS" INCLUDES, WITHOUT LIMITATION, THE FOLLOWING MATTERS:**

(i) **PHYSICAL CONDITION OF THE PROPERTY.** THE QUALITY, NATURE AND ADEQUACY OF THE PHYSICAL CONDITION OF THE ASSETS INCLUDING, WITHOUT LIMITATION, THE QUALITY OF THE DESIGN, LABOR AND MATERIALS USED TO CONSTRUCT THE IMPROVEMENTS INCLUDED IN THE PROPERTY; THE CONDITION OF THE IMPROVEMENTS, INCLUDING THE STRUCTURAL ELEMENTS, FOUNDATIONS, ROOFS, GLASS, MECHANICAL, PLUMBING, ELECTRICAL, HVAC, SEWAGE, AND UTILITY COMPONENTS AND SYSTEMS; THE CAPACITY OR AVAILABILITY OF SEWER, WATER, OR OTHER UTILITIES; THE GEOLOGY, FLORA, FAUNA, SOILS, SUBSURFACE CONDITIONS, GROUNDWATER, LANDSCAPING, AND IRRIGATION OF OR WITH RESPECT TO THE PROPERTY, THE LOCATION OF THE PROPERTY IN OR NEAR ANY SPECIAL TAXING DISTRICT, FLOOD HAZARD ZONE, WETLANDS AREA, PROTECTED HABITAT, GEOLOGICAL FAULT OR SUBSIDENCE ZONE, HAZARDOUS WASTE

DISPOSAL OR CLEAN-UP SITE, OR OTHER SPECIAL AREA, THE EXISTENCE, LOCATION, OR CONDITION OF INGRESS, EGRESS, ACCESS, AND PARKING; THE CONDITION OF THE PERSONAL PROPERTY AND ANY FIXTURES; AND THE ENVIRONMENTAL STATE OR CONDITION OF THE PROPERTY, INCLUDING THE ACTUAL OR POSSIBLE PRESENCE IN, ON, UNDER OR NEAR THE PROPERTY, OR THE TRANSPORTATION TO OR FROM THE PROPERTY, OF ANY HAZARDOUS MATERIALS, OR OTHER HAZARDOUS, DANGEROUS, OR TOXIC SUBSTANCES, MATERIALS OR WASTE. **“HAZARDOUS MATERIALS” MEANS (A) THOSE SUBSTANCES INCLUDED WITHIN THE DEFINITIONS OF ANY ONE OR MORE OF THE TERMS “HAZARDOUS SUBSTANCES,” “TOXIC POLLUTANTS”, “HAZARDOUS MATERIALS”, “TOXIC SUBSTANCES”, AND “HAZARDOUS WASTE” IN THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, 42 U.S.C. § 9601 ET SEQ. (AS AMENDED), THE HAZARDOUS MATERIALS TRANSPORTATION ACT, AS AMENDED, 49 U.S.C. SECTIONS 1801 ET SEQ., THE RESOURCE CONSERVATION AND RECOVERY ACT OF 1976 AS AMENDED, 42 U.S.C. SECTION 6901 ET SEQ., SECTION 311 OF THE CLEAN WATER ACT, 15 U.S.C. § 2601 ET SEQ., 33 U.S.C. § 1251 ET SEQ., 42 U.S.C. 7401 ET SEQ., AND THE REGULATIONS AND PUBLICATIONS ISSUED UNDER ANY SUCH LAWS, (B) PETROLEUM, RADON GAS, LEAD BASED PAINT, ASBESTOS OR ASBESTOS CONTAINING MATERIAL AND POLYCHLORINATED BIPHENYLS, (C) MOLD OR CONDITIONS AT THE PROPERTY THAT MAY PRESENT A RISK OF MOLD OR (D) OTHER SUBSTANCES, WASTES OR MATERIALS LISTED OR DEFINED BY ANY STATE OR LOCAL STATUTES, REGULATIONS AND ORDINANCES PERTAINING TO THE PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT.**

(ii) **ADEQUACY OF THE ASSETS.** THE ECONOMIC FEASIBILITY, CASH FLOW AND EXPENSES OF THE PROPERTY AND OTHER ASSETS, AND THE HABITABILITY, MERCHANTABILITY, FITNESS, SUITABILITY AND ADEQUACY OF THE PROPERTY AND OTHER ASSETS FOR ANY PARTICULAR USE OR PURPOSE.

(iii) **LEGAL COMPLIANCE OF THE ASSET.** THE COMPLIANCE OR NON-COMPLIANCE OF SELLER, THE PROPERTY, THE OTHER ASSETS OR THE OPERATION OF ANY PART THEREOF IN ACCORDANCE WITH (I) APPLICABLE LAWS, INCLUDING, BUT NOT LIMITED TO, ALL CODES, LAWS, ORDINANCES, REGULATIONS, AGREEMENTS, LICENSES, PERMITS, APPROVALS AND APPLICATIONS OF OR WITH ANY GOVERNMENTAL AUTHORITIES RELATING TO ZONING, BUILDING, PUBLIC WORKS, PARKING, FIRE AND POLICE ACCESS, ACCESS OR ACCESSIBILITY BY PERSONS WITH DISABILITIES, FIRE OR LIFE SAFETY, SUBDIVISION AND SUBDIVISION SALES, AND HAZARDOUS MATERIALS, DANGEROUS, AND TOXIC SUBSTANCES, MATERIALS, CONDITIONS OR WASTE, INCLUDING, WITHOUT LIMITATION, THE PRESENCE OF HAZARDOUS MATERIALS IN, ON, UNDER OR ABOUT THE ASSETS THAT WOULD CAUSE STATE OR FEDERAL AGENCIES TO ORDER A CLEAN UP OF THE ASSETS UNDER ANY APPLICABLE LEGAL REQUIREMENTS AND (II) ALL AGREEMENTS, COVENANTS, CONDITIONS, RESTRICTIONS (PUBLIC OR PRIVATE), CONDOMINIUM PLANS, DEVELOPMENT AGREEMENTS, SITE PLANS, BUILDING PERMITS, BUILDING RULES, AND OTHER INSTRUMENTS AND DOCUMENTS GOVERNING OR AFFECTING THE USE, MANAGEMENT, AND OPERATION OF THE ASSETS.

(iv) MATTERS DISCLOSED IN THE SCHEDULES AND THE ASSET FILE. THOSE MATTERS REFERRED TO IN THIS AGREEMENT AND THE DOCUMENTS LISTED ON THE SCHEDULES ATTACHED HERETO AND THE MATTERS DISCLOSED IN THE ASSET FILE.

(v) INSURANCE. THE AVAILABILITY, COST, TERMS AND COVERAGE OF LIABILITY, HAZARD, COMPREHENSIVE AND ANY OTHER INSURANCE OF OR WITH RESPECT TO THE ASSETS OR ANY PORTION THEREOF.

(vi) CONDITION OF TITLE. SUBJECT TO SECTION 8.2, THE CONDITION OF TITLE TO THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE VESTING OF TITLE, THE LEGAL DESCRIPTION OF THE LAND, TITLE DEFECTS, LIENS, ENCUMBRANCES, BOUNDARIES, ENCROACHMENTS, MINERAL RIGHTS, OPTIONS, EASEMENTS, ACCESS AND OTHER MATTERS AFFECTING TITLE; THE EXISTENCE OR ABSENCE OF VIOLATIONS OF RESTRICTIVE COVENANTS, ZONING ORDINANCES, SETBACK LINES, OR DEVELOPMENT AGREEMENTS; THE AVAILABILITY, COST, AND COVERAGE OF TITLE INSURANCE; LEASES, RENTAL AGREEMENTS, OCCUPANCY AGREEMENTS, AND RIGHTS OF PARTIES IN POSSESSION OF, USING, OR OCCUPYING THE PROPERTY.

Section 7.4 RELEASE.

(a) **BUYER HEREBY AGREES THAT SELLER, AND EACH OF SELLER'S PARTNERS, MEMBERS, TRUSTEES, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, PROPERTY MANAGERS, ASSET MANAGERS, AGENTS, ATTORNEYS, AFFILIATES AND RELATED ENTITIES, HEIRS, SUCCESSORS, AND ASSIGNS (COLLECTIVELY, THE "RELEASEES") SHALL BE, AND ARE HEREBY, FULLY AND FOREVER RELEASED AND DISCHARGED FROM ANY AND ALL LIABILITIES, LOSSES, CLAIMS (INCLUDING ANY THIRD PARTY CLAIMS), DEMANDS, DAMAGES (OF ANY NATURE WHATSOEVER), CAUSES OF ACTION, COSTS, PENALTIES, FINES, JUDGMENTS, ATTORNEYS' FEES, CONSULTANTS' FEES AND COSTS AND EXPERTS' FEES (COLLECTIVELY, THE "CLAIMS") WITH RESPECT TO ANY AND ALL CLAIMS, WHETHER DIRECT OR INDIRECT, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, THAT MAY ARISE ON ACCOUNT OF OR IN ANY WAY BE CONNECTED WITH THE ASSETS OR THE PROPERTY OR ANY PORTION THEREOF INCLUDING, WITHOUT LIMITATION, THE PHYSICAL, ENVIRONMENTAL AND STRUCTURAL CONDITION OF THE ASSETS OR THE PROPERTY OR ANY LAW OR REGULATION APPLICABLE THERETO, INCLUDING, WITHOUT LIMITATION, ANY CLAIM OR MATTER (REGARDLESS OF WHEN IT FIRST APPEARED) RELATING TO OR ARISING FROM (A) THE PRESENCE OF ANY ENVIRONMENTAL PROBLEMS, OR THE USE, PRESENCE, STORAGE, RELEASE, DISCHARGE, OR MIGRATION OF HAZARDOUS MATERIALS ON, IN, UNDER OR AROUND THE PROPERTY REGARDLESS OF WHEN SUCH HAZARDOUS MATERIALS WERE FIRST INTRODUCED IN, ON OR ABOUT THE PROPERTY, (B) ANY PATENT OR LATENT DEFECTS OR DEFICIENCIES WITH RESPECT TO THE ASSETS, (C) ANY AND ALL MATTERS RELATED TO THE ASSETS OR ANY PORTION THEREOF, INCLUDING WITHOUT LIMITATION, THE CONDITION AND/OR OPERATION OF THE ASSETS AND EACH PART THEREOF, (D) ANY AND ALL MATTERS RELATED TO THE CURRENT OR FUTURE ZONING OR USE OF THE PROPERTY, AND (E) THE PRESENCE, RELEASE AND/OR REMEDIATION OF ASBESTOS AND ASBESTOS CONTAINING MATERIALS IN, ON OR ABOUT THE PROPERTY REGARDLESS OF WHEN**

SUCH ASBESTOS AND ASBESTOS CONTAINING MATERIALS WERE FIRST INTRODUCED IN, ON OR ABOUT THE PROPERTY; PROVIDED, HOWEVER, THAT IN NO EVENT SHALL RELEASEES BE RELEASED FROM ANY CLAIMS ARISING PURSUANT TO THE EXPRESS PROVISIONS OF THIS AGREEMENT OR SELLER'S OBLIGATIONS, IF ANY, UNDER THE CLOSING DOCUMENTS. BUYER HEREBY WAIVES AND AGREES NOT TO COMMENCE ANY ACTION, LEGAL PROCEEDING, CAUSE OF ACTION OR SUITS IN LAW OR EQUITY, OF WHATEVER KIND OR NATURE, INCLUDING, WITHOUT LIMITATION, A PRIVATE RIGHT OF ACTION UNDER THE FEDERAL SUPERFUND LAWS, 42 U.S.C. SECTIONS 9601 ET SEQ. AND SIMILAR STATE ENVIRONMENTAL LAWS (AS SUCH LAWS AND STATUTES MAY BE AMENDED, SUPPLEMENTED OR REPLACED FROM TIME TO TIME), DIRECTLY OR INDIRECTLY, AGAINST THE RELEASEES OR THEIR AGENTS IN CONNECTION WITH CLAIMS DESCRIBED ABOVE.

(b) IN THIS CONNECTION AND TO THE GREATEST EXTENT PERMITTED BY LAW, BUYER HEREBY AGREES THAT BUYER REALIZES, ACKNOWLEDGES AND ACCEPTS THAT FACTUAL MATTERS NOT KNOWN TO IT MAY HAVE GIVEN OR MAY HEREAFTER GIVE RISE TO CAUSES OF ACTION, CLAIMS, DEMANDS, DEBTS, CONTROVERSIES, DAMAGE, COSTS, LOSSES AND EXPENSES WHICH ARE PRESENTLY UNKNOWN, UNANTICIPATED AND UNSUSPECTED, AND BUYER FURTHER AGREES THAT THE WAIVERS AND RELEASES HEREIN HAVE BEEN NEGOTIATED AND AGREED UPON IN LIGHT OF THAT REALIZATION AND THAT BUYER NEVERTHELESS HEREBY INTENDS TO RELEASE, DISCHARGE AND ACQUIT SELLER FROM ANY SUCH UNKNOWN CLAIMS, DEBTS, AND CONTROVERSIES WHICH MIGHT IN ANY WAY BE CONSIDERED TO BE A MATERIAL PORTION OF THE CONSIDERATION GIVEN TO SELLER BY BUYER IN EXCHANGE FOR SELLER'S PERFORMANCE HEREUNDER.

(c) THE PROVISIONS OF THIS SECTION 7.4 SHALL SURVIVE THE CLOSING AND SHALL NOT BE DEEMED MERGED INTO ANY INSTRUMENT OR CONVEYANCE DELIVERED AT THE CLOSING.

## ARTICLE VIII

### TITLE AND PERMITTED EXCEPTIONS

Section 8.1 Permitted Exceptions. The Property shall be sold and is to be conveyed, and Buyer agrees to purchase the Property, subject only to the Permitted Exceptions. Except as expressly set forth in Section 8.2, all title exceptions and matters set forth in the Title Commitment and on the Survey shall be deemed Permitted Exceptions and are hereby approved by Buyer. Notwithstanding the foregoing, under no circumstances will any of the following constitute Permitted Exceptions: (a) any mortgages, deeds of trust or other security interests for any other financing incurred by Seller except for the Existing Mortgage (in the event the lien thereof is assigned to Buyer's lender as contemplated by Section 8.5) and the equipment liens and financing statements securing Seller's obligations under the Ricoh Equipment Lease that encumber the Property, (b) any liens for real estate taxes which would be delinquent at Closing, (c) any mechanics' and materialmen's liens relating to work performed by or on behalf of Seller or Manager that encumber the Property, (d) judgment liens against Seller that encumber the Property, (e) any liens for state or federal taxes which would be delinquent at Closing, and (f) any liens related to utilities being provided to the Property which would be delinquent at Closing unless Buyer has received a credit against the Purchase Price in respect of such amounts; except, in each case, to the extent that the Title Company shall commit to omit any exceptions in the Title Policy relating to such items without any additional cost to Buyer, whether such insurance is made available in consideration of



payment, bonding, indemnity of Seller or otherwise. Buyer is solely responsible for obtaining any updated title commitments, surveys, or any other title related matters Buyer desires with respect to the Property.

Section 8.2 Certain Exceptions to Title; Inability to Convey.

(a) Approval by Buyer of any additional title exceptions, defects, encumbrances or other title or survey matters that would have a Material Adverse Effect, in each case, first disclosed in writing after the end of the Due Diligence Period (“Additional Title Matters”) shall be a condition precedent to Buyer’s obligations to purchase the Property. Unless Buyer gives written notice that it disapproves of any Additional Title Matters (“Additional Title Matter Notice”), stating the Additional Title Matters so disapproved, before the sooner to occur of the Closing or five Business Days after receipt of written notice of such Additional Title Matters, Buyer shall be deemed to have approved such Additional Title Matters. Seller shall have until the Closing Date within which to remove the disapproved Additional Title Matters set forth therein from title (Seller having the right but not the obligation to do so). In the event Seller determines that it is unable or unwilling to remove any one or more of such disapproved Additional Title Matters, Seller shall give written notice to Buyer to such effect within five Business Days after receipt of the Additional Title Matter Notice; in such event, Buyer may, at its option, terminate this Agreement upon written notice to Seller but only if given prior to the sooner to occur of the Closing or three Business Days after Buyer receives Seller’s notice, in which case this Agreement shall immediately terminate, Buyer shall be entitled to a return of the Earnest Money, and Seller and Buyer shall have no further rights or obligations hereunder, except for the provisions hereof that expressly survive termination of this Agreement. If Buyer fails to give such termination notice by such date, Buyer shall be deemed to have waived its objection to, and to have approved, the matters set forth in Seller’s notice.

(b) In the event Seller is unable to convey its interest to the Property subject only to the Permitted Exceptions, Buyer may elect, as its sole and exclusive remedy therefore, to either (x) subject to Seller’s rights under the immediately succeeding sentence, terminate this Agreement by giving written notice to Seller and Escrow Agent, in which event the Earnest Money shall be returned to Buyer and, thereafter, the parties shall have no further rights or obligations hereunder except for those obligations which expressly survive the termination of this Agreement, or (y) waive such title objections, in which event such title objections shall be deemed additional Permitted Exceptions and the Closing shall occur as herein provided without any reduction of or credit against the Purchase Price. Seller may elect (but shall not be obligated) to remove or cause to be removed, or insured over, at its expense any title matters which are not Permitted Exceptions, and shall be entitled to a reasonable adjournment of the Closing (not to exceed 30 days) for the purpose of such removal, which removal will be deemed effected by the issuance of title insurance eliminating or insuring against the effect of such title matter. Notwithstanding anything in this Agreement to the contrary, Seller shall be obligated at Closing to cause the release or discharge of (i) any Voluntary Encumbrance created by Seller on or after the Effective Date (each, a “Post-Effective Date Voluntary Encumbrance”) and (ii) any Lien encumbering the Property after the Effective Date that is not a Permitted Exception and may be removed by the payment of a sum of money (each, a “Post-Effective Date Monetary Encumbrance”), provided, Seller shall not be obligated to spend more than \$1,000,000 in the aggregate to remove any Post-Effective Date Monetary Encumbrances, and provided, further, if a Post-Effective Date Voluntary Encumbrance or Post-Effective Date Monetary Encumbrance is omitted from the Title Policy (or is otherwise insured over by the Title Company) then Seller shall be deemed to have satisfied the provisions of this sentence and caused the release of such Post-Effective Date Voluntary Encumbrance or Post-Effective Date Monetary Encumbrance. Notwithstanding the foregoing, If Seller fails or refuses to fully discharge any Post-Effective Date Monetary Encumbrance, Buyer shall have the option to terminate this Agreement, in which event the Earnest Money shall be returned to Buyer, and Seller and Buyer shall have no further

rights or obligations hereunder, except for the provisions hereof that expressly survive termination of this Agreement. The parties acknowledge and agree that Seller shall have the right to apply or cause Escrow Agent to apply all or any portion of the Purchase Price to cause the release of any Post-Effective Date Voluntary Encumbrance, any Post-Effective Date Monetary Encumbrance, or any lien securing the Existing Financing. Any costs or expenses incurred by Seller in causing the Title Company to omit a Post-Effective Date Voluntary Encumbrance or Post-Effective Date Monetary Encumbrance shall be referred to herein as “Seller Title Expenses”.

(c) Except as expressly set forth in Section 8.2(a) and (b), nothing contained in this Agreement shall be deemed to require Seller to take or bring any action or proceeding or any other steps to remove any title exception or to expend any moneys therefor, nor shall Buyer have any right of action against Seller, at law or in equity, for Seller’s inability to convey its interest in the Property subject only to the Permitted Exceptions.

(d) Buyer agrees to purchase Seller’s interest in the Property subject to any and all Violations, or any condition or state of repair or disrepair or other matter or thing, whether or not noted, which, if noted, would result in a Violation being placed on the Property. Seller shall have no duty to remove or comply with or repair any condition, matter or thing whether or not noted, which, if noted, would result in a Violation being placed on the Property. Seller shall have no duty to remove or comply with or repair any of the aforementioned Violations (and shall have no duty to remove or close any open building permits), or other conditions, and Buyer shall accept the Property subject to all such Violations (and any open building permits), the existence of any conditions at the Property which would give rise to such Violations, if any, and any governmental claims arising from the existence of such Violations, in each case without any abatement of or credit against the Purchase Price; provided, however, that to the extent Seller is unable or unwilling to pay all outstanding and unpaid fines relating to the Violations set forth on Schedule 8.2(d) on or prior to Closing, then at Seller’s option either (i) Buyer shall receive a credit to the Purchase Price in the amount set forth on Schedule 8.2(d) opposite each such Violation that remains unpaid at Closing (the “Unpaid Violation Amount”) or (ii) Seller shall deposit in escrow with the Title Company the Unpaid Violation Amount to secure payment or other resolution of such Violations pursuant to an escrow agreement reasonably satisfactory to Seller and Buyer.

Section 8.3 Title Policy. At Closing, Buyer shall arrange for the Title Company shall issue, or irrevocably commit to issue, to Buyer, an ALTA 2006 leasehold form title policy (the “Title Policy”) with respect to the Property, in the amount of the Purchase Price with respect to the Property, and insure that the leasehold under the Ground Lease is vested in Buyer subject only to the Permitted Exceptions. In such case, Buyer shall be entitled to request that the Title Company provide such endorsements (or amendments) to any Title Policy as Buyer may reasonably require, provided that (a) such endorsements (or amendments) shall be at no cost to, and shall impose no additional liability on, Seller, (b) Buyer’s obligations under this Agreement shall not be conditioned upon Buyer’s ability to obtain such endorsements and, if Buyer is unable to obtain such endorsements, Buyer shall nevertheless be obligated to proceed to close the transactions contemplated by this Agreement without reduction of or set off against the Purchase Price, and (c) the Closing shall not be delayed as a result of Buyer’s request.

Section 8.4 Cooperation. In connection with obtaining the Title Policy, to the extent requested by the Title Company, Buyer and Seller, as applicable shall deliver to the Title Company (a) evidence sufficient to establish (x) the legal existence of Buyer and Seller and (y) the authority of the respective signatories of Seller and Buyer to bind Seller and Buyer, as the case may be, (b) a certificate of good standing of Seller issued by the State of Delaware (c) a certificate of good standing of Seller issued by the State of New York, and (d) an affidavit of Seller in the form attached hereto as Exhibit K (the “Title Affidavit”).

Section 8.5 Assignment and Assumption of Existing Mortgage.

(a) Seller shall use commercially reasonable efforts to cause the Existing Mortgage to be assigned to Buyer's lender upon the Closing at no cost to Buyer except as provided below; provided, however, that it shall not be a condition to Buyer's obligation to close hereunder that the Existing Mortgage actually be so assigned. In connection with such assignment, (i) Buyer shall be responsible for paying the reasonable legal fees of Seller's lender, and (ii) each of Seller and Buyer shall be responsible for payment of its own legal fees. In the event that the Existing Mortgage is assigned to Buyer's lender upon the Closing, Buyer shall pay to Seller on the Closing Date, contemporaneously with the payment of the Purchase Price and in the same manner as the cash portion of the balance of the Purchase Price, an amount equal to 50% of the mortgage recording tax savings it realizes as a result of any such assignment.

(b) Following the Buyer's delivery of the Additional Deposit in accordance with Section 2.2(a)(ii), Buyer shall have the right to negotiate with Existing Mortgagee for Buyer's assumption of the Existing Financing at Closing; provided, however, that it shall not be a condition to Buyer's obligation to close hereunder that the Existing Financing actually be so assumed. In the event that, at Closing (i) Existing Mortgagee consents to the assumption of the Existing Financing by Buyer, (ii) Seller, Buyer and Existing Mortgagee execute an assumption agreement pursuant to which Buyer assumes the liability of Seller under the Existing Financing in form and substance satisfactory to Existing Mortgagee and Seller, and (iii) Seller, Buyer and Existing Mortgagee execute a release of Seller and any guarantor of Seller of all liabilities under the Existing Financing (except those which would have expressly survived termination of the applicable financing documents or payment in full of any such Existing Financing on the Closing Date), in form and substance satisfactory to Seller, then Buyer shall receive a credit to the Purchase Price in an amount equal to the outstanding balance of the Existing Financing. In connection with any such assumption, (A) Buyer shall be responsible for paying the legal fees of the Existing Mortgagee and Seller, and (B) Buyer shall be responsible for payment of its own legal fees.

ARTICLE IX

TRANSACTION COSTS; RISK OF LOSS

Section 9.1 Transaction Costs.

(a) In addition to their respective apportionment obligations under Article X hereunder, Seller and Buyer shall each be responsible for (i) the payment of the costs of their respective legal counsel, advisors and other professionals employed thereby in connection with the transactions contemplated by this Agreement, and (ii) one-half of the reasonable fees and expenses of the Escrow Agent.

(b) Buyer shall be responsible for all costs and expenses associated with (i) Buyer's due diligence, (ii) any title insurance premiums, including the costs of any endorsements, title search charges, survey costs or similar expenses, (iii) the recording charges for recording the Assignment and Assumption of Ground Lease (specifically excluding all Transfer Taxes, all of which are payable by Seller under Section 9.1(c)), (iv) Buyer's mortgage, if applicable, and (v) all sales and use Taxes applicable to the conveyance of the Assets to Buyer pursuant to the terms of this Agreement, including the New York State Sales Tax in accordance with Article 28 of the New York State Tax Law and the New York City Sales Tax in accordance with Title 11, Chapter 20 of the New York City Administrative Code, but excluding Transfer Taxes payable by Seller pursuant to Section 9.1(c) below. Seller shall be responsible for paying or remitting any required payments collected from Buyer pursuant to Section 9.1(b)(v) to the applicable Governmental Authorities at Closing.

(c) Seller shall be responsible for (1) any Seller Title Expenses and (2) the payment at Closing of all New York State and New York City Transfer Taxes (including any interest, additions to tax or penalties, as applicable) incurred as a result of the conveyance of Seller's interest in the Property to Buyer, including the New York State Transfer Tax in accordance with Article 31 of the New York State Tax Law and the New York City Real Property Transfer Tax in accordance with Title 11, Chapter 21 of the New York City Administrative Code (collectively, "Transfer Taxes").

(d) Any other closing costs not specifically allocated by this Agreement shall be allocated in accordance with closing customs for hotel sale transactions in New York City.

(e) Buyer and Seller hereby waive compliance with the notice provisions of any applicable bulk sales statute in effect; for the avoidance of doubt, Buyer will not file New York State Department of Taxation and Finance Form AU-196.10 or any other form pursuant to any applicable bulk sales statute.

(f) Each party to this Agreement shall indemnify the other party and its successors and assigns from and against any and all loss, damage, cost, charge, liability or expense (including, without limitation, court costs and reasonable attorneys' fees) which such other party may sustain or incur as a result of the failure of the indemnifying party to timely pay any of the aforementioned taxes, fees or other charges for which it has assumed responsibility under this Section 9.1. The provisions of this Section 9.1 shall survive the Closing or the termination of this Agreement without limitation and will not be deemed merged into any instrument of conveyance delivered at the Closing.

#### Section 9.2 Risk of Loss.

(a) If, on or before the Closing Date, the Property or any portion thereof shall be (i) damaged or destroyed by fire or other casualty or (ii) taken as a result of any condemnation or eminent domain proceeding, Seller shall promptly upon learning thereof notify Buyer and, at Closing, Seller will credit against the Purchase Price payable by Buyer at the Closing an amount equal to the proceeds, if any, received by Seller as a result of such casualty or condemnation, together with a credit for any deductible under such insurance paid by Seller, less (A) any amounts spent by Seller to restore which were approved by Buyer in writing or which were reasonably necessary to prevent further damage to the Property, (B) costs and expenses incurred in obtaining such proceeds and (C) amounts received on account of business or rental interruption or temporary taking relating to the period prior to Closing. If as of the Closing Date, Seller has not received any such insurance or condemnation proceeds, then subject to Section 9.2(b), the parties shall nevertheless consummate on the Closing Date the conveyance of the Assets (without any credit for such insurance or condemnation proceeds except for a credit for any deductible under such insurance) and Seller will at Closing assign to Buyer all rights of Seller, if any, to the insurance or condemnation proceeds (other than payable on account of business or rental interruption or a temporary taking relating to the period prior to Closing) and to all other rights or claims arising out of or in connection with such casualty or condemnation.

(b) Notwithstanding the provisions of Section 9.2(a), if, on or before the Closing Date, the Property or any portion thereof shall be (i) damaged or destroyed by a Material Casualty or (ii) taken as a result of a Material Condemnation, Buyer shall have the right, exercised by notice to Seller no more than ten (10) days after Buyer has received written notice of such Material Casualty or Material Condemnation (and in no event later than the Closing), to terminate this Agreement, in which event the Earnest Money shall be refunded to Buyer and neither party shall have any further rights or obligations hereunder other than those which expressly survive the termination of this Agreement. If Buyer fails to timely terminate this Agreement in accordance with this Section 9.2(b), the provisions of Section 9.2(a) shall apply. As used in this Section 9.2(b), a "Material Casualty" shall mean any damage to the Property

or any portion thereof by fire or other casualty that is expected to cost in excess of five percent (5%) of the Purchase Price to repair or otherwise prevents or materially interferes with the operation of the Property (other than damage to guest rooms) for a period after the Closing of more than 30 days. As used in this Section 9.2(b), a “Material Condemnation” shall mean a taking of the Property or any material portion thereof, or a taking that, (x) materially adversely affects pedestrian or vehicular access to the Property or parking at the Property on a permanent basis, as a result of a condemnation or eminent domain proceeding or (y) permanently and materially impairs the use of the Property for the operation of the Property.

Section 9.3 GOL 5-1311. The provisions of this Article IX are intended to supersede those of Section 5-1311 of the General Obligations Law of the State of New York.

## ARTICLE X

### ADJUSTMENTS

Unless otherwise provided below, the following are to be adjusted and prorated between Seller and Buyer as of 11:59 P.M. on the day preceding the Closing (the “Cut-Off Time”), without duplication, based upon a 365 day year, with Seller being entitled to all benefits and responsible for all burdens prior to the Cut-Off Time and Buyer being entitled to all benefits and responsible for all burdens after the Cut-Off Time (and in furtherance of the foregoing the net amount under this Article X shall be added to (if such net amount is in Seller’s favor) or deducted from (if such net amount is in Buyer’s favor) the Purchase Price payable at Closing):

#### Section 10.1 Fixed Rents and Additional Rents.

(a) Fixed rents (collectively, “Fixed Rents”) and Additional Rents (as hereinafter defined; Fixed Rents and Additional Rents being together referred to herein as “Rents”) paid or payable by tenants under the Space Leases in connection with their occupancy of the Property shall be adjusted and prorated on an if, as and when collected basis. Any Rents collected by Buyer or Seller after the Closing from any tenant who owes Rents for periods prior to the Closing, shall be applied (i) first, in payment of Rents owed by such tenant for the month in which the Closing occurs, (ii) second, in payment of current Rents at the time of receipt, (iii) third, to delinquent Rents, if any, which became due prior to the Closing and (iv) fourth, to delinquent Rents, if any, which became due and payable after the Closing. Each such amount, less any costs of collection (including reasonable counsel fees) reasonably allocable thereto, shall be adjusted and prorated as provided above, and the party who receives such amount shall promptly pay over to the other party the portion thereof to which it is so entitled. For the purposes of this provision, the term “Additional Rent” shall mean amounts payable under any Space Lease for (A) percentage rent, (B) so called “escalation rent” or additional rent based upon increases in real estate taxes or operating expenses or labor costs or cost of living or porter’s wages or otherwise and (C) any general excise taxes collected from the tenants. As to any Additional Rent in respect of an accounting period that shall have expired prior to the Closing but which is payable after the Closing, Buyer shall pay the entire amount over to Seller upon Buyer’s receipt thereof.

(b) Buyer shall bill tenants who owe Rents for periods prior to the Closing on a monthly basis following the Closing and use commercially reasonable efforts to attempt to collect such past due Rents with any reasonable out-of-pocket expenses incurred in connection therewith reimbursed by Seller (or withheld by Buyer from any amounts received by Buyer on behalf of Seller), but shall not be obligated to engage a collection agency or take legal action to collect such amount. Notwithstanding the foregoing, if Buyer shall be unable to collect such past due Rents, Seller shall have the right to pursue such tenant to collect such delinquencies (including, without limitation, the prosecution of one or more

lawsuits, but Seller shall not take any action to evict any such tenant or terminate any such Space Lease). Seller shall furnish to Buyer all information relating to the period prior to the Closing that is reasonably necessary for the billing of such Rent and Buyer will deliver to Seller, concurrently with the delivery to tenants, copies of all statements relating to Rent for a period prior to the Closing. Buyer shall bill tenants for Rents for accounting periods prior to the Closing in accordance with and on the basis of such information furnished by Seller. The obligations of Buyer under this Section 10.1(b) shall survive Closing.

(c) To the extent that any portion of Additional Rent is required to be paid monthly by tenants on account of estimated amounts for any calendar year (or, if applicable, any lease year or tax year or any other applicable accounting period), and at the end of such calendar year (or lease year, tax year or other applicable accounting period, as the case may be), such estimated amounts are to be recalculated based upon the actual expenses, taxes and other relevant factors for that calendar (lease or tax) year or other applicable accounting period, with the appropriate adjustments being made with such tenants, then such portion of the Additional Rent shall be prorated between Seller and Buyer at the Closing based on such estimated payments actually paid by tenants (i.e., with Seller entitled to retain all monthly or other periodic installments of such amounts paid by tenants with respect to periods prior to the calendar month or other applicable installment period in which the Closing occurs (on a pro-rata basis for any partial months), Seller to pay to Buyer at the Closing all monthly or other periodic installments of such amounts theretofore received by Seller with respect to periods following the calendar month or other applicable installment period in which the Closing occurs and Seller and Buyer to apportion as of the Closing all monthly or other periodic installments of such amounts paid by tenants with respect to the calendar month or other applicable installment period in which the Closing occurs). At the time(s) of final calculation and collection from (or refund to) each tenant of the amounts in reconciliation of actual Additional Rent for a period for which estimated amounts paid by such tenant have been prorated, there shall be a re proration between Seller and Buyer. If, with respect to any tenant, the recalculated Additional Rent exceeds the estimated amount paid by such tenant, upon collection from the tenant, such excess shall be apportioned between Seller and Buyer as of the Closing in accordance with paragraph (a), (b) and (c) of this Section 10.1. If, with respect to any tenant, the recalculated Additional Rent is less than the estimated amount paid by such tenant, such shortfall shall be apportioned between Seller and Buyer as of the Closing, with Seller paying to Buyer the portion of such shortfall so allocable to Seller.

(d) Until such time as all amounts required to be paid to Seller by Buyer pursuant to this Section 10.1 shall have been paid in full, Buyer shall furnish to Seller, upon Seller's request, a reporting of rents which have been collected by Buyer after the Closing with respect to Space Leases with delinquent Rents as of the Closing.

#### Section 10.2 Taxes and Assessments.

Real estate (ad valorem) and personal property taxes affecting the Property shall be adjusted and prorated based on (a) the periods of ownership by Seller and Buyer and (b) the most current official real property tax information available from the county assessor's office where the Property is located or other assessing authorities. If real property tax and assessment figures for the taxes or assessments to be apportioned between Buyer and Seller pursuant to this Section 10.2 are not available, real property taxes shall be prorated based on the most recent assessment, subject to further and final adjustment when the tax rate and/or assessed valuation for such taxes and assessments for the Property is fixed. In the event that the Property or any part thereof shall be or shall have been affected by an assessment or assessments, whether or not the same become payable in annual installments (or portions thereof), Seller shall, at the Closing, be responsible for any installments (or portions thereof) payable prior to the Closing and Buyer shall be responsible for any installments (or portions thereof) payable from and

after the Closing. In addition, Buyer shall be responsible to pay all amounts for which it receives a credit hereunder.

Section 10.3 Utilities.

With respect to electricity, gas, fuel, steam, water and sewer services which are metered, trash removal and other utilities, Seller shall use reasonable efforts to have the respective companies providing such utilities read the meters on or immediately prior to the Cut-Off Time. Seller shall be responsible for all charges incurred prior to the Cut-Off Time based on such final meter readings and Buyer shall be responsible for all charges thereafter. To the extent such meters are not read at the Property and final bills rendered as of the Cut-Off Time, such charges with respect to the Property shall be prorated effective as of the Cut-Off Time utilizing an estimate of such charges reasonably approved by both Buyer and Seller based on prior utility bills, and any deposits or credits with respect to the foregoing services which are transferred to Buyer will be credited to Seller. Upon the taking of a subsequent actual reading, such apportionment shall be adjusted to reflect the actual rate for the billing period in which the Closing Date occurs, and Seller, or Buyer, as the case may be, shall promptly deliver to the other the amount determined to be due upon such adjustment.

Section 10.4 Contracts. Charges and payments under all Assumed Contracts.

Section 10.5 Miscellaneous Revenues. Revenues, if any, arising out of telephone booths, vending machines, parking, or other similar income producing agreements relating to the operation of the Property.

Section 10.6 Security Deposits. Buyer shall receive a credit equal to the actual amounts of the security deposits under the Space Leases which are being held by Seller in cash to the extent such amounts are not assigned or transferred to Buyer at Closing.

Section 10.7 Leasing Costs. Seller shall be responsible for all Leasing Costs relating to Space Leases or renewals, amendments, expansions and extensions of Space Leases, entered into, exercised or which first become binding, prior to the date of this Agreement (the "Seller's Leasing Costs"). Buyer shall be responsible for all Leasing Costs relating to Space Leases or renewals, amendments, expansions and extensions of Space Leases, entered into, exercised or which first become binding, after the date of this Agreement (the "Buyer's Leasing Costs"), and shall assume the economic effect of any "free rent" or other concessions pertaining to the period from and after the Closing Date and expressly disclosed in the Space Leases; provided, however, that Buyer shall not be responsible for any Leasing Costs resulting from Space Leases or renewals, amendments, expansions or extension thereof entered into by Seller in breach of its obligations under Section 3.4(d) hereof and any such Leasing Costs shall constitute Seller's Leasing Costs. To the extent Seller's Leasing Costs have not been fully paid as of the Closing Date, Buyer shall receive a credit at the Closing against the Purchase Price in the amount of the balance of Seller's Leasing Costs remaining to be paid and Buyer shall assume all obligations of Seller to pay the balance of Seller's Leasing Costs as to which Buyer shall have received such credit and to perform the obligations associated with the same. The obligations of Buyer under this Section 10.7 shall survive the Closing.

Section 10.8 Accounts Receivable.

(a) Guest Ledger. All revenues received or to be received from transient guests on account of room rents, facilities occupied and the use of the premises (including, without limitation, parking areas, mini-bar sales, phone and other communication charges and the like) for the period on or prior to the Cut-Off Time shall belong to Seller. At Closing, Seller shall receive a credit in an amount

equal to: (i) all amounts charged to the Guest Ledger for all room nights up to (but not including) the night during which the Cut-Off Time occurs, and (ii) one half (½) of all amounts charged to the Guest Ledger for the room night during which the Cut-Off Time occurs (provided, however, that Seller shall not receive a credit to the extent that such amounts were paid prior to Closing and Seller has received and retained any such amounts). Following the Closing, provided Seller has received a credit as set forth in the immediately preceding sentence, revenues collected from the Guest Ledger shall belong solely to Buyer. In the event that an amount less than the total amount due from a guest is collected and such guest continued in occupancy after the Cut-Off Time, such amount shall be divided between Seller and Buyer pro rata based on the relative amounts owed to each.

(b) Accounts Receivable (Other than Guest Ledger). Other than with respect to the Guest Ledger, as discussed above, there shall be no prorations or adjustments of any kind under this Agreement with respect to Accounts Receivable due and owing to Seller as of the Closing Date. Buyer acknowledges and agrees that (i) all such Accounts Receivable and any deposits with respect thereto shall remain the property of Seller and shall not be transferred to Buyer, (ii) Seller shall remain entitled to collect such Accounts Receivable and (iii) Buyer shall not be entitled to collect any such Accounts Receivable. In the event that Buyer receives any amounts in payment of such Accounts Receivable (with the understanding that unless any amount received by Buyer references specific invoices or is otherwise expressly stated to be with respect to an amount for a period prior to the Closing all amounts received by Buyer shall be applied first in payment of accounts receivable owed by such party for amounts that have accrued from and after the Closing), Buyer shall hold such amounts in trust and shall promptly deliver such amounts to Seller. Buyer shall not be required to take any legal action or to incur any out-of-pocket costs to effect collection on behalf of Seller. The provisions of this Section 10.8(b) shall survive the Closing hereunder without limitation.

Section 10.9 Consumables. At the Closing, the Purchase Price shall be increased by an amount equal to the cost (as reflected on Seller's balance sheet) of any unopened Consumables located at the Properties as of the Cut-Off Time.

Section 10.10 Accounts Payable. Seller shall be responsible for all Accounts Payable (as shown on the books and records of the Property as of the Cut-Off Time) to the extent attributable to the period preceding the Cut-Off Time and shall be entitled to keep any deposits with respect thereto which were not otherwise transferred to Buyer pursuant to the terms of this Agreement. Buyer shall be charged with any prepaid Accounts Payable to the extent those Accounts Payable are attributable to the period after the Cut-Off Time. From and after the Closing Date, Buyer shall be responsible for paying when due all other accounts payable arising out of the operation of the Property from and after the Cut-Off Time. The provisions of this Section 10.10 will survive the Closing without limitation and will not be deemed merged into any instrument of conveyance delivered at Closing.

Section 10.11 Bookings; Booking Deposits. At the Closing, Buyer shall assume all of the obligations of Seller under the Bookings made subject to and in accordance with this Agreement as of the Cut-Off Time, including, without limitation, obligations with respect to any prepaid amounts and deposits under the Booking Deposits not earned as of the Cut-Off Time, and Buyer shall receive a credit against the Purchase Price at the Closing in an amount equal to all such amounts (and, therefore, Seller shall have the right to retain any such amounts for which Buyer receives a credit). All prepaid amounts under the Booking Deposits for which Buyer has received credit as of the Cut-Off Time shall be the obligation of Buyer after the Closing. The provisions of this Section 10.11 shall survive Closing without limitation and will not be deemed merged into any instrument of conveyance delivered at the Closing.

Section 10.12 Sales, General Excise, Room and Occupancy Taxes. Seller shall pay all sales taxes, general excise taxes and room occupancy, hotel, resort, and use taxes due and payable



with respect to the operation of the Property for the period prior to the Cut-Off Time, and Buyer shall pay all sales taxes, general excise taxes, room occupancy, hotel, resort, and use taxes due and payable with respect to the operation of the Property for the periods on and after the Cut-Off Time. Seller, on the one hand, and Buyer, on the other hand, shall each pay fifty percent (50%) of all sales taxes, general excise taxes, room occupancy and use taxes due and payable with respect to the operation of the Property for the night commencing prior to and ending on the day on which the Cut-Off Time occurs. Seller shall be entitled to receive any rebates or refunds on such taxes (i) paid by Seller prior to Closing to the extent related to the period prior to Closing or (ii) paid by Seller prior to Closing to the extent related to the period following Closing and for which Seller did not receive a credit. The provisions of this Section 10.12 shall survive Closing without limitation and will not be deemed merged into any instrument of conveyance delivered at the Closing.

Section 10.13 Ground Rent. Ground rent and all other payments and charges due under the Ground Lease with respect to the year in which the Closing occurs shall be adjusted and prorated between Buyer and Seller as of the Closing.

Section 10.14 Gift Certificates. Buyer shall receive a credit at Closing with respect to the outstanding gift certificates, passes and coupons, whether in a specified dollar amount or for a specified item, such as room night or meals (collectively, "Gift Certificates") to be applied against the charges or fees for rooms, meals and/or goods and services at the Property, in an amount equal to 90% of the (i) face value of all Gift Certificates if a value is stated on such certificate, and (ii) if a face value is not stated on such certificate, the Scheduled Gift Certificate Costs applicable thereto. Buyer shall honor all such unexpired Gift Certificates after Closing and shall assume all liability, if any, for all outstanding Gift Certificates as of the Closing Date regardless of any purported expiration. As used herein, "Scheduled Gift Certificate Costs" shall mean the estimated out-of-pocket costs to the owner of the Property of or for providing rooms, meals and/or goods and services at the Property pursuant to the Gift Certificates.

Section 10.15 Other Adjustments. If applicable, the Purchase Price shall be adjusted at the Closing to reflect the adjustment of any other item which, under the explicit terms of this Agreement, is to be apportioned at Closing to effectuate the intent that, except as otherwise expressly provided herein, all items of operating revenue and operating expense of the Assets prior to the Cut-Off Time shall be for the account of and paid by Seller and all items of operating revenue and operating expense of the Assets with respect to the period after the Cut-Off Time shall be for the account of and paid by Buyer.

Section 10.16 Benefit Plans; Employees. Buyer shall be responsible for all liabilities that accrue or are incurred after the Cut-Off Time to or in respect of Transferred Employees that relate to their employment with Buyer, any manager engaged by Buyer or any Affiliate of Buyer or such manager, or the termination of such Transferred Employee's employment with Buyer or any Affiliate of Buyer or such manager. In addition to the foregoing, Buyer will be responsible for all costs and expenses of accrued, earned and unused (or unpaid) vacation, sick leave and paid time off for all Transferred Employees, including payroll taxes and any other amounts due in connection therewith, in each case, for the period through the Closing Date (collectively, the "Benefits Credit"). At the Closing, Buyer shall assume all of the obligations with respect to the Benefits Credit and Seller shall provide Buyer with a credit against the Purchase Price in the amount of the Benefits Credit. The covenants and agreements contained in this Section 10.16 are not intended and shall not confer any benefit or right on any person or entity other than the parties to this Agreement. Except for the Benefits Credit, Seller and the Manager shall be and remain solely responsible for payment of any other employee benefits payable to Employees, including former employees of the Manager and Seller at the Property with respect to any period prior to the Closing Date or (solely to the extent Buyer has made a qualifying offer of employment

pursuant to Section 14.1(a)) resulting from their termination at Closing and Seller shall indemnify, defend and hold Buyer harmless therefrom. The provisions of this Section 10.16 will survive the Closing and will not be deemed merged into any instrument of conveyance delivered at the Closing.

Section 10.17 Cash on Hand. Seller shall receive a credit for any and all cash on hand or on deposit in any house bank and all checks, traveler's checks and bank drafts paid by guests at the Property and located on the Property (collectively, the "Cash on Hand").

Section 10.18 Re-Adjustment; Credits against the Purchase Price. If any items to be adjusted pursuant to this Article X are not determinable at the Closing, the adjustment shall be made subsequent to the Closing when the charge is determined. Any errors or omissions in computing adjustments or readjustments at the Closing or thereafter shall be promptly corrected, and any corrective payments shall be promptly made, provided that the party seeking to correct such error or omission or to make such readjustment shall have notified the other party of such error or omission or readjustment on or prior to the date that is following the Closing. The provisions of this Section 10.18 will survive the Closing without limitation and will not be deemed merged into any instrument of conveyance delivered at the Closing.

Section 10.19 Post-Closing Statement. Not earlier than ninety (90) days following the Closing and not later than one-hundred twenty (120) days following the Closing (provided that adjustment of Taxes and adjustments and prorations under Section 10.16 may occur later if information with respect thereto is not then available or otherwise results from assessments or adjustments which take place thereafter), Buyer shall deliver to Seller, to the extent information is then available, a post-closing statement reflecting an accounting and substantiation covering all of the prorations and other adjustments set forth in this Article X in a form and substance reasonably satisfactory to Buyer and Seller, including any year-end or similar reconciliations. Unless otherwise expressly provided herein, the obligations of Seller and Buyer hereunder shall survive the Closing, until one (1) year after the Closing (provided that adjustment of Taxes and adjustments and prorations under Section 10.16 may occur later if information with respect thereto is not then available or otherwise results from assessments or adjustments which take place thereafter) and will not be deemed merged into any instrument of conveyance delivered at the Closing.

## ARTICLE XI

### INDEMNIFICATION

Section 11.1 Indemnification by Seller. Following the Closing and subject to Sections 11.3, 11.4 and 11.5, Seller shall indemnify and hold Buyer and its Affiliates and their respective partners, members, officers, directors, employees, representatives and agents (collectively, "Buyer-Related Entities") harmless from and against any and all costs, fees, expenses, damages, deficiencies, interest and penalties (including, without limitation, reasonable attorneys' fees and disbursements) suffered or incurred by any such indemnified party in connection with any and all losses, liabilities, claims, damages and expenses ("Losses"), resulting from (a) any breach of any representation or warranty of Seller contained in this Agreement or in any Closing Document, (b) any breach of any covenant of Seller contained in this Agreement (which expressly survives the Closing) or in any Closing Document, (c) the Excluded Employee Liabilities, Excluded Taxes and Excluded Litigation.

Section 11.2 Indemnification by Buyer. From and after the Closing and subject to Sections 11.3, 11.4 and 11.5, Buyer shall indemnify and hold Seller and its Affiliates and their respective members, partners, officers, directors, employees, representatives and agents (collectively, "Seller-Related Persons") harmless from any and all Losses resulting from (a) any breach of any

representation or warranty by Buyer contained in this Agreement or in any Closing Document, (b) any breach of any covenant of Buyer contained in this Agreement (which expressly survives the Closing ) or in any Closing Document and (c) any and all Assumed Employee Liabilities and Assumed Taxes.

### Section 11.3 Limitations on Indemnification.

(a) Seller shall not be required to indemnify Buyer or any Buyer-Related Entities under Sections 11.1(a) and (b), unless the aggregate of all amounts for which an indemnity would otherwise be payable by Seller under Sections 11.1(a) and (b) exceeds the Basket Limitation and, in such event, Seller shall be responsible only for such amount in excess of the Basket Limitation. In no event shall the liability of Seller with respect to the indemnification provided for in Sections 11.1(a) and (b) exceed in the aggregate the Cap Limitation. Notwithstanding the foregoing, Seller's obligations (i) under Section 9.1, (ii) under Article X with respect to prorations and adjustments, (iii) under Section 11.1(c) with respect to Excluded Employee Liabilities, Excluded Taxes and Excluded Litigation, (iv) under Section 15.2 with respect to Seller's Broker and (v) under Article XIV shall not be subject to the Basket Limitation or the Cap Limitation. If, prior to the Closing, Buyer has actual knowledge (i.e., within Buyer's Knowledge, but not including any implied, imputed or constructive knowledge of the Buyer Knowledge party) of any inaccuracy or breach of any representation, warranty or pre-closing covenant of Seller contained in this Agreement (to the extent within Buyer's Knowledge, a "Buyer-Waived Breach") and nonetheless proceeds with and consummates the Closing, then Buyer and any Buyer-Related Entities shall be deemed to have waived and forever renounced any right to assert a claim for indemnification under this Article XI for, or any other claim or cause of action under this Agreement, whether at law or in equity, on account of any such Buyer-Waived Breach.

(b) Buyer shall not be required to indemnify Seller or any Seller-Related Persons under Sections 11.2(a) and (b), unless the aggregate of all amounts for which an indemnity would otherwise be payable by Buyer under Sections 11.2(a) and (b) exceeds the Basket Limitation and, in such event, Buyer shall be responsible only for such amount in excess of the Basket Limitation. In no event shall the liability of Buyer with respect to the indemnification provided for in Sections 11.2(a) and (b) exceed in the aggregate the Cap Limitation. If, prior to the Closing, Seller is aware of any inaccuracy or breach of any representation, warranty or pre-closing covenant of Buyer contained in this Agreement (a "Seller-Waived Breach") and nonetheless proceeds with and consummates the Closing, then Seller and any Seller-Related Persons shall be deemed to have waived and forever renounced any right to assert a claim for indemnification under this Article XI for, or any other claim or cause of action under this Agreement, whether at law or in equity, on account of any Seller-Waived Breach. Notwithstanding the foregoing, Buyer's obligations (i) under Section 9.1, (ii) under Article X with respect to prorations and adjustments, (iii) under Section 11.2(c) with respect to Assumed Employee Liabilities and Assumed Taxes, (iv) under Section 15.2 with respect to Buyer's Broker and (v) under Article XIV shall not be subject to the Basket Limitation or the Cap Limitation.

### Section 11.4 Survival.

(a) Notwithstanding anything in this Agreement to the contrary, the representations and warranties and covenants of Seller set forth in or made pursuant to this Agreement or the Seller Closing Certificate shall survive the Closing for a period (the "Survival Period") commencing on the Closing Date and expiring on the applicable Survival Termination Date. No action or proceeding thereon shall be valid or enforceable, at law or in equity, unless notice of a breach of any such representations, warranty or covenant is given by Buyer to Seller on or before the expiration of the applicable Survival Period and a legal proceeding is commenced on or before the date which is 45 days following the expiration of the applicable Survival Period.

(b) Notwithstanding anything in this Agreement to the contrary, the representations and warranties and covenants of Buyer set forth in or made pursuant to this Agreement shall survive the Closing for the Survival Period. No action or proceeding thereon shall be valid or enforceable, at law or in equity, unless notice of a breach of any such representations, warranty or covenant is given by Seller to Buyer on or before the expiration of the applicable Survival Period and a legal proceeding is commenced on or before the date which is 45 days following the expiration of the applicable Survival Period.

Section 11.5 Indemnification as Sole Remedy. If the Closing has occurred, the sole and exclusive remedy available to a party in the event of a breach by the other party to this Agreement of any representation, warranty, covenant or other provision of this Agreement or any Closing Document which survives the Closing shall be the indemnifications provided for under this Article XI. Neither party shall have any liability to the other party for consequential, indirect, exemplary or punitive damages resulting from any breach of any representation or warranty or covenant in this Agreement; provided, however, that the foregoing shall not limit an indemnified party's right to seek reimbursement of all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees, disbursements, and court costs in connection therewith) actually incurred by such indemnified party in connection with such breach.

Section 11.6 Holdback. At Closing, Seller shall deposit with Escrow Agent an amount equal to Cap Limitation (the "Holdback") to be retained in escrow for nine months following the Closing Date to secure payment and performance of Seller's obligations which survive Closing (including, without limitation, the indemnification obligations set forth herein) pursuant to and in accordance with that certain Holdback Agreement between the Parties and Escrow Agent in the form attached hereto as Exhibit L (the "Holdback Agreement"); provided, however, unless Buyer elects in its sole and absolute discretion, the Holdback shall not be used to pay Seller's obligations (a) under Section 9.1 and Article X with respect to prorations and adjustments, (b) under Section 11.1(c) with respect to Excluded Employee Liabilities and Excluded Taxes, (c) under Section 15.2 with respect to Seller's Broker, and (d) under Article XIV, all of which shall be Seller's obligation to pay in addition to the Holdback. Seller's obligations under this Section 11.6 shall survive the Closing.

Section 11.7 Tax Treatment of Indemnity. Seller and Buyer agree that any indemnity payments made under this Agreement shall be treated as adjustments to the Purchase Price for all Tax purposes, unless a final determination by the U.S. Internal Revenue Service or other applicable taxing authority provides otherwise.

The obligations under this Article XI shall survive the Closing in accordance with the terms hereof.

## ARTICLE XII

### TAX CERTIORARI PROCEEDINGS

Section 12.1 Prosecution and Settlement of Proceedings. If any tax reduction proceedings (including, but not limited to, administrative and/or judicial proceedings or appeals) in respect of the Property, relating to any fiscal years ending prior to the fiscal year in which the Closing occurs, are pending at the time of the Closing, Seller reserves and shall have the right to continue to prosecute and/or settle the same. If any tax reduction proceedings in respect of the Property, relating to the fiscal year in which the Closing occurs, are pending at the time of Closing, then Seller reserves and shall have the right to continue to prosecute and/or settle the same; provided, however, that Seller shall not settle any such proceeding without Buyer's prior written consent. Buyer shall reasonably cooperate with Seller in connection with the prosecution of any such tax reduction proceedings.

Section 12.2 Application of Refunds or Savings. Any refunds or savings in the payment of taxes resulting from such tax reduction proceedings on account of taxes allocable to the period prior to the date of the Closing shall belong to and be the property of Seller, and any refunds or savings in the payment of taxes on account of taxes allocable to the period from and after the date of the Closing shall belong to and be the property of Buyer; provided, however, that if any such refund creates an obligation to reimburse any Tenants under Space Leases for any rents or additional rents paid or to be paid, that portion of such refund equal to the amount of such required reimbursement (after deduction of allocable expenses as may be provided in the Space Lease to such tenant) shall, at Seller's option, either (a) be paid to Buyer and Buyer shall disburse the same to such tenants or (b) be paid by Seller directly to the Tenants entitled thereto provided Seller delivers to Buyer evidence of such payment to the applicable Tenants. All attorneys' fees and other expenses incurred in obtaining such refunds or savings shall be apportioned between Seller and Buyer in proportion to the gross amount of such refunds or savings payable to Seller and Buyer, respectively (without regard to any amounts reimbursable to Tenants); provided, however, that neither Seller nor Buyer shall have any liability for any such fees or expenses in excess of the refund or savings paid to such party unless such party initiated such proceeding.

Section 12.3 Survival. The provisions of this Article XII shall survive the Closing.

### ARTICLE XIII

#### DEFAULT

##### Section 13.1 BUYER DEFAULT.

(a) This Agreement may be terminated by Seller prior to the Closing, as its sole and exclusive remedy, in the event (i) any of the conditions precedent to Seller's obligations set forth in Section 5.1 have not been satisfied or waived in writing by Seller (in its sole discretion) on or prior to the Closing Date or (ii) there is a material breach or default by Buyer in the performance of any of its obligations under this Agreement of which Seller has provided Buyer written notice and Buyer has failed to cure by the earlier of 10 Business Days after such notice and the Closing Date; provided, however, that the provisions of this Section 13.1(a) shall not be applicable to (and Buyer shall not be entitled to such notice and opportunity to cure) any failure to pay the Purchase Price on the Closing Date in breach and default of this Agreement (the remedy for which is set forth in Section 13.1(c) below).

(b) In the event this Agreement is terminated pursuant to Section 13.1(a), this Agreement shall be null and void and of no further force or effect and neither party shall have any rights or obligations against or to the other except (i) for Buyer's Surviving Obligations and Seller's Surviving Obligations and (ii) as set forth in Section 13.1(c).

(c) If Seller terminates this Agreement pursuant to Section 13.1(a) because of a failure by Buyer to pay the Purchase Price or perform all of its other material obligations to be performed on the Closing in breach of this Agreement after Seller has performed or tendered performance in accordance with this Agreement, then, provided Seller is not in material default of its obligations under this Agreement, the Earnest Money shall be paid to and retained by Seller as liquidated damages and except for Buyer's Surviving Obligations and Seller's Surviving Obligations, Seller and Buyer shall have no further obligations to each other. BUYER AND SELLER ACKNOWLEDGE THAT THE DAMAGES TO SELLER IN THE EVENT OF A BREACH OF THIS AGREEMENT BY BUYER WOULD BE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT THE AMOUNT OF THE EARNEST MONEY REPRESENTS THE PARTIES' BEST AND MOST ACCURATE ESTIMATE OF THE DAMAGES THAT WOULD BE SUFFERED BY SELLER IF THE TRANSACTION SHOULD

FAIL TO CLOSE AND THAT SUCH ESTIMATE IS REASONABLE UNDER THE CIRCUMSTANCES EXISTING AS OF THE EFFECTIVE DATE AND UNDER THE CIRCUMSTANCES THAT SELLER AND BUYER REASONABLY ANTICIPATE WOULD EXIST AT THE TIME OF SUCH BREACH. THEREFORE, IN THE EVENT THAT THIS AGREEMENT IS TERMINATED AS A RESULT OF BUYER'S FAILURE TO CLOSE THE ACQUISITION OF THE PROPERTY IN BREACH OF THIS AGREEMENT, SELLER SHALL BE ENTITLED TO, AND SHALL BE PAID BY ESCROW AGENT, THE ENTIRE EARNEST MONEY AS LIQUIDATED DAMAGES AND AS ITS SOLE AND EXCLUSIVE REMEDY AT LAW OR IN EQUITY.

(d) This Section 13.1 is intended only to liquidate and limit Seller's right to damages arising due to Buyer's failure to purchase the Assets in breach of this Agreement and shall not limit the Buyer's Surviving Obligations.

Section 13.2 SELLER DEFAULT.

(a) This Agreement may be terminated by Buyer prior to the Closing if (i) any of the conditions precedent to Buyer's obligations set forth in Section 5.2 have not been satisfied or waived in writing by Buyer (in its sole discretion) on or prior to the Closing Date or (ii) there is a material breach or default by Seller in the performance of its obligations under this Agreement of which Buyer has provided Seller written notice and Seller has failed to cure by the earlier of 10 Business Days after such notice and the Closing Date; provided, however, that Seller shall not be entitled to such notice and opportunity to cure for failure to cause the conveyance of the Assets on the Closing Date.

(b) Subject to Section 13.2(c) below, upon termination of this Agreement by Buyer pursuant to Section 13.2(a), Buyer as its sole and exclusive remedy shall be entitled to receive a disbursement of the Earnest Money from the Escrow Agent and upon such disbursement, except for Buyer's Surviving Obligations and Seller's Surviving Obligations, Seller and Buyer shall have no further obligations to each other unless Buyer's termination of this Agreement arose out of a knowing, intentional or willful default by Seller (including, but not limited to, one or more knowing, intentional or willful breach(es) of Seller's representations, warranties or covenants of this Agreement that gives Buyer the right to terminate this Agreement under Section 13.2(a) hereof, in which case Buyer shall be entitled to obtain reimbursement from Seller of Buyer's actual out of pocket costs incurred by Buyer in connection with this Agreement and the transactions contemplated hereby (including, without limitation, any costs and expenses incurred in Buyer's due diligence of the Property (including, without limitation, reasonable attorneys' fees and costs and)) up to an amount equal to \$1,000,000.

(c) Buyer may, in lieu of terminating this Agreement as provided in Section 13.2(a), specifically enforce the terms and conditions of this Agreement; provided, however, that such specific enforcement action must be initiated no later than 60 days after the Closing Date.

ARTICLE XIV

EMPLOYEE MATTERS

Section 14.1 Employee Matters.

[REDACTED]

[REDACTED]

(b) Indemnity. Buyer shall indemnify, defend and hold Seller and all Seller-Related Persons and the Manager harmless from and against any and all claims, actions, suits, demands, proceedings, losses, expenses, damages, obligations and liabilities (including costs of collection, attorney's fees and other costs of defense) arising out of or otherwise in respect of (i) the termination of the employment with Buyer or Buyer's Manager (or their Affiliate) of any Transferred Employees on or after the Closing Date; (ii) failure of Buyer (or its manager) to offer employment to any Employee (or continue the employment of any Transferred Employee) on the terms required under Section 14.1(a) hereof; (iii) failure of Buyer to comply with its obligations (including, but not limited to, any statutory or contractual obligations) with respect to the Transferred Employees; (iv) any claim made by any Transferred Employee for severance pay arising on or after the Closing Date due to the termination of such Transferred Employees employment with Buyer or Buyer's Manager (or their Affiliate); (v) any liability relating to the Transferred Employees or the Union Agreements that is attributable to periods commencing on or after the Closing Date, including any liabilities resulting from the failure of Buyer to (A) assume the Union Agreements or (B) comply with the provisions of this Section 14.1, any Union Agreement or Applicable Law, and (vi) any and all claims, losses, damages and expenses (including, without limitation, reasonable attorneys' fees and expenses) and other liabilities and obligations incurred or suffered as a result of any claim by any Transferred Employee that arises under federal, state or local statute (including, without limitation, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967, the National Labor Relations Act, the Equal Pay Act, the Americans with Disabilities Act of 1990, ERISA, the MultiEmployer Pension Plan Act of 1980, the Displaced Building Service Workers Protection Act of the City of New York, and all other statutes regulating the terms and conditions of employment), under any regulation or ordinance, under the common law or in equity (including any claims for wrongful discharge or otherwise), or under any policy, agreement, understanding or promise, written or oral, formal or informal, in each case, arising out of actions, events or omissions that occurred (or, in the case of omissions, failed to occur) from and after the Closing Date. Seller shall indemnify, defend and hold Buyer and Buyer-Related Persons harmless from and against any and all claims, suits, charges, complaints, demands, grievances, proceedings, losses, expenses, damages, obligations and liabilities (including costs of collection, attorney fees and other defense costs or disbursements) arising out of or otherwise in respect of (1) any liability relating to the Employees or the Union Agreements that is incurred before the Closing Date, including any liabilities resulting from any failure of Seller to comply with its obligations (including, but not limited to, any statutory or contractual obligations) with respect to the Employees prior to the Closing Date, other than liabilities covered by the Benefits Credit, (2) any and all claims, losses, damages and expenses (including, without limitation, reasonable attorneys' fees and expenses) and other liabilities and obligations incurred or suffered as a result of any claim by any Employee that arises under federal, state or local statute (including, without limitation, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the

Age Discrimination in Employment Act of 1967, the National Labor Relations Act, the Equal Pay Act, the Americans with Disabilities Act of 1990, ERISA, the Multi-Employer Pension Plan Act of 1980, the Displaced Building Service Workers Protection Act of the City of New York, and all other statutes regulating the terms and conditions of employment), under any regulation or ordinance, under the common law or in equity (including any claims for wrongful discharge or otherwise), or under any policy, agreement, understanding or promise, written or oral, formal or informal, in each case, arising out of actions, events or omissions that occurred (or, in the case of omissions, failed to occur) before the Closing Date, and (3) (a) the termination of the employment of any non-Transferred Employees (solely to the extent Buyer has made a qualifying offer of employment pursuant to Section 14.1(a)) and (b) failure of Seller to comply with its obligations (including, but not limited to, any statutory or contractual obligations) with respect to the non-Transferred Employees (solely to the extent Buyer has made a qualifying offer of employment pursuant to Section 14.1(a)).

(c) WARN Act. Provided Seller complies with this last sentence in this paragraph, Buyer shall not, at the Property, at any time within the 90 days after the Closing Date, effectuate a “plant closing” or “mass layoff,” as those terms are defined in the WARN Act, affecting in whole or in part any site of employment, facility, operating unit or Employee. In addition, Buyer shall provide a full defense to, and indemnify Seller, and Seller-Related Persons and the Manager for, any claims, suits, charges, complaints, demands, grievances, proceedings, losses, expenses, damages, obligations and liabilities (including costs of collection, attorney fees and other defense costs or disbursements) which Seller or Manager may incur in connection with any suit or claim of violation brought against or affecting Seller or the Manager under the WARN Act for any actions taken by Buyer (or its manager or Affiliate) with regard to any site of employment, facility, operating unit or Employee affected by this Agreement, including but not limited to liability under the WARN Act that arises in whole or in part as a result of any “employment loss”, as that term is defined in the WARN Act, which was caused by Buyer (or its manager or Affiliate) in such 90 day period following the Closing Date. Within ten (10) days following the Closing Date, Seller shall provide to Buyer a written list of all Employees who were providing services to the Property and who experienced an “employment loss” as defined under the WARN Act within the 90-day period immediately preceding the Closing Date with such list delineating for each such employee, the date of termination and the reason for the termination.

(d) Pensions.

(i) The parties desire that the transactions contemplated by this Agreement qualify for the relief contemplated in Section 4204 of ERISA. Following the Closing Date, Buyer agrees to contribute (or cause its manager to contribute) to any Union Benefit Plan that is a multiemployer plan within the meaning of ERISA Section 4001(a)(3) with respect to which withdrawal liability may otherwise apply to a withdrawal as of the Closing Date (an “Underfunded Benefit Plan”) to which the Manager, Seller or any of their respective Affiliates has heretofore contributed on behalf of Employees substantially the same number of contribution base units, as defined in Section 4001(a)(11) of ERISA, for which Seller (or Manager or Affiliate) was obligated to contribute on behalf of Employees immediately prior to the Closing Date. Buyer agrees to provide (or cause its manager to provide), to and for the benefit of the Underfunded Benefit Plan to comply with the requirements of Section 4204 of ERISA, and to maintain for the five plan years commencing with the first plan year to begin after the Closing Date (herein the “Surety Period”), either a bond issued by a corporate surety company that is an acceptable surety for purposes of Section 412 of ERISA, an amount held in escrow by a bank or similar financial institution satisfactory to the Underfunded Benefit Plan, or any other arrangement including a letter of credit satisfactory to the Underfunded Benefit Plan, in either case in an amount equal to the greater of (A) the average annual contribution that Seller or the Manager, as applicable, was required to make with respect to the covered operations for the three



plan years immediately preceding the plan year in which the Closing Date occurs, or (B) the annual contribution that Seller or the Manager, as applicable, was required to make with respect to the covered operations for the plan year immediately preceding the plan year in which the Closing Date occurs, or any greater amount which may be required under Section 4204 of ERISA, which bond, such amount or arrangement held in escrow shall be paid to the Underfunded Benefit Plan if, at any time during the Surety Period, Buyer withdraws from the Underfunded Benefit Plan or fails to make any contribution to the Underfunded Benefit Plan when due. The full cost of such bond or amount held in escrow, if requested by the Underfunded Benefit Plan, shall be borne by Buyer. If Buyer at any time withdraws from the Underfunded Benefit Plan in a complete or partial withdrawal with respect to the assets acquired by Buyer pursuant to this Agreement during the Surety Period, Buyer shall be primarily liable and pay, and Seller shall be secondarily liable for any withdrawal liability Seller would have had to the Underfunded Benefit Plan with respect to the operations of the Property (but for the provisions of Section 4204 of ERISA) if any such withdrawal liability of Buyer with respect to such Underfunded Benefit Plan is not paid. Buyer shall indemnify and hold Seller harmless for any withdrawal liability incurred by Seller pursuant to the preceding sentence. Buyer agrees to provide Seller with reasonable advance notice of any action or event which could result in the imposition of any withdrawal liability contemplated by this Section 14.1(d) and in any event Buyer shall immediately furnish Seller with a copy of any notice including, but not limited to a notice of withdrawal liability, it may receive with respect to the Underfunded Benefit Plan, together with all the pertinent details. Any proposed notice or communication to the Underfunded Benefit Plan relating to Buyer's obligations under this Section 14.1(d) shall be provided to Seller at least ten (10) days before such notice is provided to the Underfunded Benefit Plan, and the form of such notice and communication shall be subject to Seller's written approval, which approval shall not be unreasonably withheld. Notwithstanding anything contained in this Agreement to the contrary, Buyer shall not be obligated to provide any bond, letter of credit, or escrow in the event and to the extent Buyer obtains from the Underfunded Benefit Plan or the Pension Benefit Guaranty Corporation a proper variance or exemption under Section 4204(c) of ERISA and the applicable regulations thereunder. Buyer and Seller shall cooperate in taking such steps and executing such documents as are necessary to carry out the provisions of this Section 14.1(d) (including obtaining any variance from the escrow or bond requirement), or to otherwise qualify the transactions contemplated by this Agreement under the provisions of Section 4204 of ERISA so that a complete or partial withdrawal within the meaning of Section 4201 of ERISA shall not thereby occur as a result of the transactions contemplated hereby. Upon Buyer's request, Seller agrees to reasonably cooperate with Buyer in providing the Underfunded Benefit Plan with notice of the parties' intention that this transaction be covered by Section 4204 of ERISA.

(ii) Following the Effective Date, Buyer shall reasonably cooperate with Seller and/or Manager to secure the release or return of any ERISA Bond, including executing such documents and providing such information to the applicable Union Benefit Plan or any other Person as is reasonably necessary to secure such release or return. All costs incurred in obtaining such release shall be borne by Seller.

(e) No Third Party Beneficiaries. Buyer and Seller acknowledge that all provisions contained in Article XIV with respect to Employees are included for the sole benefit of Buyer (and Buyer's Affiliates, as applicable) and Seller (and Seller's Affiliates, as applicable) and shall not be deemed to constitute an amendment to any employee benefit plan or create any right or third-party beneficiary rights (i) in any other person, including any Employees, former Employees, any participant in any benefit plans (including Union Employee Benefit Plans) or any beneficiary thereof, or any union trust

or (ii) to continued employment with Buyer or any of its Affiliates, managers or contractors following the Closing Date.

(f) Survival. The provisions of this Section 14.1 shall survive the Closing without limitation.

ARTICLE XV

MISCELLANEOUS

Section 15.1 Exculpation.

(a) Notwithstanding anything to the contrary contained herein, Seller's shareholders, partners, members, the partners or members of such partners or members, the shareholders of such partners or members, and the trustees, officers, directors, employees, agents and security holders of Seller and the partners or members of Seller assume no personal liability for any obligations entered into on behalf of Seller and their individual assets shall not be subject to any claims of any person relating to such obligations. The foregoing shall govern any direct and indirect obligations of Seller under this Agreement.

(b) Notwithstanding anything to the contrary contained herein, Buyer's shareholders, partners, members, the partners or members of such partners or members, the shareholders of such partners or members, and the trustees, officers, directors, employees, agents and security holders of Buyer and the partners or members of Buyer assume no personal liability for any obligations entered into on behalf of Buyer and their individual assets shall not be subject to any claims of any person relating to such obligations. The foregoing shall govern any direct and indirect obligations of Buyer under this Agreement.

(c) The provisions of this Section 15.1 shall survive the Closing or any termination of this Agreement without limitation and will not be deemed merged into any instrument of conveyance delivered at the Closing.

Section 15.2 Brokers.

● [REDACTED]

● [REDACTED]

Section 15.3 Confidentiality; IRS Reporting Requirements.

(a) Buyer and Seller shall hold as confidential all information and materials in the Asset File and all other information or materials disclosed to them by or behalf of the other party concerning each other, the Assets, this Agreement and the transactions contemplated hereby ("Confidential Information") and shall not release any such Confidential Information to third parties without the prior written consent of the other parties hereto, except (i) any information which was previously or is hereafter publicly disclosed (other than in violation of this Agreement or other confidentiality agreements to which Affiliates of Buyer are parties), (ii) to their partners, advisers, underwriters, analysts, employees, affiliates, officers, directors, consultants, lenders, accountants, legal counsel, title companies or other advisors (collectively, "Representatives") of any of the foregoing, provided that they are advised as to the confidential nature of such information and are instructed to maintain such confidentiality and each party shall be liable for the breach of the terms of this Section 15.13 by its Representatives, and (iii) to comply with any law, rule or regulation or as required to satisfy any information request of any Governmental Authority. Notwithstanding any provision of this Agreement, the parties hereto (and their employees, representatives and agents) may disclose to any and all Persons, without limitation of any kind, the U.S. federal income tax treatment and tax structure of transactions effected pursuant to this Agreement, provided, however, (y) the parties hereto (and their employees, representatives and agents) shall keep confidential any such information to the extent necessary to comply with any applicable federal or state securities law, and (z) the parties hereto agree that the tax treatment and tax structure do not include, and the parties hereto (and their employees, representatives and agents) shall keep confidential, the name of, and other identifying information regarding, any such party or transactions, including the specific economic terms of such transactions. The foregoing shall constitute a modification of any prior confidentiality agreement that may have been entered into by the parties. Nothing contained in this Section 15.3(a) shall limit (or be construed to limit) Buyer's use of information concerning the ownership or operation of the Property from and after the Closing. The provisions of this Section 15.3(a) shall survive the Closing and the termination of this Agreement for a period of one year and will not be deemed merged into any instrument of conveyance delivered at the Closing.

(b) Upon the Closing, Seller or Buyer may issue a press release or other public disclosure with respect to this Agreement and the transactions contemplated hereby, provided that the content of any such press release or other public disclosure shall be subject to the prior written consent of the other party hereto and in no event shall any such press release or other public disclosure issued by a party disclose the identity of the other party's direct or indirect beneficial owners by name or the consideration paid to Seller for the Assets. The provisions of this Section 15.3(b) shall survive the Closing and the termination of this Agreement without limitation and will not be deemed merged into any instrument of conveyance delivered at the Closing.

(c) For the purpose of complying with any information reporting requirements or other rules and regulations of the IRS that are or may become applicable as a result of or in connection with the transaction contemplated by this Agreement, including, without limitation, any requirements set forth in proposed Income Tax Regulation Section 1.6045-4 and any final or successor version thereof (collectively, the "IRS Reporting Requirements"), Seller and Buyer hereby designate and appoint the Escrow Agent to act as the "Reporting Person" (as that term is defined in the IRS Reporting Requirements) to be responsible for complying with any IRS Reporting Requirements. The Escrow

Agent hereby acknowledges and accepts such designation and appointment and agrees to fully comply with any IRS Reporting Requirements that are or may become applicable as a result of or in connection with the transaction contemplated by this Agreement. Without limiting the responsibility and obligations of the Escrow Agent as the Reporting Person, Seller and Buyer hereby agree to comply with any provisions of the IRS Reporting Requirements that are not identified therein as the responsibility of the Reporting Person.

Section 15.4 Escrow Provisions.

(a) The Escrow Agent shall hold the Earnest Money in escrow in an interest-bearing bank account with Citibank (the "Escrow Account").

(b) The Escrow Agent shall hold the Earnest Money in escrow in the Escrow Account until the Closing or sooner termination of this Agreement and shall hold or apply such proceeds in accordance with the terms of this Section 15.4(b). Seller and Buyer understand that no interest is earned on the Earnest Money during the time it takes to transfer into and out of the Escrow Account. At Closing, the Earnest Money shall be paid by the Escrow Agent to, or at the direction of, Seller. If for any reason the Closing does not occur and either party makes a written demand upon the Escrow Agent for payment of such amount, the Escrow Agent shall, within 24 hours give written notice to the other party of such demand. If the Escrow Agent does not receive a written objection within five Business Days after the giving of such notice, the Escrow Agent is hereby authorized to make such payment. If the Escrow Agent does receive such written objection within such five Business Day period or if for any other reason the Escrow Agent in good faith shall elect not to make such payment, the Escrow Agent shall continue to hold such amount until otherwise directed by joint written instructions from the parties to this Agreement or a final judgment of a court of competent jurisdiction. However, the Escrow Agent shall have the right at any time to deposit the Earnest Money with the clerk of the Court of New York County. The Escrow Agent shall give written notice of such deposit to Seller and Buyer. Upon such deposit the Escrow Agent shall be relieved and discharged of all further obligations and responsibilities hereunder.

(c) The parties acknowledge that the Escrow Agent is acting solely as a stakeholder at their request and for their convenience, that the Escrow Agent shall not be deemed to be the agent of either of the parties, and the Escrow Agent shall not be liable to either of the parties for any act or omission on its part, other than for its gross negligence or willful misconduct. Seller and Buyer shall jointly and severally indemnify and hold the Escrow Agent harmless from and against all third party claims (and the reasonable costs, claims and expenses, including, without limitation, reasonable attorneys' fees and disbursements resulting from such claims), incurred by the Escrow Agent in connection with the performance of the Escrow Agent's duties hereunder (other than claims arising out of or in connection with Escrow Agent's negligence or willful misconduct).

(d) Seller and Buyer agree that the Escrow Agent shall not be responsible for any penalties, loss of principal or interest, or the consequences of a delay in withdrawal of the Earnest Money and interest accrued thereon (the "Escrow"), if any, which may be imposed as a result of the making or the redeeming of the above investment, as the case may be, pursuant to this Agreement. Seller and Buyer also agree that Escrow Agent shall not be liable for any loss or impairment of the Earnest Money while the Earnest Money is in the course of collection or of the Escrow if such loss or impairment results from the failure, insolvency or suspension of the financial institution in which the Earnest Money is deposited.

(e) The Escrow Agent has acknowledged its agreement to these provisions by signing this Agreement in the place indicated following the signatures of Seller and Buyer.

Section 15.5 Successors and Assigns; No Third-Party Beneficiaries. Except as specifically set forth herein, the stipulations, terms, covenants and agreements contained in this Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective permitted successors and assigns (including, without limitation, any successor entity after a public offering of stock, merger, consolidation, purchase or other similar transaction involving a party hereto) and nothing herein expressed or implied shall give or be construed to give to any Person, other than the parties hereto and such assigns, any legal or equitable rights hereunder.

Section 15.6 Assignment. This Agreement may not be assigned by Buyer without the prior written consent of Seller. Any transfer of direct or indirect interests in Buyer shall be deemed to be an assignment of this Agreement by Buyer. Notwithstanding the foregoing, Buyer may designate an Affiliate to which the Assets will be transferred to at the Closing (“Buyer’s Designee”), provided that (i) Buyer provides to Seller the identity of such Buyer’s Designee at least five Business Days prior to the Closing Date, and (ii) Buyer and Buyer’s Designee execute and deliver an assignment and assumption agreement in form reasonably satisfactory to Seller. Buyer will continue to remain primarily liable under this Agreement prior to the Closing notwithstanding any such designation and the representations set forth in Section 4.1 of this Agreement shall be deemed to be made with respect to Buyer’s Designee as of the Closing Date; provided, however, that Buyer will be released from its obligations under this Agreement upon Closing.

Section 15.7 Further Assurances. From time to time, as and when requested by any party hereto, the other party shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions as such other party may reasonably deem necessary or desirable to consummate the transactions contemplated by this Agreement. The provisions of this Section 15.7 shall survive the Closing without limitation and will not be deemed merged into any instrument of conveyance delivered at the Closing.

Section 15.8 Notices. All notices, demands or requests made pursuant to, under or by virtue of this Agreement must be in writing and shall be (i) personally delivered, (ii) delivered by express mail, Federal Express or other comparable overnight courier service, (iii) mailed to the party to which the notice, demand or request is being made by certified or registered mail, postage prepaid, return receipt requested or (iv) sent by electronic mail, with telephone or written confirmation within one Business Day, as follows:

(a) To Seller:

[REDACTED]

with copies thereof to:

[REDACTED]

(b) To Buyer:

[REDACTED]

with copy to:

[REDACTED]

And to:

[REDACTED]

(c) To the Escrow Agent:

[REDACTED]

(d) All notices (i) shall be deemed to have been given on the date that the same shall have been delivered in accordance with the provisions of this Section 15.8 and (ii) may be given either by a party or by such party's attorneys. Any party may, from time to time, specify as its address for purposes of this Agreement any other address upon the giving of 10 days' prior notice thereof to the other parties.

Section 15.9 Entire Agreement. This Agreement, along with the Exhibits and Schedules hereto, contains all of the terms agreed upon between the parties hereto with respect to the subject matter hereof, and all understandings and agreements heretofore had or made among the parties hereto are merged in this Agreement which alone fully and completely expresses the agreement of the parties hereto.

Section 15.10 Amendments. This Agreement may not be amended, modified, supplemented or terminated, nor may any of the obligations of Seller or Buyer hereunder be waived, except by written agreement executed by the party or parties to be charged.

Section 15.11 No Waiver. Any waiver by either party of any failure or refusal by the other party to comply with its obligations hereunder shall be made in writing and in no event shall any such waiver be deemed a waiver of any other or subsequent failure or refusal to so comply.

Section 15.12 Governing Law. This Agreement shall be governed by, interpreted under, and construed and enforced in accordance with, the laws of the State of New York.

Section 15.13 Submission to Jurisdiction. Buyer and Seller each irrevocably submits to the jurisdiction of (a) the Supreme Court of the State of New York and (b) the United States District Court for the Southern District of New York for the purposes of any suit, action or other proceeding arising out of this Agreement or any transaction contemplated hereby. Buyer and Seller each further agree that service of any process, summons, notice or document by U.S. registered mail to such party's respective address set forth above shall be effective service of process for any action, suit or proceeding in New York with respect to any matters to which it has submitted to jurisdiction as set forth above in the immediately preceding sentence. Buyer and Seller each irrevocably and unconditionally waives trial by jury and irrevocably and unconditionally waives any objection to the laying of venue in any action, suit or proceeding arising out of this Agreement or the transactions contemplated hereby in (x) the Supreme Court of the State of New York and (y) the United States District Court for the Southern District of New York, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

Section 15.14 Severability. If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 15.15 Section Headings. The headings of the various Sections of this Agreement have been inserted only for purposes of convenience, are not part of this Agreement and shall not be deemed in any manner to modify, explain, expand or restrict any of the provisions of this Agreement.

Section 15.16 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart. The delivery of an executed counterpart of this Agreement by facsimile or as a .pdf or similar attachment to an email shall constitute effective delivery of such counterpart for all purposes with the same force and effect as the delivery of an original, executed counterpart.

Section 15.17 Construction. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto. The words "herein", "hereof", "hereunder", "hereby", "this Agreement" and other similar references shall be construed to mean and include this Agreement and all amendments and supplements hereto unless the context shall clearly indicate or require otherwise. Whenever the words "including", "include" or "includes" are used in this

Agreement, they shall be interpreted in a non-exclusive manner. Except as otherwise indicated, all Exhibit, Schedule and Section references in this Agreement shall be deemed to refer to the Exhibits, Schedules and Sections in this Agreement.

Section 15.18 Attorney's Fees. If either party hereto brings any suit or proceeding, including an arbitration proceeding, with respect to the subject matter or the enforcement of this Agreement, each party shall bear the costs and expenses of their own attorneys, expert witnesses, research and case presentation in connection with any such suit or proceeding. Notwithstanding the foregoing, if any party secures a court judgment or arbitration ruling in its favor in any proceeding brought to enforce or interpret this Agreement, then any costs or expenses (including reasonable attorneys' fees) incurred by such prevailing party in instituting, defending, settling, enforcing and/or appealing, as applicable, such court judgment or arbitration ruling shall be payable by the party against whom such court judgment, arbitration ruling or determination on appeal has been rendered and shall be recoverable separately from and in addition to any other amount included in such court judgment or arbitration ruling.

Section 15.19 Recordation. Neither this Agreement nor any memorandum or notice of this Agreement may be recorded by any party hereto without the prior written consent of the other party hereto. The provisions of this Section shall survive the Closing or any termination of this Agreement. In furtherance of the foregoing, Buyer hereby indemnifies Seller from and against any and all Losses arising out of a breach of this Section 15.19. The provisions of this Section 15.19 shall survive the Closing or any termination of this Agreement.

Section 15.20 Guest Baggage and Safe Deposit Boxes.

(a) Property of Guests. All baggage, parcels or property checked or left in the care of Seller by current guests as of the Closing Date, or by those formerly staying at the Property, or others, shall be sealed and listed in an inventory prepared jointly by representatives of Seller and Buyer as of the Closing Date and initialed and exchanged by such representatives. Possession and control of all such baggage, parcels or property listed on such inventory shall be delivered to Buyer on the Closing Date and Buyer shall be responsible from and after the Closing Date for the liability of all items listed in such inventory, but only in the condition actually delivered by Seller.

(b) Notice to Persons with Safe Deposit Boxes. On the Closing Date, Seller shall give written notices ("Seller Verification Notices") to guests and other Persons who have safe deposit boxes at the Property or who have deposited items in the house safe at the Property (the "Depositors"), if any, advising them of the sale of the Property to Buyer and requesting, within 48 hours, verification of the contents of their safe deposit boxes and/or the house safe and either (i) removal of such contents, or (ii) if such Depositors desire to have the continued use of the safe deposit boxes and/or the house safe, the execution of a new agreement with Buyer for such continued use. Copies of Seller Verification Notices shall be given to Buyer. During said 48-hour period, each safe deposit box and/or the house safe shall be opened and the items therein recorded only in the presence of representatives of both Seller and Buyer. If the Depositors desire to continue to use a safe deposit box and/or the house safe, Buyer shall make arrangements for such continued use. The contents of all safe deposit boxes and/or the house safe of Depositors not responding to Seller Verification Notices shall be opened promptly after the expiration of the 48-hour period, but only in the presence of both Seller and Buyer. The contents of all boxes so opened shall be listed in an inventory at the time such safe deposit boxes or house safe are opened, each such list shall be signed by the representatives of Seller and Buyer, the keys and/or combinations to the boxes shall be delivered to Buyer, and the boxes shall then be relocked, sealed and left in the possession of Buyer. Seller hereby agrees to indemnify and hold Buyer harmless from and against any liability based on damage occurring prior to the Closing Date that is verified and recorded on the Closing Date.



Section 15.21 Survival

(a) Unless expressly stated otherwise, all terms and provisions contained in this Agreement shall not survive the Closing.

(b) This Article XV shall survive the Closing or any termination of this Agreement without limitation and will not be deemed merged into any instrument of conveyance delivered at the Closing.

Section 15.22 Time of the Essence. Time is of the essence of this Agreement. However, whenever action must be taken (including the giving of notice or the delivery of documents) under this Agreement during a certain period of time (or by a particular date) that ends (or occurs) on a non-Business Day, then such period (or date) shall be extended until the immediately following Business Day.


[no further text on this page]

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the day and year first above written.

SELLER:

NWPH LLC

By:

  
Name: Jonathan Wang  
Title: Managing Director and Assistant  
Treasurer

BUYER:

Hotel Lotte Co., Ltd.

By:

\_\_\_\_\_  
Name: Yong-Dok Song  
Title: President and CEO

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the day and year first above written.

SELLER:

NWPH LLC

By: \_\_\_\_\_

Name:

Title:

BUYER:

Hotel Lotte Co., Ltd.

By: \_\_\_\_\_

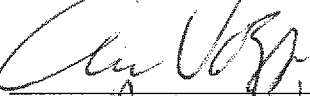
*Yong-Dok Song*  
Name: Yong-Dok Song  
Title: President & CEO

ACKNOWLEDGEMENT BY ESCROW AGENT OF RECEIPT OF INITIAL DEPOSIT

First American Title Insurance Company, referred to in this Agreement as the "Escrow Agent" hereby acknowledges that it received the Initial Deposit on May \_\_, 2015. The Escrow Agent hereby agrees to hold and distribute the Earnest Money in accordance with the terms and provisions of the Agreement.

First American Title Insurance Company

By:



Name: Antonio Vozza

Title: V.P.

JOINDER BY ESCROW AGENT

First American Title Insurance Company, referred to in this Agreement as the "Escrow Agent," hereby acknowledges that it received this Agreement executed by Seller and Buyer as of May \_\_, 2015, and accepts the obligations of the Escrow Agent as set forth herein.

First American Title Insurance Company

By:

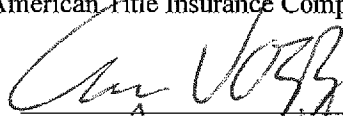
  
Name: Antonio VOZZA  
Title: V.P.

EXHIBIT A

FORM OF ASSUMPTION OF TRADES COUNCIL UNION AGREEMENT

ASSUMPTION  
AGREEMENT

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[remainder of page intentionally left blank]

FOR THE UNION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
          Authorized to Sign  
Dated: \_\_\_\_\_

FOR THE BUYER (on behalf of each owner,  
operator and manager)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
          Authorized to Sign  
Dated: \_\_\_\_\_

EXHIBIT B

FORM OF ASSIGNMENT AND ASSUMPTION OF LEASES

This ASSIGNMENT AND ASSUMPTION OF LEASES (“Assignment”) is made and entered into as of the [\_\_ day of \_\_\_\_\_, 2015] by and between NWPB LLC, a Delaware limited liability company, (“Assignor”), and Hotel Lotte Co., Ltd., a company incorporated in Republic of Korea (“Assignee”).

RECITALS

This Assignment is made with reference to the following facts:

● [REDACTED]

● [REDACTED]

[REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]



IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed as of the date written above.

ASSIGNOR:

NWPH LLC

By: \_\_\_\_\_  
Name:  
Title:

ASSIGNEE:

Hotel Lotte Co., Ltd.

By: \_\_\_\_\_  
Name:  
Title:

(signature page to Assignment and Assumption of Leases)

EXHIBIT A

PROPERTY

EXHIBIT B  
RENT ROLL



IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed as of the date written above.

ASSIGNOR:

NWPH LLC

By: \_\_\_\_\_  
Name:  
Title:

ASSIGNEE:

Hotel Lotte Co., Ltd.

By: \_\_\_\_\_  
Name:  
Title:

(signature page to Assignment and Assumption of Contracts)

EXHIBIT A

PROPERTY

Leasehold Description: (Block 1286 Lots 21, 30 and 53)

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

Beginning at the corner formed by the intersection of the southerly side of East 51st Street with the easterly side of Madison Avenue;

THENCE easterly along the southerly side of East 51st Street 200 feet to a point, said point being 200 feet westerly as measured along the southerly side of East 51st Street from its intersection with the westerly side of Park Avenue;

THENCE southerly and parallel with the easterly side of Madison Avenue 100 feet 5 inches to the center line of the block;

THENCE easterly along the center line of the block 45 feet to a point;

THENCE southerly and parallel to the easterly side of Madison Avenue 100 feet 5 inches to a point in the northerly side of East 50th Street, said point being 155 feet westerly as measured along the northerly side of East 50th Street from its intersection with the westerly side of Park Avenue;

THENCE westerly along the northerly side of East 50th Street 245 feet to the easterly side of Madison Avenue;

THENCE northerly along the easterly side of Madison Avenue 200 feet 10 inches to point and place of Beginning.

EXHIBIT B

ASSUMED CONTRACTS

EXHIBIT D

FORM OF TENANT NOTICE

NWPH LLC  
c/o Northwood Investors LLC  
575 Fifth Avenue, 23<sup>rd</sup> Floor  
New York, NY 10017

[\_\_\_\_\_, 2015]

VIA UPS/CERTIFIED MAIL

[\_\_\_\_\_  
TENANT ADDRESS

Attn: \_\_\_\_\_]

Re: Notice to Tenants of The New York Palace Hotel in New York City (the "Premises");

Dear Tenant:

Please be advised that effective [\_\_\_\_\_, 20\_\_], NWPH LLC conveyed the Premises to Hotel Lotte Co., Ltd. As part of this transaction, your lease (the "Lease") was assigned by NWPH LLC to Hotel Lotte Co., Ltd. ("New Owner"). A copy of the Assignment and Assumption of Leases and W-9 are enclosed for your reference. The purpose of this letter is to inform you of this transaction and the impact on your Lease.

I. Rent. All rents, additional rents and other charges under the Lease from and after [\_\_\_\_ 2015] are to be made payable to Hotel Lotte Co., Ltd. and be paid to the following address:

Hotel Lotte Co., Ltd.  
[Address]

Please note that the address listed on the W-9 is the tax filing address for your landlord and not the address to be used for your rental payments and other charges.

Due to this change in ownership you may receive multiple quarterly account statements. Each quarterly account statement will detail balances open (credits and/or charges) relating to the **respective owner's period of ownership and should be combined to produce the current balance on your account.**



II. Notices and Correspondence. All notices and correspondence (other than insurance certificates and sales reports) should be sent to New Owner at the following address:

Hotel Lotte Co., Ltd.  
c/o \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

With a copy to:

Hotel Lotte Co., Ltd.  
c/o \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

III. Insurance. You are hereby requested to have the insurance policies required under the Lease amended to add Hotel Lotte Co., Ltd. as additional insured thereunder and have a certificate of insurance indicating such amendment forwarded to Hotel Lotte Co., Ltd.

All certificates of insurance should be addressed to:

Hotel Lotte Co., Ltd.  
c/o \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

IV. Sales Reports. All Sales reports should be addressed to:

Hotel Lotte Co., Ltd.  
c/o \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

V. Security Deposit. The security deposit paid by you to NWPH LLC has been transferred to the New Owner and the New Owner shall be responsible for holding the same in accordance with the terms of the Lease.

VI. Personnel. Finally, if you have specific questions, please feel free to contact [ ] at [ ].

We appreciate your patience and cooperation during this transition.

NWPH LLC

By: \_\_\_\_\_  
Name:  
Title:

Hotel Lotte Co.

By: \_\_\_\_\_  
Name:  
Title:

Enc.

## EXHIBIT E

### FORM OF ASSIGNMENT OF LICENSES, PERMITS AND WARRANTIES

ASSIGNMENT OF LICENSES, PERMITS AND WARRANTIES (this “Assignment”) dated as of [\_\_\_\_\_, 2015], among NWPH LLC, a Delaware limited liability company (collectively, “Assignor”) and Hotel Lotte Co., Ltd., a company incorporated in Republic of Korea (“Assignee”).

### RECITALS

This Assignment is made with reference to the following facts:

A. Concurrently with this Assignment, Assignor is selling to Assignee, and Assignee is purchasing from Assignor, that real property and related improvements, fixtures and personal property described in Exhibit A attached hereto (the “Property”), pursuant to that certain Agreement of Purchase and Sale (the “Agreement”) dated as of May 14, 2015, by and between Assignor as seller and Assignee, as Buyer. Any capitalized terms used herein and not otherwise defined shall have the meaning ascribed thereto in the Agreement.

B. In connection with such purchase and sale, Assignor desires to assign and delegate to Assignee, and Assignee desires to assume, all of Assignor’s right, title, interest, duties and obligations (to the extent such rights, duties and obligations first arise or accrue on or after the date hereof), in, to and under various licenses, permits, warranties and intellectual property pertaining to the Property and its operation.

NOW, THEREFORE, in consideration of the purchase price paid by Assignee to Assignor for the Property and the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. Assignment. Assignor hereby sells, assigns, transfers and conveys to Assignee all of Assignor’s right, title and interest in and to the Licenses and Permits, all Warranties, and all Assigned IP, in each case, expressly excluding Assignor’s right, title and interest in and to any Excluded Assets.

2. Assumption of Contracts. Assignee hereby accepts the assignment, transfer and conveyance of the Licenses and Permits, all Warranties, all Assigned IP. Assignee hereby assumes and agrees to be bound by all of the covenants, obligations, and burdens of Assignor under the Licenses and Permits, all Warranties, all Assigned IP first arising from and after the date of this Assignment.

3. Successors and Assigns. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

4. Governing Law. This Assignment shall in all respects be governed by, and construed in accordance with, the laws of the State of New York.

5. Counterparts. This Assignment may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed as of the date written above.

ASSIGNOR:

NWPH LLC

By: \_\_\_\_\_  
Name:  
Title:

ASSIGNEE:

Hotel Lotte Co., Ltd.

By: \_\_\_\_\_  
Name:  
Title:

(signature page to Assignment of Licenses, Permits and Warranties )

EXHIBIT F

[REDACTED]

RECITALS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

IN WITNESS WHEREOF, Assignor and Assignee have duly executed this Assignment as an instrument under seal as of the date first above written.

ASSIGNOR:

NWPH LLC

By: \_\_\_\_\_  
Name:  
Title:

ASSIGNEE:

Hotel Lotte Co., Ltd.

By: \_\_\_\_\_  
Name:  
Title:

EXHIBIT G

FORM OF BUYER CLOSING CERTIFICATE

BUYER'S CERTIFICATE CONCERNING  
REPRESENTATIONS AND WARRANTIES

THIS BUYER'S CERTIFICATE CONCERNING REPRESENTATIONS AND WARRANTIES is given effective as of [\_\_\_\_\_], 2015, by HOTEL LOTTE CO, LTD ("Buyer"), to NWPB LLC, a Delaware limited liability company ("Seller"), in connection with the closing of the transaction contemplated by that certain Purchase and Sale Agreement dated as of May 14, 2015, between Seller and Buyer (the "Purchase Agreement").

Buyer hereby confirms to Seller that, as of the date hereof, each of the representations and warranties made by Buyer in the Purchase Agreement is true and correct in all material respects on and as of the date hereof (unless such representation or warranty was made on and as of a specific date, in which case it was true and correct in all material respects as of such date).

HOTEL LOTTE CO, LTD

By: \_\_\_\_\_  
Title: \_\_\_\_\_



## EXHIBIT H

### FORM OF BILL OF SALE

This BILL OF SALE ("Agreement") is made and entered into as of the [\_\_ day of \_\_\_\_\_, 2015] by NWPH LLC, a Delaware limited liability company ("Seller"), in favor of Hotel Lotte Co., Ltd., a company incorporated in Republic of Korea ("Buyer").

### RECITALS

This Agreement is made with reference to the following facts:

A. Concurrently with this Agreement, Seller is selling to Buyer, and Buyer is purchasing from Seller, that real property and related improvements, fixtures and personal property described in Exhibit A attached hereto (the "Real Property"), pursuant to that certain Agreement of Purchase and Sale (the "Purchase Agreement") dated as of May 14, 2015, by and between NWPH LLC, a Delaware limited liability company, as seller and Hotel Lotte Co., Ltd., a company incorporated in Republic of Korea, as Buyer. Any capitalized terms used herein and not otherwise defined shall have the meaning ascribed thereto in the Purchase Agreement.

B. In connection with such purchase and sale, Seller desires to assign and delegate to Buyer, and Buyer desires to assume, all of Seller's right, title, interest, duties and obligations (to the extent such rights, duties and obligations first arise or accrue on or after the date hereof), in, to and under various personal property and other rights pertaining to the Real Property and its operation.

NOW, THEREFORE, in consideration of the purchase price paid by Buyer to Seller for the Real Property and the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

1. Sale of Personalty. Seller hereby sells, transfers, sets over and conveys to Buyer the following (the "Assigned Personal Property"):

- (a) the Personal Property;
- (b) the Consumables;
- (c) the Retail Merchandise;
- (d) the Books and Records;
- (e) the Plans and Specifications;
- (f) Bookings; and
- (g) Vehicles.

provided, however, in each case, that Assigned Personal Property shall expressly exclude Assignor's right, title and interest in and to any Excluded Assets.

2. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3. Governing Law. This Agreement shall in all respects be governed by, and construed in accordance with, the laws of the State of New York.

4. Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

[no further text on this page]

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed as of the date written above.

SELLER:

NWPH LLC, a Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Title:

BUYER:

Hotel Lotte Co., Ltd., a company incorporated in Republic of Korea

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

(signature page to Bill of Sale)

EXHIBIT A  
REAL PROPERTY

## EXHIBIT I

### FORM OF FIRPTA CERTIFICATE

Section 1445 of the Internal Revenue Code of 1986, as amended (the “Code”), provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. For U.S. tax purposes (including Section 1445 of the Code), the owner of a disregarded entity (which has legal title to a U.S. real property interest under local law) will be deemed the transferor of the property and not the disregarded entity. To inform Hotel Lotte Co., Ltd., a company incorporated in Republic of Korea (“Transferee”) that withholding of tax is not required upon disposition of a U.S. real property interest by , a Delaware limited liability company (“Parent”) (the owner, for U.S. federal income tax purposes, of NWPH, LLC, a Delaware limited liability company (“Transferor”), which is a disregarded entity for U.S. federal income tax purposes), the undersigned hereby certifies the following on behalf of the Parent:

- (a) Parent is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Code and Income Tax Regulations);
- (b) Parent is not a disregarded entity as defined in Treasury Regulations Section 1.1445-2(b)(2)(iii).
- (c) The U.S. employer identification number of Parent is .
- (d) Parent has an address at c/o Northwood Investors LLC, 575 Fifth Avenue, 23rd Floor, New York, New York 10017.

This Certification is given to Transferee with respect to the transfer of the Assets as such term is defined in that certain Agreement of Purchase and Sale dated as of May 14, 2015, among Transferor and Transferee, for the purpose of establishing and documenting the nonforeign affidavit exemption to the withholding requirement of Section 1445 of the Code.

Parent understands that this Certification may be disclosed to the Internal Revenue Service by Transferee and that any false statement contained herein could be punished by fine, imprisonment or both.

[Signature Page Follows]

Under penalty of perjury, I declare that I have examined this Certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have the authority to sign this document on behalf of Parent.

[\_\_\_\_\_, 2015]

[], a Delaware limited liability company

By: \_\_\_\_\_

Name:

Title:

\_\_\_\_\_

EXHIBIT J

FORM OF SELLER CLOSING CERTIFICATE

SELLER'S CERTIFICATE  
CONCERNING REPRESENTATIONS  
AND WARRANTIES

THIS SELLER'S CERTIFICATE CONCERNING REPRESENTATIONS AND WARRANTIES is given effective as of [\_\_\_\_\_], 2015, by NWPH LLC, a Delaware limited liability company ("Seller"), to HOTEL LOTTE CO, LTD, a Delaware limited liability company ("Buyer"), in connection with the closing of the transaction contemplated by that certain Purchase and Sale Agreement dated as of May 14, 2015, by and among Seller and Buyer (the "Purchase Agreement").

Seller hereby confirms to Buyer that, as of the date hereof, except as otherwise set forth on Schedule I attached hereto, each of the representations and warranties made by Seller in the Purchase Agreement is true and correct in all material respects on and as of the date hereof (unless such representation or warranty was made on and as of a specific date, in which case it was true and correct in all material respects as of such date).

SELLER:

NWPH LLC, a Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Title:

EXHIBIT K

FORM OF TITLE AFFIDAVIT

TITLE-AFFIDAVIT  
dated as of [\_\_\_\_/\_\_\_\_/15]

---

Re: Owner:  
See annexed SIGNATURE PAGE TO TITLE-AFFIDAVIT  
Title Insurer:  
First American Title Insurance Company ("FirstAM"), and coinsurers (if any)  
Commitment #:  
[\_\_\_\_\_] issued by FirstAM  
Premises:  
The New York Palace Hotel, New York City

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Certifications:

In connection with the above, the undersigned certifies the following to Title Insurer as to the Premises but only as to the period between [\_\_\_\_/\_\_\_\_/\_\_\_\_] (date of acquisition), and the date hereof (subject to any exceptions expressly noted below):

Mechanics Liens:

- A. All labor, services or materials rendered or furnished in connection with the Premises or with the construction or repair of any building or improvements on the Premises contracted for or requested by the undersigned have been completed and paid for in full, with the possible exception of routine repairs and/or maintenance which have been or will be duly paid in the ordinary course of business; and
- B. To the actual knowledge of the undersigned, all other labor, services or materials rendered or furnished in connection with the Premises or with the construction or repair of any building or improvements on the Premises have been completed and paid for in full.

Tenants/Parties in Possession:

Except as shown in the Commitment (with respect to tenancies of record), including matters disclosed in the underlying exception documents of record referenced therein, there are no tenants or other parties who are in possession or have the right to be in possession of said Premises, other than those tenants identified on the annexed RENT-ROLL (and any subtenants thereunder), which tenants have rights as tenants only and do not have options to purchase all or part of the Premises ("OTPs"), rights of first refusal to acquire all or part of the Premises ("ROFRs") or rights of first offer to acquire all or part of the Premises ("ROFOs").

Unrecorded OTPs, ROFRs and ROFOs:

The undersigned has not entered into (and has no actual knowledge of) any unrecorded OTPs, ROFRs or ROFOs which are presently in effect and will survive the transfer of the Premises in connection with the instant transaction, except as set forth in the Commitment.

Covenants & Restrictions:

To the actual knowledge of the undersigned, (a) the undersigned has received no written notice of past or present violations of any effective covenants, conditions or restrictions set forth in the Commitment (the "CC&Rs") which remain uncured, and (b) any charge or assessment provided for in any of the CC&Rs has been or will be duly paid in the ordinary course.



**Bankruptcy:**

No proceedings in bankruptcy or receivership have been instituted by or against the undersigned (or its constituent entities) which are now pending, nor has the undersigned (or its constituent entities) made any assignment for the benefit of creditors which is in effect as to said Premises.

Exceptions to the foregoing Certifications, if any, are listed hereinafter:

---

**Gap Indemnification:**

Between the date hereof and the date of recording of the insured conveyance but in no event later than 5 business days from the date hereof (hereinafter, the "Gap Period"), Owner has not taken or allowed and will not voluntarily take or allow any action to encumber the Premises in the Gap Period.

**Further Assurances:**

The undersigned hereby undertakes and agrees to fully cooperate with Title Insurer in correcting any errors in the execution and acknowledgment of the insured conveyance.

**Counterparts:**

This document may be executed in counterparts.

**Inducement and Indemnification:**

The undersigned provides this document to induce Title Insurer to insure title to said Premises well knowing that it will do so only in complete reliance upon the matters asserted hereinabove and further, will indemnify, defend and hold Title Insurer harmless against any loss or damage sustained as a result of any inaccuracy in the matters asserted hereinabove.

**Knowledge/Survival:**

Any statement "to the actual knowledge of the Owner" (or similar phrase) shall mean that the "Designated Representative" (as hereinafter defined) of the Owner has no knowledge that such statement is untrue (and, for this purpose, the Owner's knowledge shall mean the present actual knowledge [excluding constructive or imputed knowledge] of the Designated Representative, but such Designated Representative shall not have any liability in connection herewith. \*\*\* Notwithstanding anything to the contrary herein, (1) any cause of action for a breach of this document shall survive until 6 months after the date hereof, at which time the provisions hereof (and any potential cause of action resulting from any breach for which Title Insurer has not given Owner written notice) shall terminate; and (2) to the extent Title Insurer shall have knowledge as of the date hereof that any of the statements contained herein is false or inaccurate, then the Owner shall have no liability with respect to the same. \*\*\* The "Designated Representative" for the Owner is [\_\_\_\_\_]. \*\*\* The Designated Representative of the Owner is an individual affiliated with, or employed by, the Owner or its affiliates who has been directly involved in the asset management or property management of the Premises and is in a position to confirm the truth and accuracy of Owner's knowledge certifications herein concerning the Premises.

SEE ANNEXED SIGNATURE PAGE TO TITLE-AFFIDAVIT

SIGNATURE PAGE TO TITLE-AFFIDAVIT

OWNER:

NWPH LLC, a Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Title:

Subscribed and sworn to on \_\_\_\_/\_\_\_\_/\_\_\_\_

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

Subscribed and sworn to on \_\_\_\_/\_\_\_\_/\_\_\_\_

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

RENT-ROLL

SEE ANNEXED

## EXHIBIT L

### FORM OF HOLDBACK AGREEMENT

#### HOLDBACK AGREEMENT

THIS HOLDBACK AGREEMENT (this "Agreement") is entered into as of [\_\_\_\_], 2015 (the "Effective Date") among HOTEL LOTTE CO., LTD., a company incorporated in Republic of Korea ("Buyer"), NWPB LLC, a Delaware limited liability company ("Seller"), and FIRST AMERICAN TITLE INSURANCE COMPANY, as escrow agent ("Escrow Agent").

#### RECITALS

A. Buyer and Seller are parties to an Agreement of Purchase and Sale dated May 14, 2015 (the "Purchase Agreement") pursuant to which Buyer is purchasing a leasehold interest in certain property located at 455 Madison Avenue, New York, New York, as more particularly described therein (the "Property"). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Purchase Agreement.

B. Simultaneous with the Closing and pursuant to Section 11.6 of the Purchase Agreement, Escrow Agent shall disburse from the funds deposited by Buyer into the Closing escrows an aggregate amount equal to \$[\_\_\_\_] (the "Escrowed Funds"), and deposit the same into a money market interest bearing account held by Escrow Agent (the "Escrow Account"), which shall be established under Seller's federal employer identification number.

C. The parties to this Agreement desire to implement the terms of Section 11.6 of the Purchase Agreement and to establish the terms and conditions pursuant to which the Escrowed Funds will be deposited, held in, and disbursed from the Escrow Account.

#### AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties to this Agreement agree as follows:

1. Appointment of Escrow Agent. Buyer and Seller hereby appoint Escrow Agent to act as escrow agent on the terms and conditions herein set forth, and Escrow Agent hereby agrees to assume and perform the duties of, escrow agent under and pursuant to this Agreement.
2. Escrowed Funds. Escrow Agent agrees to (a) accept delivery of the Escrowed Funds; and (b) hold such Escrowed Funds in the Escrow Account, which shall be an interest-bearing account (provided that Buyer provides a W-9 and investment directions), all subject to the terms and conditions of this Agreement.
3. Deposit of Escrowed Funds; Release from Escrow.
  - (a) Delivery of Escrowed Funds. Escrow Agent hereby acknowledges receipt of the Escrowed Funds from Seller, and shall act in accordance with and subject to the terms of this Agreement. Escrow Agent shall deposit such funds received by it hereunder into the Escrow Account. The Escrowed Funds shall not be subject to lien or attachment by any creditor of any party hereto and shall be used solely for the purpose set forth in this Agreement.

(b) Release. The Escrowed Funds will be held and disbursed by Escrow Agent only as follows:

(i) In the event Buyer becomes aware of a claim that is recoverable from the Escrowed Funds pursuant to Section 11.6 of the Purchase Agreement (a "Holdback Claim"), Buyer shall promptly (and in any event prior to the date that is nine months after the Closing Date (which is, for avoidance of doubt, the date of this Agreement) (such nine month period being the "Survival Period")), if at all, give written notice of such Holdback Claim to Seller and Escrow Agent (a "Holdback Claim Notice"), which Holdback Claim Notice shall set forth Buyer's assertion of Seller's liability with respect to such Holdback Claim and the amount requested to be disbursed by Escrow Agent (the "Claimed Amounts"). Escrow Agent shall, within two (2) business days after receipt of a Holdback Claim, deliver written notice to Seller of such Holdback Claim. If Seller does not deliver to Escrow Agent a written objection to the payment of such Holdback Claim within 5 Business Days after Seller's receipt of such written notice from Escrow Agent, then Escrow Agent is authorized to deliver the Claimed Amounts to Buyer. If Seller does deliver such written objection within such 5 Business Day period, then the Escrow Agent shall continue to hold the Claimed Amounts in escrow unless and until (a) Escrow Agent receives a joint written notice from Buyer and Seller, in which event it will deliver the Claimed Amounts in accordance with such joint written instructions, or (b) the entry of a final non-appealable judgment, in which event Escrow Agent will deliver or retain the Claimed Amounts in accordance with the terms of said judgment. If Seller disputes the validity of a Holdback Claim, Buyer shall commence litigation in a court of competent jurisdiction with respect to such Holdback Claim, if at all, prior to 60 days after the expiration of the Survival Period and if such proceeding is not commenced within such period, the Holdback Claim shall be deemed withdrawn and the Claimed Award disbursed to Seller upon demand.

(ii) Subject to the disbursements of Escrowed Funds to pay Holdback Claims or the retention of the Claimed Amounts, each in accordance with the preceding subsection, the balance of the Escrowed Funds held in escrow shall be returned and distributed to Seller on the date that is nine months after the Closing Date. Notwithstanding the forgoing, Escrow Agent shall not be deemed to have breached its obligations under subsection 3(b)(ii) unless Escrow Agent fails to promptly (but in any event within three business days) disburse the Escrowed Funds to Seller in accordance with this subsection 3(b)(ii) following notice (email notice shall be sufficient) to Escrow Agent directing Escrow Agent to so disburse such Escrowed Funds. At the time of the disposition of the Escrowed Funds, all interest accrued thereon (if any) shall be delivered to Seller.

(c) Tax Reporting Matters. Buyer and Seller each agrees, upon request, to provide Escrow Agent with its tax identification number by furnishing an appropriate form W-9 and other forms and documents that Escrow Agent may reasonably request.

#### 4. Escrow Provisions.

(a) In the event Escrow Agent is required to invest the Escrowed Funds hereunder, Escrow Agent shall not be held responsible for any loss of principal or interest which may be incurred as a result of making such investment or redeeming such investment in accordance herewith. Buyer and Seller authorize Escrow Agent to accept, comply with and obey any writs, orders, judgments or decrees entered or issued by any court with jurisdiction, and Escrow Agent shall not be liable to Buyer or Seller or any other person by reason of such

compliance, notwithstanding that such writ, order, judgment or decree be subsequently reversed, modified, annulled, set aside or vacated. If Escrow Agent is made a party defendant to any suit or proceedings regarding the escrow of the Escrowed Funds, Buyer and Seller agree to pay Escrow Agent, upon written demand, all reasonable costs, attorney's fees, and expenses incurred with respect to such suit or proceeding, except to the extent arising from Escrow Agent's gross negligence, willful misconduct or breach of this Agreement.

(b) Escrow Agent shall not be bound by any modification, cancellation or rescission of this Agreement unless in writing and signed by Escrow Agent.

(c) If any dispute arises as to whether Escrow Agent is obligated to deliver the Escrowed Funds or as to whom the Escrowed Funds are to be delivered or the amount or timing thereof, Escrow Agent shall not be required to make any delivery, but in such event Escrow Agent may hold the Escrowed Funds until receipt by Escrow Agent of instructions in writing, signed by all parties which have, or claim to have, an interest in the Escrowed Funds, directing the disposition of the Escrowed Funds, or in the absence of such authorization, Escrow Agent may hold the Escrowed Funds until receipt of a certified copy of a final judgment or order of a court of competent jurisdiction, providing for the disposition of the Escrowed Funds. If such written instructions are not received, or proceedings for such determination are not commenced, within thirty (30) days after receipt by Escrow Agent of notice of any such dispute and diligently continued, or if Escrow Agent is uncertain as to which party or parties are entitled to the Escrowed Funds, Escrow Agent may either (i) hold the Escrowed Funds until receipt of (A) such written instructions or (B) a certified copy of a final judgment of a court of competent jurisdiction providing for the disposition of the Escrowed Funds, or (ii) deposit the Escrowed Funds in the registry of a court of competent jurisdiction; provided, however, that notwithstanding the foregoing, Escrow Agent may, but shall not be required to, institute legal proceedings of any kind.

(d) Each of Buyer and Seller, jointly and severally, shall indemnify and hold harmless Escrow Agent from and against any and all losses, liabilities, damages, claims, expenses or costs actually incurred by Escrow Agent in connection with its performance of its duties hereunder, other than those caused by Escrow Agent's own breach of this Agreement, misconduct, bad faith or gross negligence.

5. Expenses. All fees and expenses of Escrow Agent for performing its responsibilities hereunder, which shall be capped at Three Hundred and 00/Dollars (\$300.00), will be shared equally by Buyer and Seller and shall be paid upon execution hereof from the proceeds of the Closing.

6. Successor Escrow Agent.

(a) Escrow Agent may resign as escrow agent thirty (30) calendar days following the giving of prior written notice thereof to Buyer and Seller. In addition, Escrow Agent may be removed and replaced on a date designated in a written instrument signed by Buyer and Seller and delivered to Escrow Agent. Notwithstanding the foregoing, no such resignation or removal shall be effective until a successor escrow agent has acknowledged its appointment as such. In either event, upon the effective date of such resignation or removal and upon receipt by Escrow Agent of any fees, costs and expenses owed or due to it, if any, Escrow Agent shall deliver the Escrowed Funds to such successor escrow agent, together with such

records maintained by Escrow Agent in connection with its duties hereunder and other information with respect to the Escrowed Funds as such successor may reasonably request.

(b) If a successor escrow agent shall not have acknowledged its appointment as such, in the case of a resignation, prior to the expiration of thirty (30) calendar days following the date of a notice of resignation or, in the case of a removal, on the date designated for Escrow Agent's removal, as the case may be, Buyer and Seller are unable to agree on a successor escrow agent, or for any other reason, Escrow Agent may petition a court of competent jurisdiction to select a successor or Escrow Agent may select a successor escrow agent and any such resulting appointment shall be binding upon all of the parties to this Agreement.

7. Notices. Any notice provided for or permitted hereunder will be treated as having been given when (i) delivered personally, (ii) sent by confirmed facsimile, (iii) sent by commercial overnight courier with written verification of receipt, or (iv) five business days after being mailed postage prepaid by certified or registered mail, return receipt requested, to the party to be notified, at the address set forth below, or at such other place of which the other party has been notified in accordance with the provisions of this Section 7.

If to Seller:

[REDACTED]

with a copy to:

[REDACTED]

If to Buyer:

[REDACTED]

with a copy to:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

If to Escrow Agent:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

8. General.

(a) Governing Laws. It is the intention of the parties hereto that the internal laws of the State of New York shall govern the validity of this Agreement, the construction of its terms, and the interpretation and enforcement of the rights and duties of the parties to this Agreement.

(b) Binding upon Successors and Assigns. Subject to, and unless otherwise provided in, this Agreement, each and all of the covenants, terms, provisions, and agreements contained in this Agreement shall be binding upon, and inure to the benefit of, the permitted successors, executors, heirs, representatives, administrators and assigns of the parties to this Agreement.

(c) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original as against any party whose signature appears on such counterpart and all of which together shall constitute one and the same instrument. This Agreement shall become binding when one or more counterparts of this Agreement, individually or taken together, shall bear the signatures of all of the parties reflected in this Agreement as signatories.

(d) Entire Agreement. This Agreement, the documents referenced in this Agreement and the exhibits to such documents, constitute the entire understanding and agreement of the parties to this Agreement with respect to the subject matter of this Agreement and of such documents and exhibits and supersede all prior and contemporaneous agreements or understandings, inducements or conditions, express or implied, written or oral, between the parties with respect to this Agreement. The express terms of this Agreement control and supersede any course of performance or usage of the trade inconsistent with any of the terms of this Agreement.

(e) Waivers. No waiver by any party to this Agreement of any condition or of any breach of any provision of this Agreement will be effective unless in writing. No waiver by any party of any such condition or breach, in any one instance, will be deemed to be a further or continuing waiver of any such condition or breach or a waiver of any other condition or breach of any other provision contained in this Agreement.



(f) Amendment. This Agreement may be amended with the written consent of Buyer, Seller and Escrow Agent, provided that if Escrow Agent does not agree to an amendment agreed upon by Buyer and Seller, Buyer and Seller will appoint a successor Escrow Agent in accordance with Section 6.

(g) Attorneys' Fees and Costs. In the event either party is required to resort to litigation to enforce its rights under this Agreement, the prevailing party in such litigation will be entitled to collect from the other party all costs, expenses and attorneys' fees incurred in connection with such action.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK.]

IN WITNESS WHEREOF, the parties have duly executed this Holdback Agreement as of the day and year first above written.

BUYER: HOTEL LOTTE CO., LTD., a company incorporated in Republic of Korea

By: \_\_\_\_\_  
Name:  
Title:

SELLER: NWPH LLC, a Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Title:

ESCROW AGENT: FIRST AMERICAN TITLE INSURANCE COMPANY

By: \_\_\_\_\_  
Name:  
Title:

EXHIBIT M

[REDACTED]

\_\_\_\_\_, 2015

TO: [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

• [REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

• [REDACTED]  
[REDACTED]

• [REDACTED]  
[REDACTED]

[REDACTED]

• [REDACTED]

• [REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED]

H. The current notice address for Tenant (cannot be a P.O. Box) is as follows:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

with a copy being simultaneously delivered to:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

● Guarantor hereby certifies and represents unto the Purchaser and each other Recipient in respect of the Guaranty, as of the date set forth above as follows:

A. The Guaranty remains in full force and effect and has not been modified.

With respect to Section 1 above:

TENANT:

[REDACTED]  
[REDACTED]

[REDACTED]  
\_\_\_\_\_  
[REDACTED]  
\_\_\_\_\_  
[REDACTED]  
\_\_\_\_\_

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
\_\_\_\_\_  
[REDACTED]  
\_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT N

FORM OF GROUND LEASE ESTOPPEL

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CERTIFICATION

[REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

[REDACTED]

IN WITNESS WHEREOF, the undersigned Landlord has executed this Estoppel Certificate as of the date first written above.

LANDLORD:

[Redacted signature]

By:

Name: \_\_\_\_\_

Title:

[Redacted text]

[Redacted text]

[Redacted text]

[Redacted text]

[Redacted text]

[Redacted text]

EXHIBIT A

BLOCK 1286 LOTS 21, 30 and 53

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, County of New York, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the southerly side of East 51st Street with the easterly side of Madison Avenue;

THENCE easterly along the southerly side of East 51<sup>st</sup> Street, 200 feet to a point; said point being 200 feet westerly as measured along the southerly side of East 51<sup>st</sup> Street from its intersection with the westerly side of Park Avenue;

THENCE southerly and parallel with the easterly side of Madison Avenue, 100 feet 5 inches to the center line of the block;

THENCE easterly along the center line of the block 45 feet to a point;

THENCE southerly and parallel to the easterly side of Madison Avenue 100 feet 5 inches to a point in the northerly side of East 50th Street, said point being 155 feet westerly as measured along the northerly side of East 50th Street from its intersection with the westerly side of Park Avenue;

THENCE westerly along the northerly side of East 50th Street, 245 feet to the easterly side of Madison Avenue;

THENCE northerly along the easterly side of Madison Avenue, 200 feet 10 inches to the point and place of BEGINNING.



SCHEDULE A

Property

Leasehold Description: (Block 1286 Lots 21, 30 and 53)

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

Beginning at the corner formed by the intersection of the southerly side of East 51st Street with the easterly side of Madison Avenue;

THENCE easterly along the southerly side of East 51st Street 200 feet to a point, said point being 200 feet westerly as measured along the southerly side of East 51st Street from its intersection with the westerly side of Park Avenue;

THENCE southerly and parallel with the easterly side of Madison Avenue 100 feet 5 inches to the center line of the block;

THENCE easterly along the center line of the block 45 feet to a point;

THENCE southerly and parallel to the easterly side of Madison Avenue 100 feet 5 inches to a point in the northerly side of East 50th Street, said point being 155 feet westerly as measured along the northerly side of East 50th Street from its intersection with the westerly side of Park Avenue;

THENCE westerly along the northerly side of East 50th Street 245 feet to the easterly side of Madison Avenue;

THENCE northerly along the easterly side of Madison Avenue 200 feet 10 inches to point and place of Beginning.

SCHEDULE 1.1(a)

Survey

1. Original Survey dated April 30, 1981, by Earl B. Lovell – S.P. Belcher, Inc., as most recently updated by Visual Examination of the Premises made on October 23, 2013, by Roland K. Link, N.Y. State Licensed Land Surveyor (Lic. Reg. No. 044228). The Visual Examination is certified to: National Land Tenure Company LLC; First American Title Insurance Company; NWPH, LLC and NWPH, Inc.; Wells Fargo Bank, National Association, as Administrative Agent, together with their successors and/or assigns.

SCHEDULE 1.1(b)

[REDACTED]

● [REDACTED]  
[REDACTED]

● [REDACTED]  
[REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]  
[REDACTED]

● [REDACTED]

SCHEDULE 1.1(d)

[REDACTED]

● [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

● [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]



[REDACTED]

SCHEDULE 2.1(b)(xii)

[REDACTED]

[REDACTED]

SCHEDULE 2.1(c)(ii)

Manager's Personal Property

None.



SCHEDULE 3.1(c)

Required Consents

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]



SCHEDULE 3.2(b)

[REDACTED]

- [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- [REDACTED]
- [REDACTED]  
[REDACTED]
- [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- [REDACTED]  
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[REDACTED]  
[REDACTED]
- [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

SCHEDULE 3.2(d)

[REDACTED]

● [REDACTED]  
[REDACTED]

● [REDACTED]  
[REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]  
[REDACTED]

● [REDACTED]

● [REDACTED]  
[REDACTED]

[REDACTED]

SCHEDULE 3.2(h)(i)

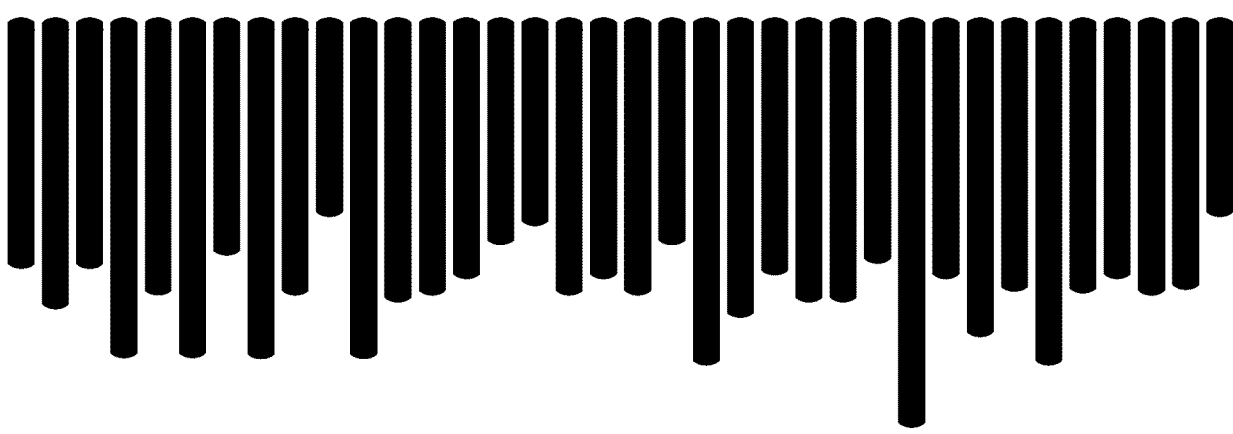
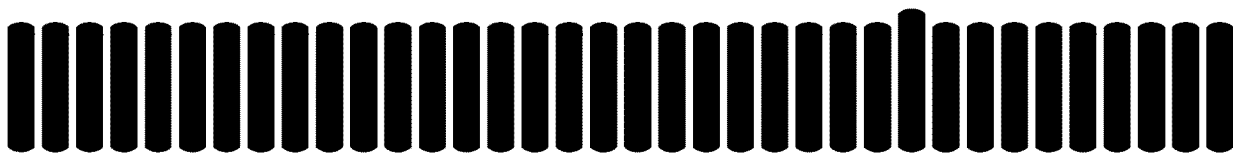
Employees

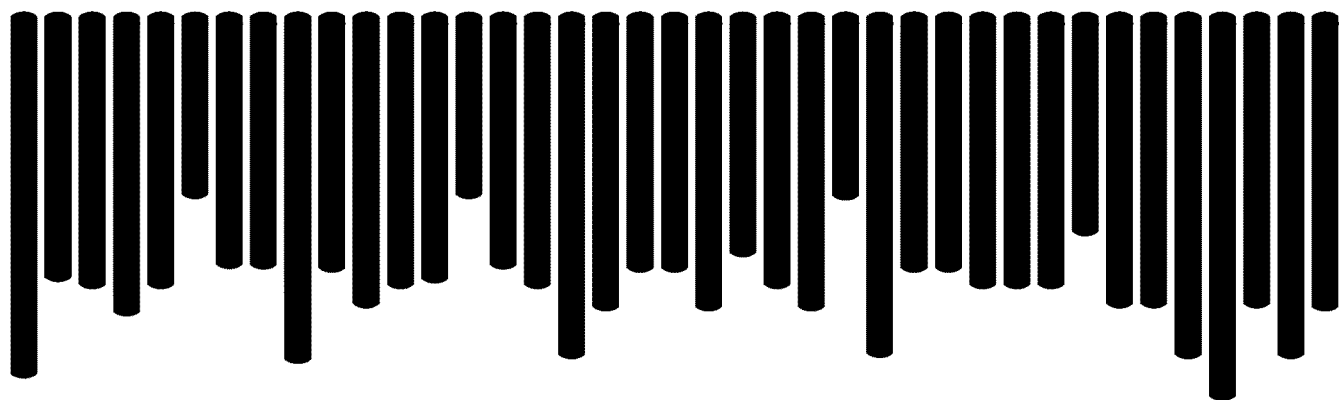
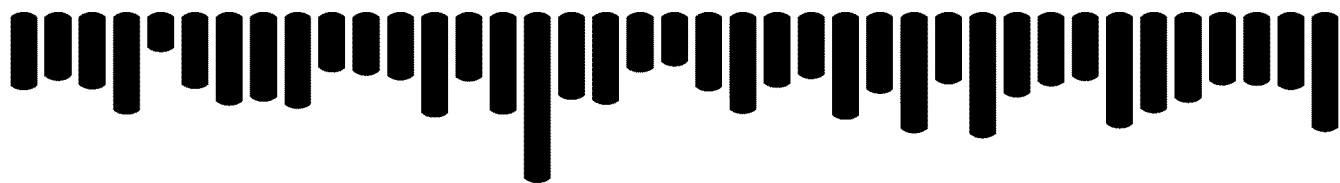


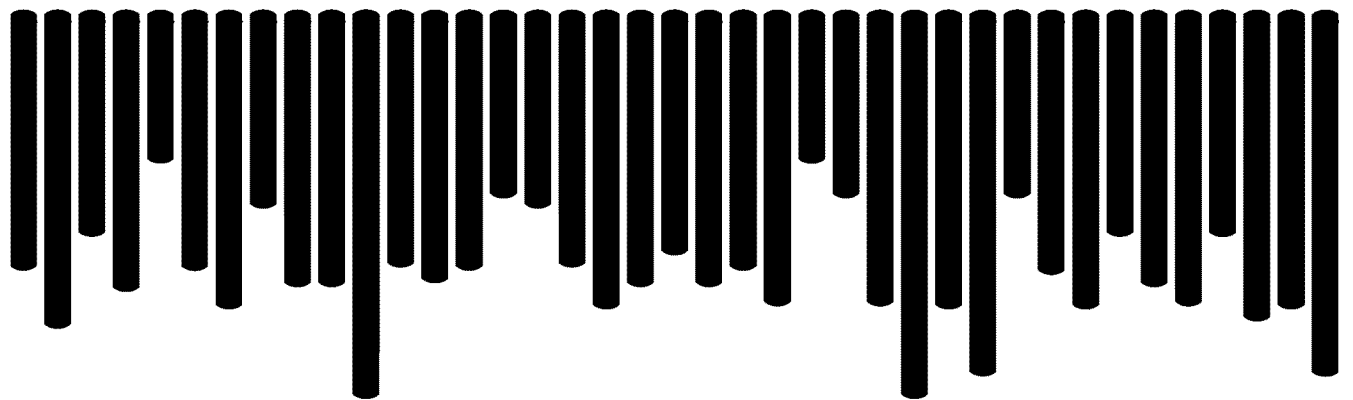
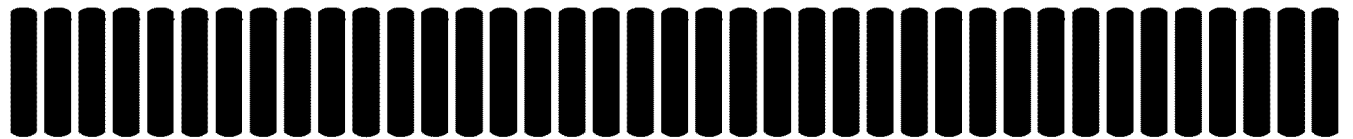
Last Name



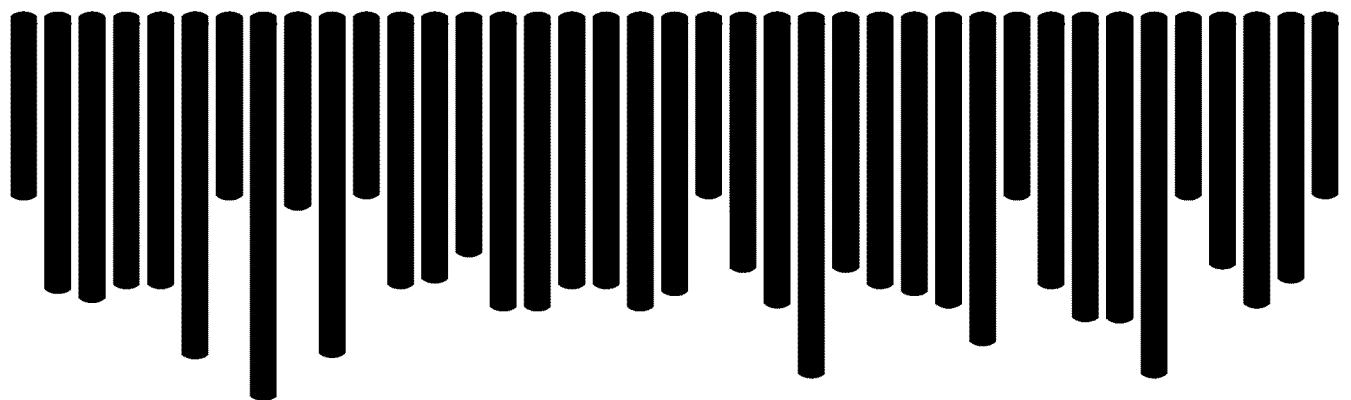
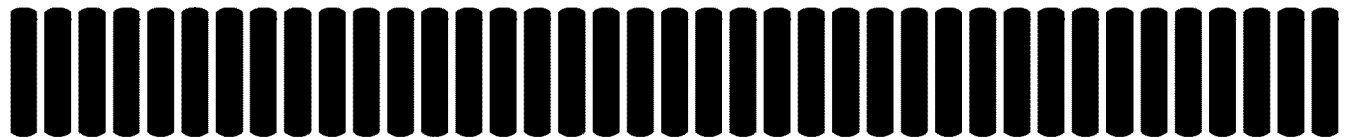
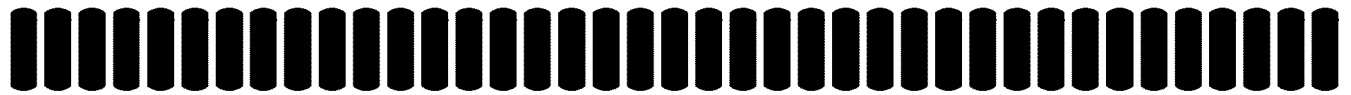
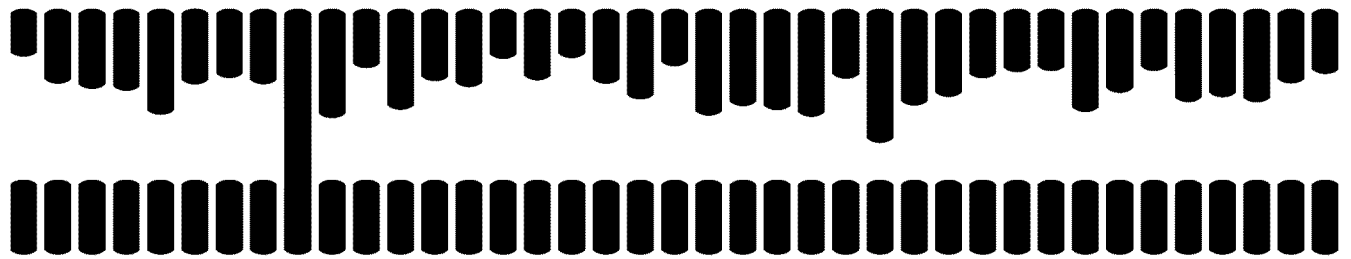
First Name

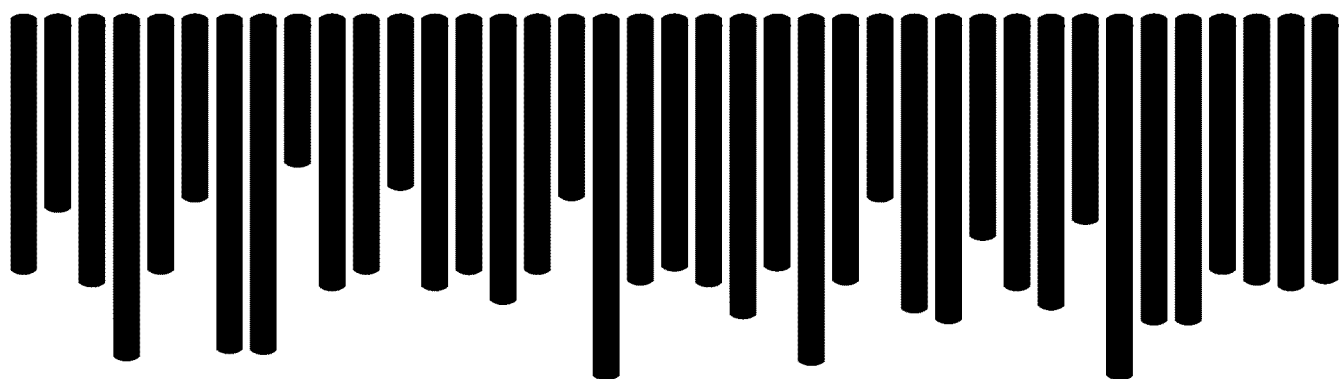
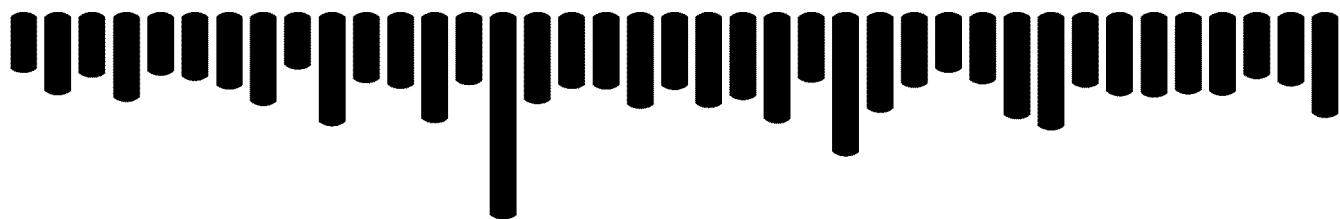


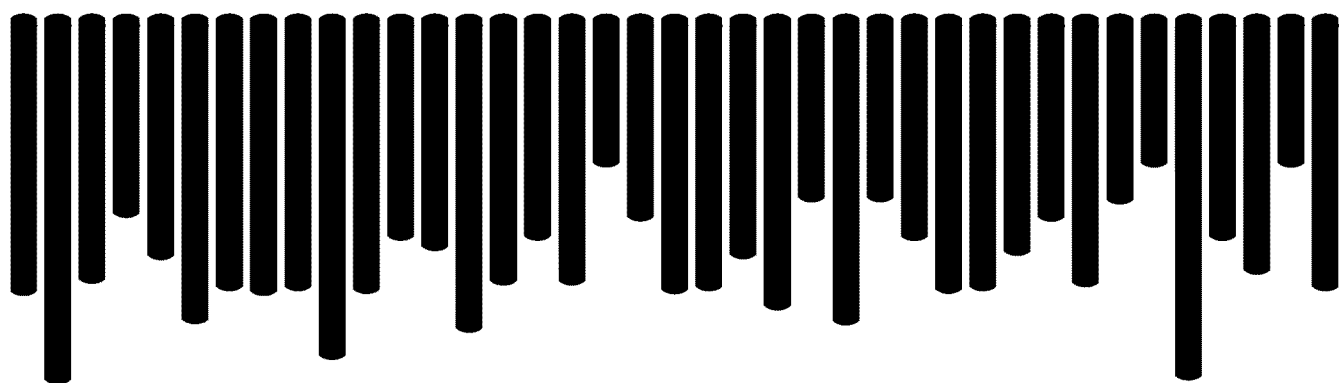
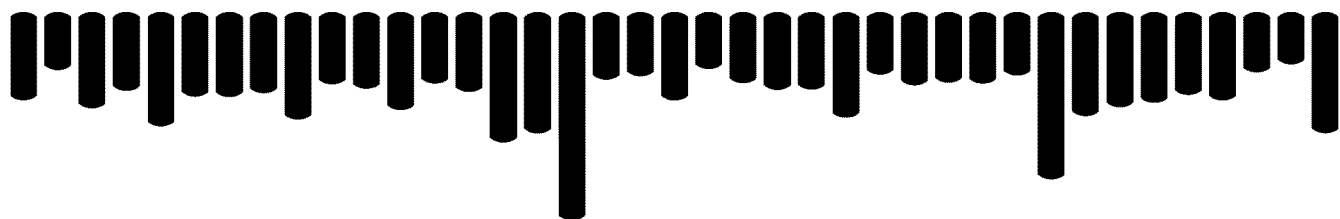


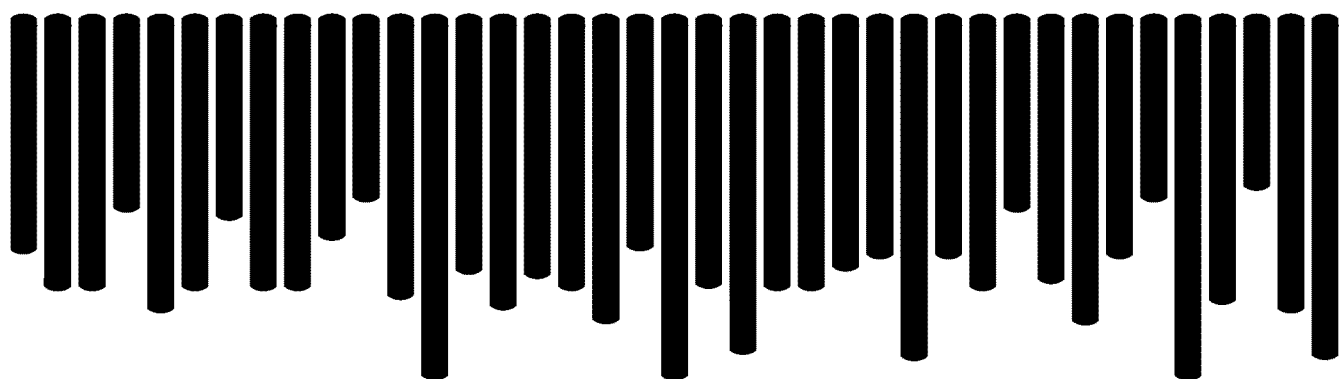


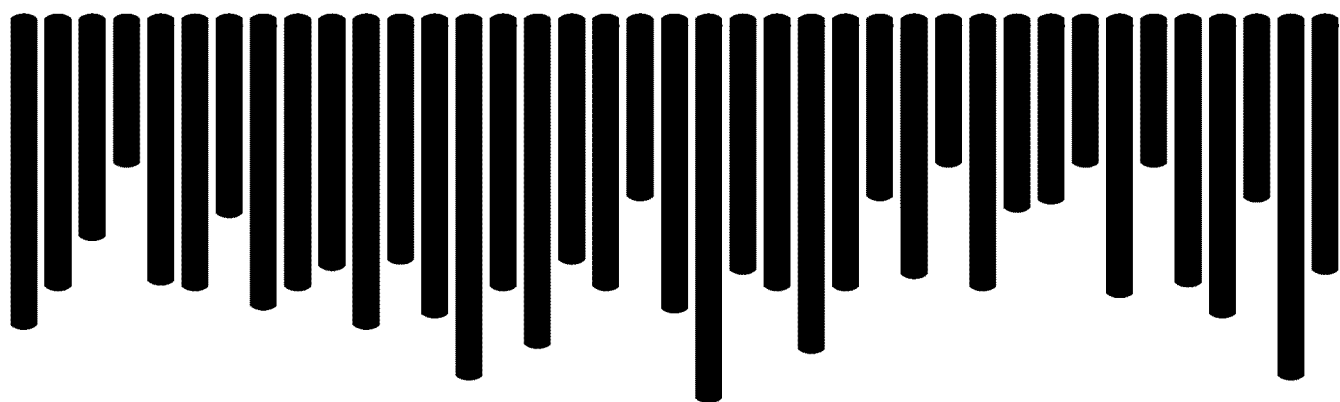


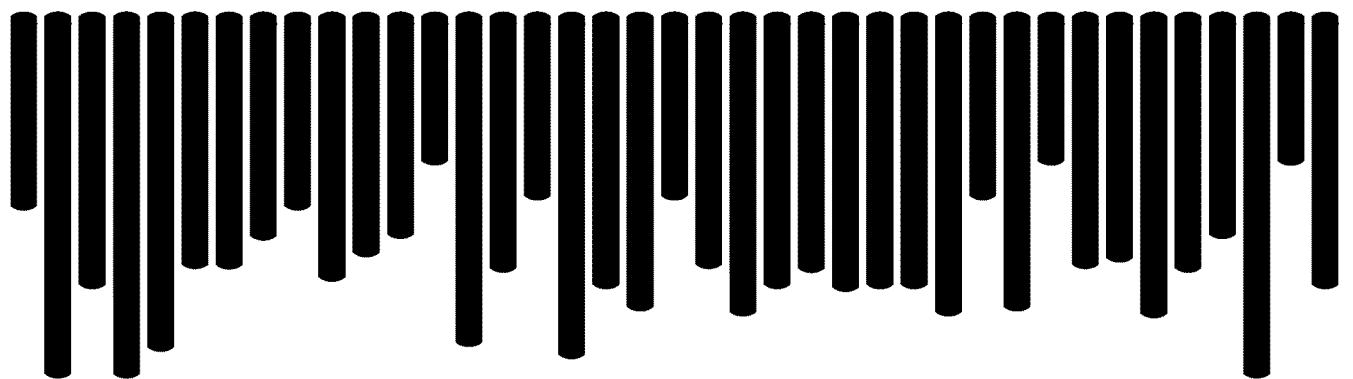
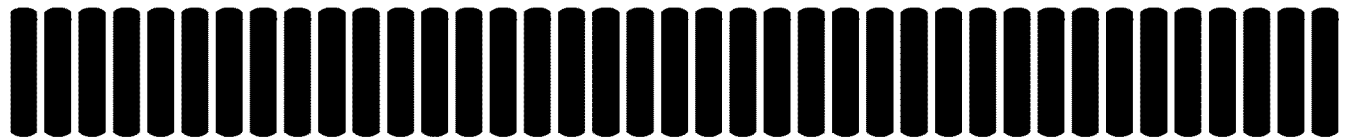
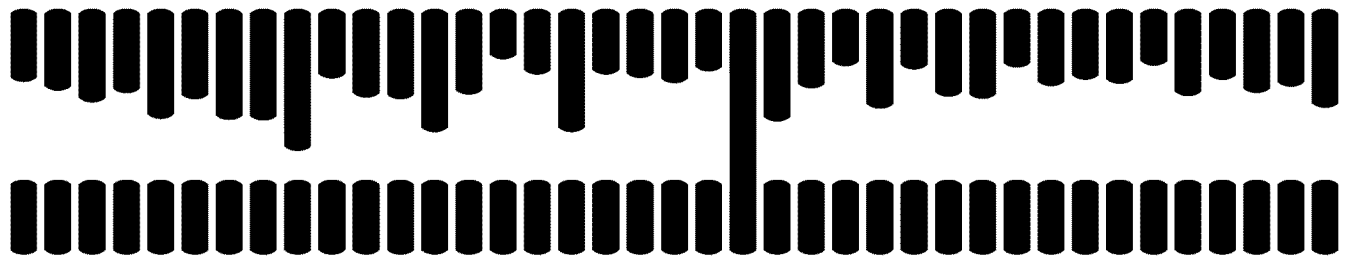


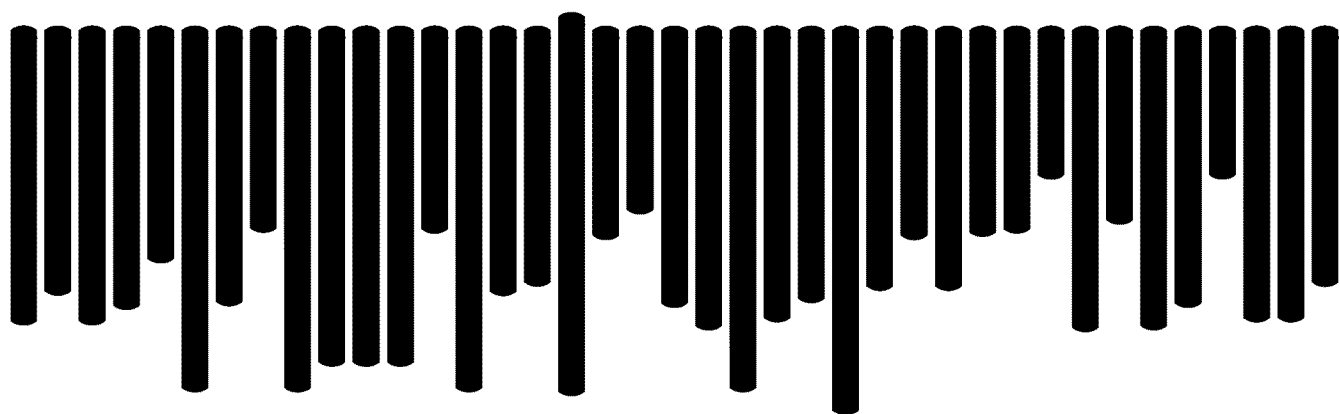


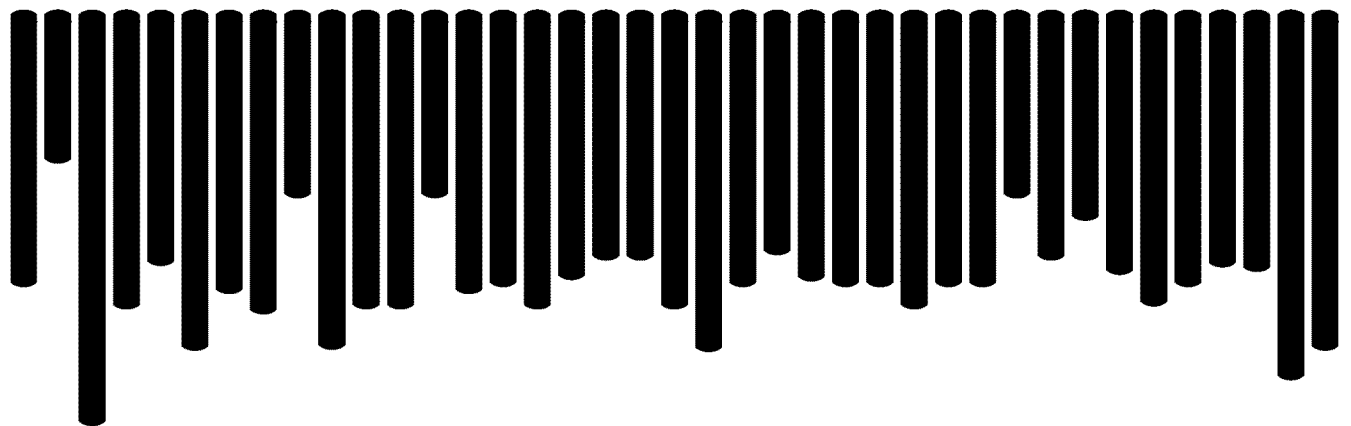
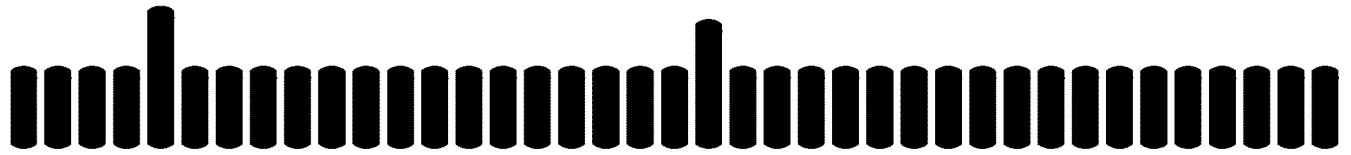
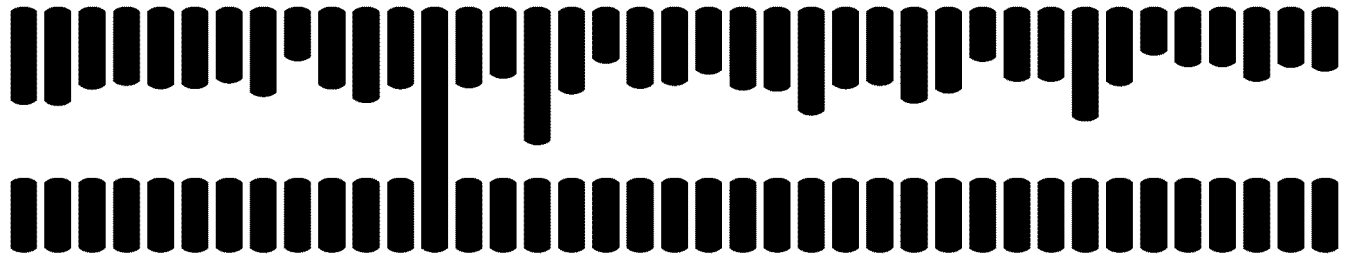




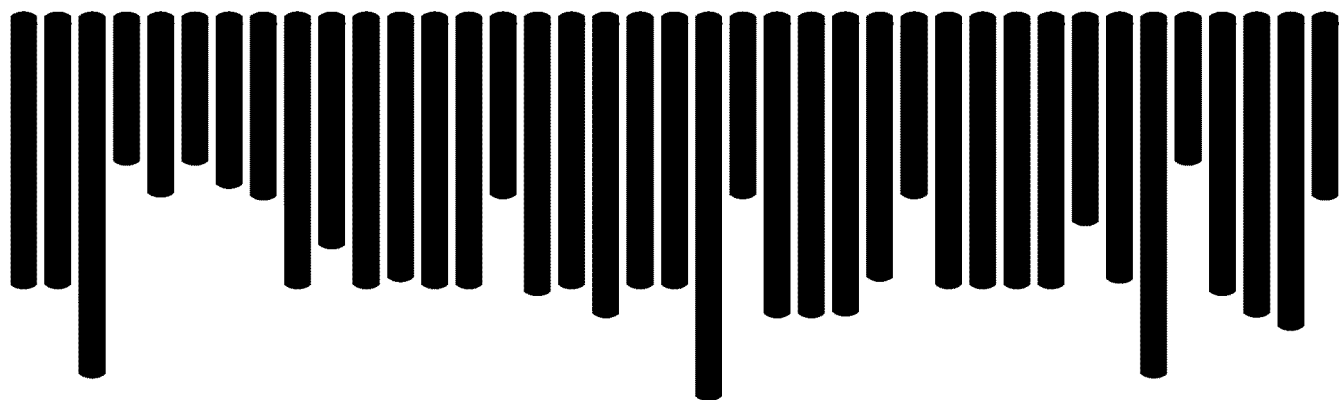
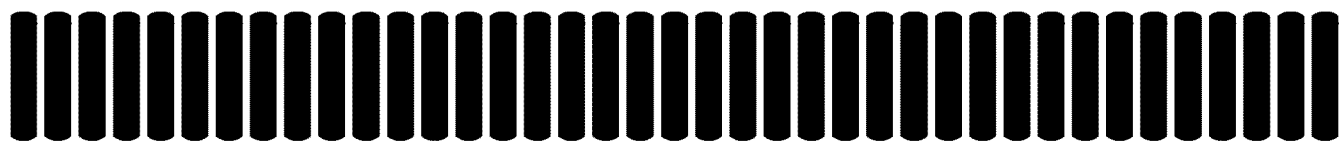


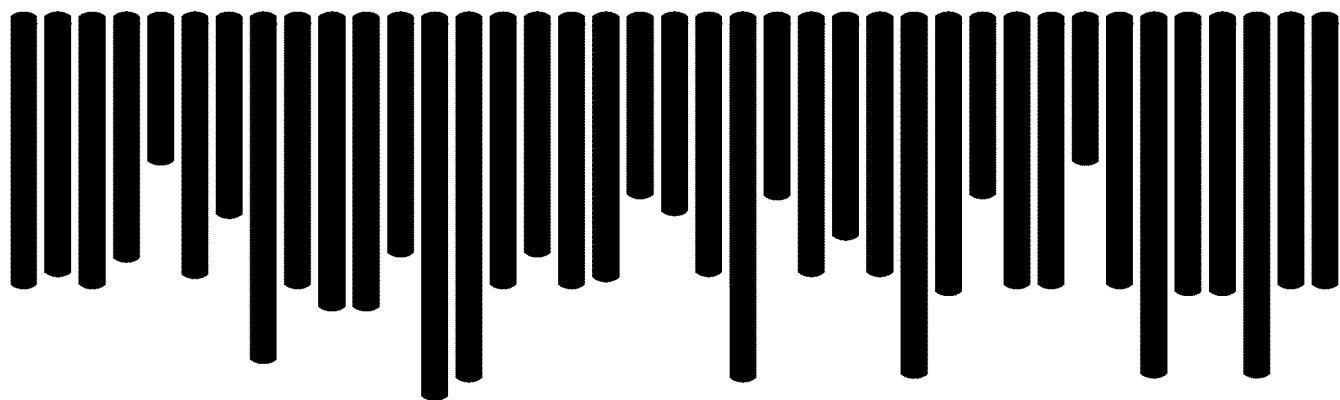
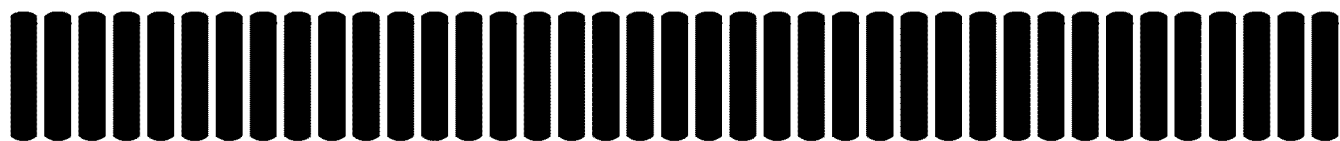
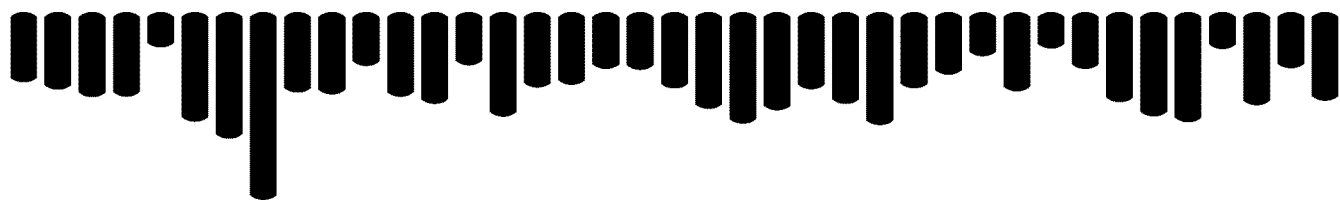


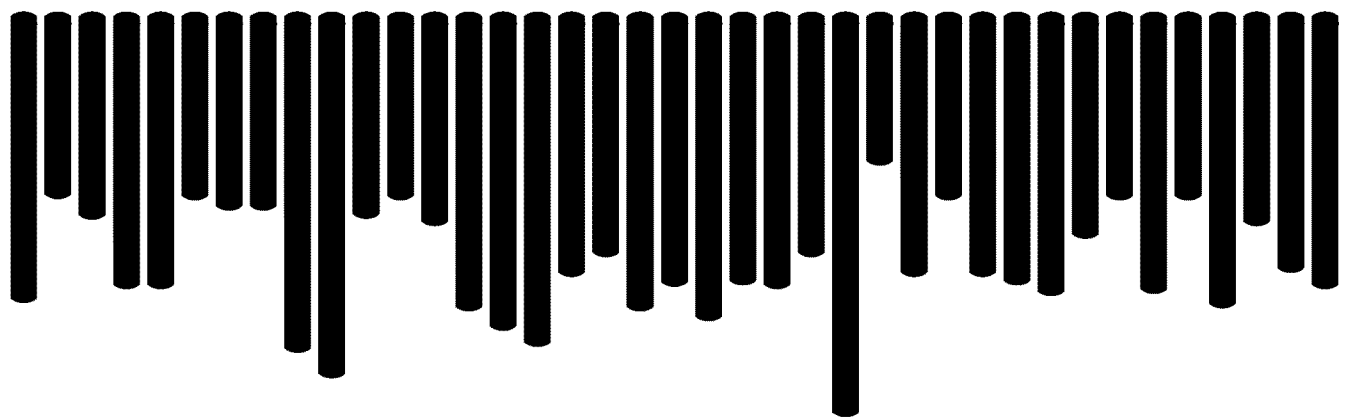
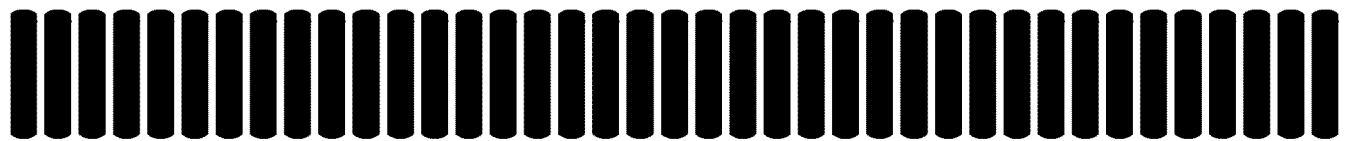


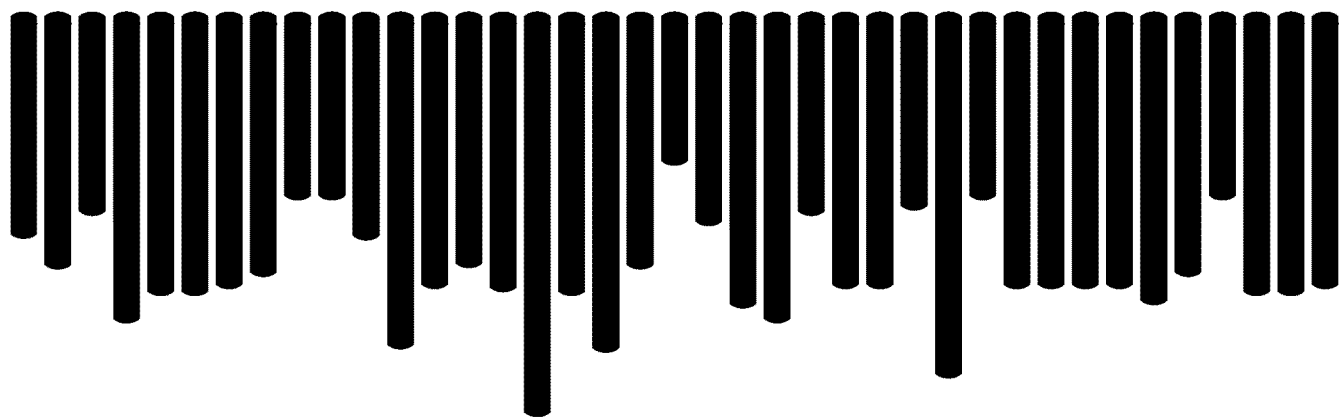
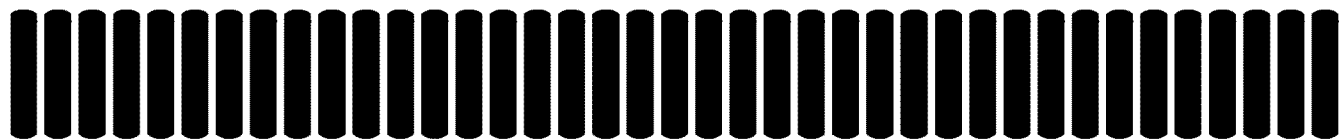
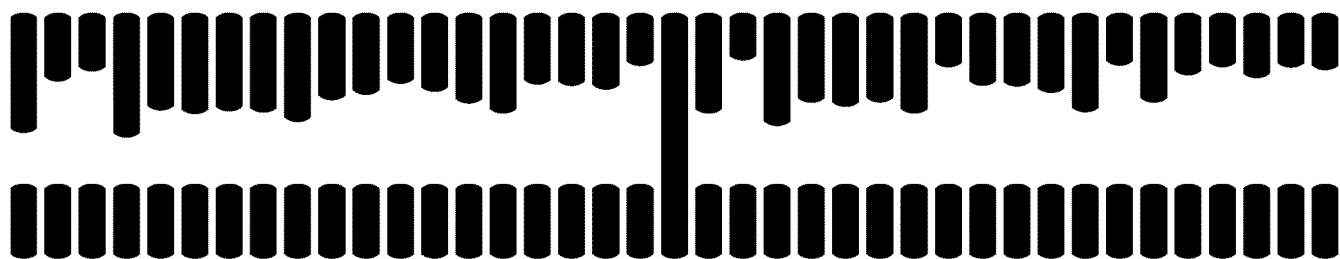


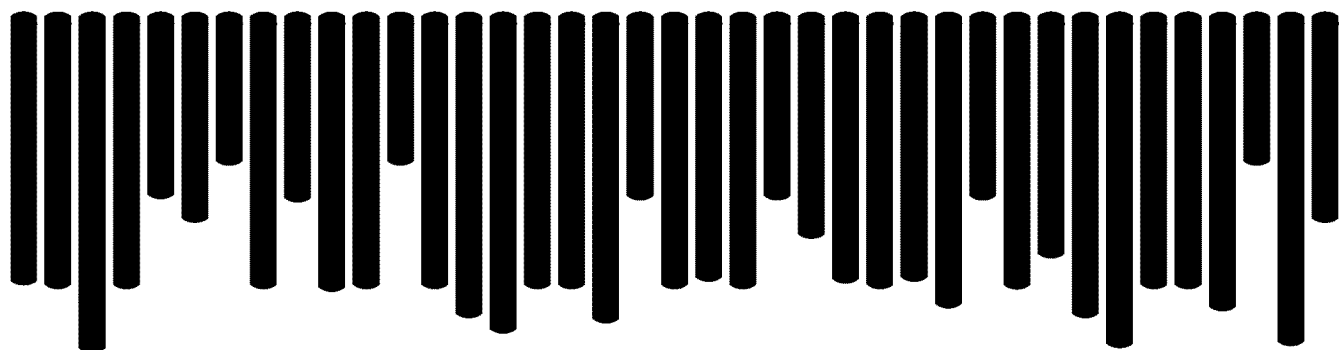


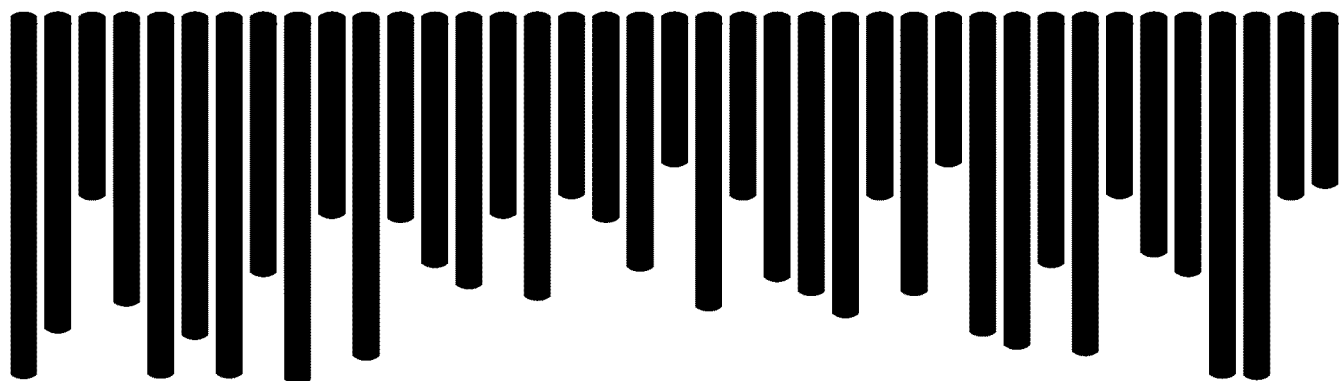
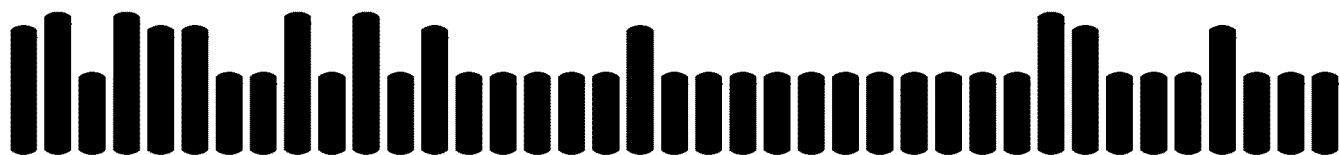
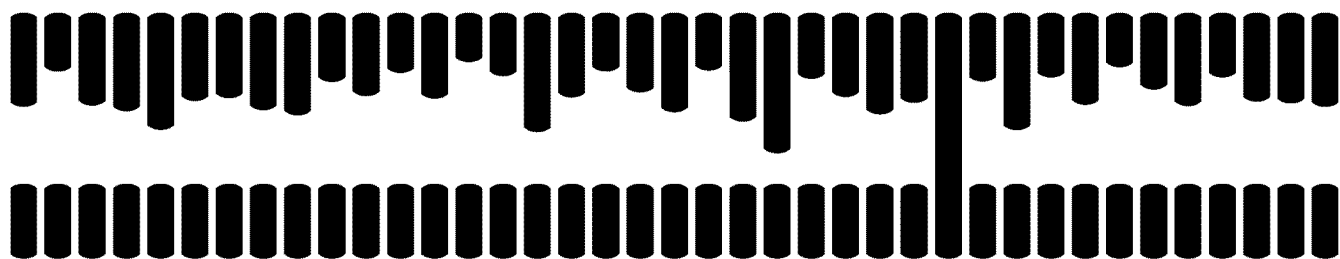


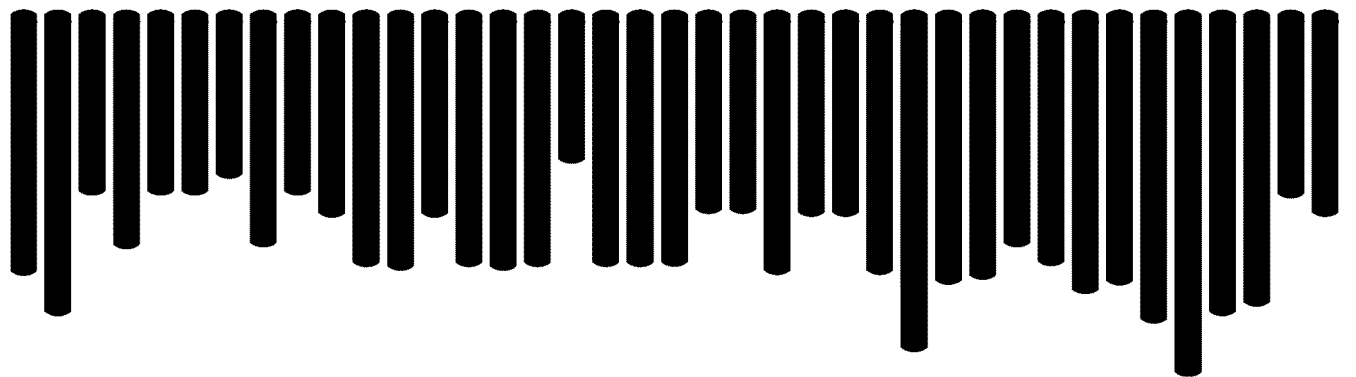


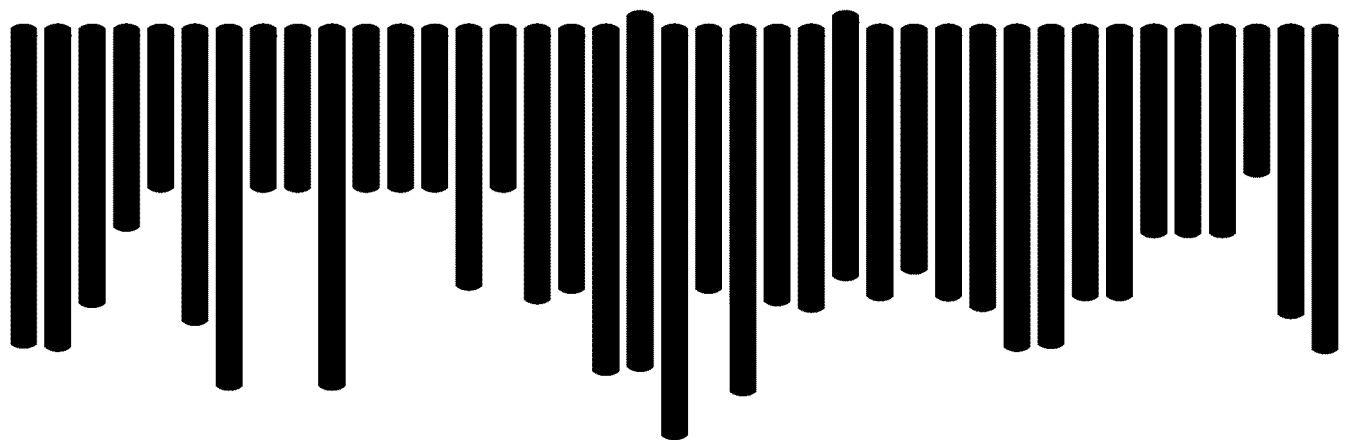
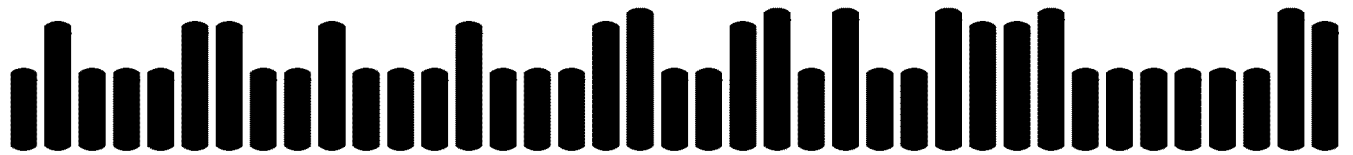




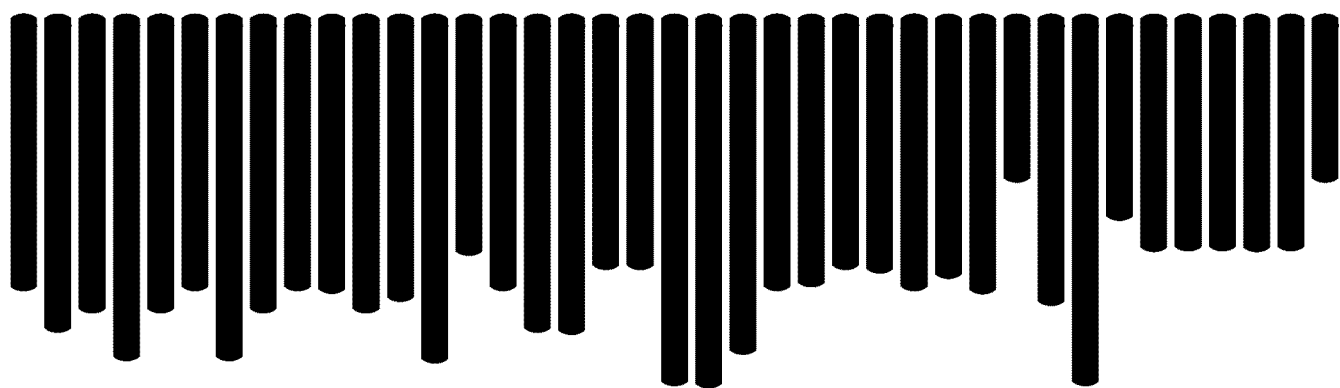
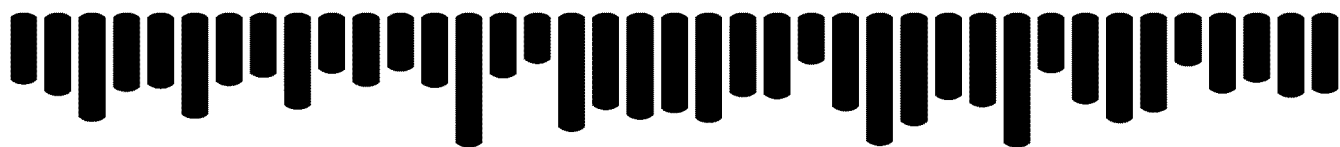
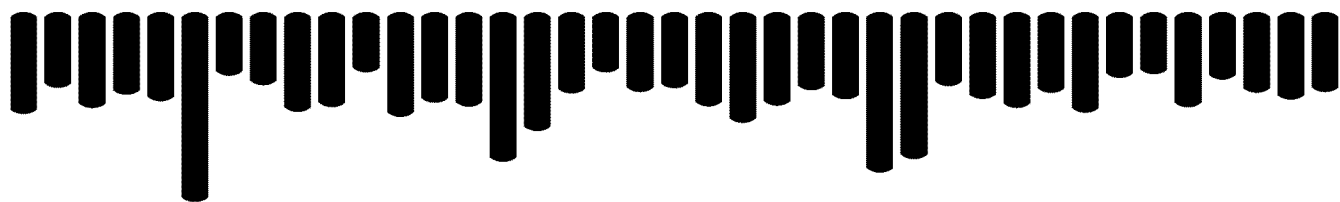


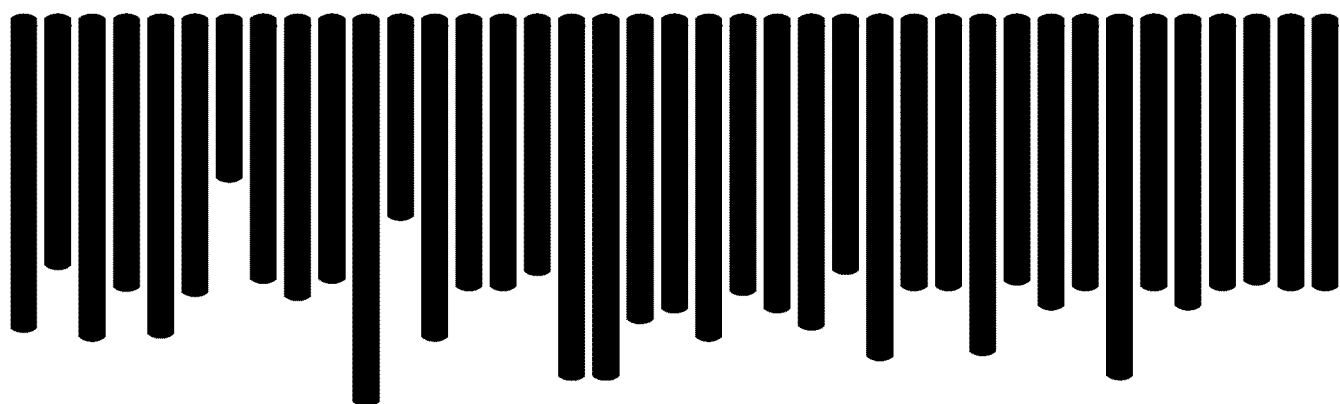
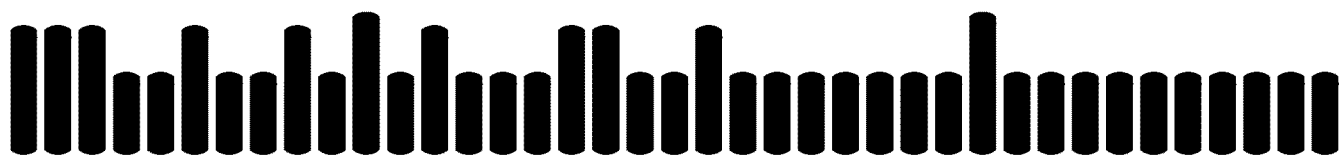


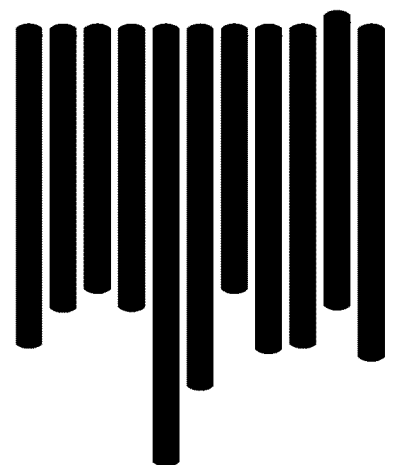
















Name	Type	Hourly Rate	Vac \$	Sick \$	Pers \$	Total PTO
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Name	Type	Hourly Rate	Vac \$	Sick \$	Pers \$	Total PTO
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Name	Type	Hrly Rate	Vac \$	Sick \$	Pers \$	Total PTO
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]







Name	Type	Hourly Rate	Vac \$	Sick \$	Pers \$	Total PTO
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Name	Type	Hourly Rate	Vac \$	Sick \$	Pers \$	Total PTO
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]



Name	Type	Hourly Rate	Vac \$	Sick \$	Pers \$	Total PTO
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Name	Type	Hourly Rate	Vac \$	Sick \$	Pers \$	Total PTO
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

















Name	Type	Hrly Rate	Vac \$	Sick \$	Pers \$	Total PTO
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]








































Name	Type	Hourly Rate	Vac \$	Sick \$	Pers \$	Total PTO
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]





Name	Type	Hourly Rate	Vac \$	Sick \$	Pers \$	Total PTO
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Name	Type	Hourly Rate	Vac \$	Sick \$	Pers \$	Total PTO
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Name	Type	Hourly Rate	Vac \$	Sick \$	Pers \$	Total PTO
						
						
						
						
						

SCHEDULE 3.2(h)(ii)

Union & Employee Matters

1. [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]









SCHEDULE 3.2(k)

Property Tax Appeals

None

SCHEDULE 3.2(I)

Intellectual Property

Trademark Registrations

Country	Mark	Status	App. No.	Filing Date	Reg. No.	Reg. Date	Goods/Services
USA	POMME PALAIS	Registered. The registration date is used to determine when post-registration maintenance documents are due.	86141720	Dec. 12, 2013	4579610	Aug. 05, 2014	bakery goods; retail bakery shops; cafe services
USA	RARITIES	Registered. The registration date is used to determine when post-registration maintenance documents are due.	86141736	Dec. 12, 2013	4571730	Jul. 22, 2014	cocktail lounge services
USA	TAVERN ON 51	Registered. The registration date is used to determine when post-registration maintenance documents are due.	86141728	Dec. 12, 2013	4573903	Jul. 22, 2014	bar and cocktail lounge services
USA	VILLARD	Registered. The registration date is used to determine when post-registration maintenance documents are due.	86141708	Dec. 12, 2013	4571729	Jul. 22, 2014	restaurant and bar services
USA	TROUBLE'S TRUST	Registered. The registration date is used to determine when post-registration maintenance documents are due.	86141717	Dec. 12, 2013	4568230	Jul. 15, 2014	bar and cocktail lounge services

		e documents are due.					
USA	LOS ANGELES PALACE	A fifth request for extension of time to file a Statement of Use has been granted.	85547999	Feb. 21, 2012			Hotel and restaurant services
USA	MIAMI PALACE	A fifth request for extension of time to file a Statement of Use has been granted.	85547992	Feb. 21, 2012			Hotel and restaurant services
USA	WASHINGTON DC PALACE	A fifth request for extension of time to file a Statement of Use has been granted.	85547982	Feb. 21, 2012			Hotel and restaurant services
USA	CAPITAL PALACE	A fifth request for extension of time to file a Statement of Use has been granted.	85547975	Feb. 21, 2012			Hotel and restaurant services
USA	BOSTON PALACE	A fifth request for extension of time to file a Statement of Use has been granted.	85547965	Feb. 21, 2012			Hotel and restaurant services
USA	ISTANA	The registration has been renewed.	75784947	Aug. 26, 1999	2422990	Jan. 23, 2001	restaurant services
USA	NEW YORK PALACE	The registration has been renewed.	75150014	Aug. 14, 1996	2093035	Sep. 02, 1997	
USA	NEW YORK PALACE	The registration has been renewed.	75149946	Aug. 14, 1996	2093034	Sep. 02, 1997	

Domain Names

[REDACTED]

SCHEDULE 3.2(m)

[REDACTED]

- [REDACTED]  
[REDACTED]  
[REDACTED]

- [REDACTED]  
[REDACTED]  
[REDACTED]

- [REDACTED]  
[REDACTED]  
[REDACTED]

SCHEDULE 8.2(d)

[REDACTED]

● [REDACTED]

- [REDACTED]
- [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

● [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

● [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]



## ASSIGNMENT AND ASSUMPTION OF CONTRACTS

This ASSIGNMENT AND ASSUMPTION OF CONTRACTS (this "Assignment") is made and entered into as of the 23<sup>rd</sup> day of August, 2015, by and between NWPH LLC, a Delaware limited liability company, ("Assignor"), LOTTE Hotel New York Palace, LLC, a Delaware limited liability company ("Assignee").

### RECITALS

This Assignment is made with reference to the following facts:

A. Concurrently with this Assignment, Assignor is selling to Assignee, and Assignee is purchasing from Assignor, that real property and related improvements, fixtures and personal property described in Exhibit A attached hereto (the "Property"), pursuant to that certain Agreement of Purchase and Sale dated as of May 14, 2015, as amended by that certain First Amendment to Agreement of Purchase and Sale dated as of July 27, 2015, and as further amended by that certain Second Amendment to Agreement of Purchase and Sale dated as of August 20, 2015 (the "Agreement"), by and between NWPH LLC, a Delaware limited liability company, collectively, as seller, and LOTTE Hotel New York Palace, LLC, a Delaware limited liability company, as buyer. Any capitalized terms used herein and not otherwise defined shall have the meaning ascribed thereto in the Agreement.

B. In connection with such purchase and sale, Assignor desires to assign and delegate to Assignee, and Assignee desires to assume, all of Assignor's right, title, interest, duties and obligations (to the extent such rights, duties and obligations first arise or accrue on or after the date hereof), in, to and under various contracts pertaining to the Property and its operation.

NOW, THEREFORE, in consideration of the purchase price paid by Assignee to Assignor for the Property and the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. Assignment of Contracts. Assignor hereby sells, assigns, transfers and conveys to Assignee, all of Assignor's right, title and interest, in and to the Assumed Contracts described in Exhibit B attached hereto.

2. Assumption of Contracts. Assignee hereby accepts the assignment, transfer and conveyance of the Assumed Contracts described in Exhibit B attached hereto. Assignee hereby assumes and agrees to be bound by all of the covenants, obligations, and burdens of Assignor under the Assumed Contracts first arising from and after the date of this Assignment.

3. Successors and Assigns. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

4. Governing Law. This Assignment shall in all respects be governed by, and construed in accordance with, the laws of the State of New York.

5. Counterparts. This Assignment may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed as of the date written above.

ASSIGNOR:

NWPH LLC  
a Delaware limited liability company

By:

  
\_\_\_\_\_  
Name: Jonathan Wang  
Title: Managing Director and Assistant  
Treasurer

ASSIGNEE:

LOTTE HOTEL NEW YORK PALACE, LLC  
a Delaware limited liability company

By:

\_\_\_\_\_  
Name:  
Title:

(Signature Page to Assignment and Assumption of Contracts)

**TRADEMARK**  
**REEL: 008362 FRAME: 0825**

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed as of the date written above.

ASSIGNOR:

NWPH LLC  
a Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Title:

ASSIGNEE:

LOTTE HOTEL NEW YORK PALACE, LLC  
a Delaware limited liability company

By: *Hyuk Kwon*  
Name: *Hyuk Blum Kwon*  
Title: *CFO*

(Signature Page to Assignment and Assumption of Contracts)

EXHIBIT A

PROPERTY

Leasehold Description: (Block 1286 Lots 21, 30 and 53)

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

Beginning at the corner formed by the intersection of the southerly side of East 51st Street with the easterly side of Madison Avenue;

THENCE easterly along the southerly side of East 51st Street 200 feet to a point, said point being 200 feet westerly as measured along the southerly side of East 51st Street from its intersection with the westerly side of Park Avenue;

THENCE southerly and parallel with the easterly side of Madison Avenue 100 feet 5 inches to the center line of the block;

THENCE easterly along the center line of the block 45 feet to a point;

THENCE southerly and parallel to the easterly side of Madison Avenue 100 feet 5 inches to a point in the northerly side of East 50th Street, said point being 155 feet westerly as measured along the northerly side of East 50th Street from its intersection with the westerly side of Park Avenue;

THENCE westerly along the northerly side of East 50th Street 245 feet to the easterly side of Madison Avenue;

THENCE northerly along the easterly side of Madison Avenue 200 feet 10 inches to point and place of Beginning.

EXHIBIT B

ASSUMED CONTRACTS

<b>Contract</b>	<b>Service</b>
Agreement dated July 1, 2013 by and between The New York Palace and Kone, Inc.	Elevator System Maintenance
Factory Protection Plan – End User Agreement dated February 20, 2014 by and between NWPH, Inc. and Reliable Secure Power Systems	Co Gen Maintenance
Service Agreement dated April 8, 2013 by and between Northwood Hospitality and Cablevision Lightpath, Inc.	Service Agreement/Internet
ATM Agreement dated August 10, 2004 by and between ATM Systems Corporation and Amedeo Hotels d/b/a NY Palace Hotel	ATM Machine
Agreement dated March 31, 2014 by and between The New York Palace and Carnegie Linen Services, Inc.	Linen Services
Service Agreement for Audio Visual Services dated November 10, 2009 by and between Audio Visual Services Group Inc. dba PSAV Presentation Services – Hotel Services Division (“PSAV”) and Amedeo Hotel LTD Partnership, dba The New York Palace Hotel as amended by the First Amendment dated October 1, 2013 by and between NWPH Inc. (succesor-in-interest to Amedo Hotel Ltd. Partnership) d/b/a The New York Palace and PSAV.	Audio Visual Services
Call Center Reseravation Services Agreement dated as of August 31, 2011 by and between Sabre Hospitality Solutions, a division of Sabre Inc. and NYPH, LLC.	Reservation System
SYNXIS Central Reservation System Agreement dated as of May 31, 2011 by and between NYPH, LLC and Sabre Hospitality Solutions, a division of Sabre Inc., as amended by the Additional Services – Synxis Central Reservation System Agreement dated April 30, 2013, as further amended by the New York Palace Renewal Terms Letter dated as of April 1, 2014.	SYNIX
Service Agreement dated April 8, 2013 by and between New York Palace and Cablevision Lightpath, Inc.	Internet
Purchase Agreement, including Exhibit B thereto, and the SpaSoft Support Services Agreement, each dated March 30, 2006, between NWPH, LLC (as successor in interest to Amedeo Hotels Limited Parnership) and PAR Springer-Miller Systems, Inc.	Spa Soft
The Hotel Collection from American Express – Participation Agreement dated January 30, 2015 between Amex and The Palace	Rewards Program
American Express Merchant Marketing Program Insertion Order dated May 8, 2015 between Amex and The Palace	Amex Merchant IO
2015 Fine Hotels and Resorts Program Participation Agreement and Contract dated March 16, 2014 between Amex and The Palace	Rewards Program

**TRADEMARK**