

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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FORM 10-K

(MARK ONE)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(D) OF  
THE SECURITIES EXCHANGE ACT OF 1934

FOR THE FISCAL YEAR ENDED DECEMBER 31, 2000

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(D) OF  
THE SECURITIES EXCHANGE ACT OF 1934

FOR THE TRANSITION PERIOD FROM        TO  
-----

COMMISSION FILE NO. 1-13079

GAYLORD ENTERTAINMENT COMPANY  
(Exact Name of Registrant as Specified in Its Charter)

DELAWARE	73-0664379
(State or Other Jurisdiction of Incorporation or Organization)	(I.R.S. Employer Identification No.)

ONE GAYLORD DRIVE, NASHVILLE, TENNESSEE	37214
(Address of Principal Executive Offices)	(Zip Code)

(Registrant's Telephone Number, Including Area Code) (615) 316-6000

Securities registered pursuant to Section 12(b) of the Act:

COMMON STOCK--\$.01 PAR VALUE	NEW YORK STOCK EXCHANGE
(Title of Class)	(Name of exchange on which registered)

Securities registered pursuant to Section 12(g) of the Act:

NONE  
(Title of Class)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.  Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

As of March 12, 2001, there were 33,453,522 shares of Common Stock outstanding. The aggregate market value of the shares of Common Stock held by non-affiliates of the registrant based on the closing price of the Common Stock on the New York Stock Exchange on March 12, 2001 was approximately \$541,155,000. Shares of Common Stock held by non-affiliates exclude only those shares beneficially owned by officers and directors.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's Annual Report to Stockholders for the year ended December 31, 2000, are incorporated by reference into Part II of this Form 10-K. Portions of the registrant's Proxy Statement for the Annual Meeting of Stockholders to be held May 3, 2001, are incorporated by reference into Part III of this Form 10-K.

## GAYLORD ENTERTAINMENT COMPANY

## 2000 FORM 10-K ANNUAL REPORT

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## PART I

## ITEM 1. BUSINESS

## INTRODUCTION AND HISTORY

Gaylord Entertainment Company (the "Company") is a diversified entertainment company operating principally in three groups: (i) hospitality and attractions, (ii) music, media and entertainment, and (iii) corporate and other.

The Company traces its origins to a newspaper publishing business founded in 1903 in the Oklahoma Territory by a group including the Gaylord and Dickinson families. In 1928, the Company entered the radio broadcasting business and, in 1949, expanded its broadcasting interests to include television stations. The Company currently owns three radio stations. See "Music, Media and Entertainment."

In 1983, the Company acquired Opryland USA, an interrelated group of businesses tracing their origins to the Grand Ole Opry music radio show which began in 1925. The Company has developed an entertainment and convention/resort complex in Nashville, Tennessee that is anchored by the Opryland Hotel Nashville, which is one of the nation's largest convention hotels, the Opry House (the current home of the Grand Ole Opry), and, until the end of 1997, the Opryland theme park. Since May 2000, the former Opryland theme park site has been home to Opry Mills, an entertainment/retail complex built in partnership with The Mills Corporation. See "Other Interests."

Also in 1983, Opryland USA entered the cable networks business by launching The Nashville Network ("TNN"), a cable network with a national audience featuring country lifestyles, entertainment, and sports. In 1991, the Company acquired a 67% interest in Country Music Television ("CMT"), a cable network with a 24-hour country music video format. The Company subsequently expanded CMT outside the U.S., and the first of the CMT International cable networks was launched in Europe in 1992. CMT International, which programs primarily country music videos, was later expanded into Asia and the Pacific Rim, as well as Latin America. During 2000, CMT International was re-branded as MusicCountry. In January 1997, the Company acquired the assets of Word Entertainment ("Word"), one of the largest contemporary Christian music companies in the world. See "Music, Media and Entertainment."

Prior to September 30, 1997, the Company was a wholly owned subsidiary of a corporation which was then known as Gaylord Entertainment Company ("Old Gaylord"). On October 1, 1997, Old Gaylord consummated a transaction with Westinghouse Electric Corporation, which thereafter changed its name to CBS Corporation ("CBS"), in which a wholly-owned subsidiary of CBS merged with Old Gaylord (the "CBS Merger"), with Old Gaylord continuing as the surviving corporation and a wholly-owned subsidiary of CBS. Immediately before the CBS Merger, Old Gaylord was restructured by transferring to the Company and its subsidiaries its assets and liabilities, other than TNN, the U.S. and Canadian operations of CMT, and certain other related assets and liabilities which remained with Old Gaylord. Following the restructuring, on September 30, 1997, Old Gaylord distributed pro rata to its stockholders all of the outstanding capital stock of the Company (the "Distribution"). In connection with these transactions, the Company and Old Gaylord entered into various agreements relating to the future relationship between the Company and Old Gaylord (as a subsidiary of CBS) after the CBS Merger (the

"CBS Transitional Agreements"). Immediately following the CBS Merger, the Company changed its name to Gaylord Entertainment Company.

Unless the context otherwise requires, references in this Annual Report on Form 10-K to the "Company" for periods prior to the Distribution are to Old Gaylord.

#### DEVELOPMENTS DURING 2000

The year 2000 saw significant changes in the Company. At the beginning of the year, the Company was managed using four business segments: hospitality and attractions, creative content, interactive media, and corporate and other. The Company was also pursuing a strategy of developing several new projects, including two hotels, the implementation of an Internet strategy, and the development of a new record label. It was anticipated that capital expenditures during 2000 would be approximately \$260 million, including approximately \$200 million related to the Company's hotel expansion projects in Florida and Texas, and that the Company would incur initial operating losses in connection with the Internet strategy and the new record label. In light of the expected net losses for the year ended December 31, 2000, in February 2000, the Company's Board of Directors voted to discontinue the payment of cash dividends on the Company's common stock.

During 2000, while the Company was attempting to fund its capital requirements related to its hotel development and construction projects in Florida and Texas, the Company's operating results were weaker than anticipated. In addition, during the year the Company encountered a significant number of departures from its senior management, including in July 2000, the Company's President and Chief Executive Officer and in September 2000 a senior entertainment industry executive who had been recruited as head of the Company's creative content segment and to develop a new record label. As a result of these factors, after the Company's Chairman had served briefly as interim Chief Executive Officer, the Board of Directors appointed a new Chief Executive Officer to serve on an interim basis, initiated a search for a permanent chief executive officer, and engaged in an assessment of the Company's strategic alternatives related to its operations and capital requirements. In connection with this strategic review, during the fourth quarter, the Company took a number of actions directed toward focusing on the Company's core assets with the goal of improving profitability. These actions included the closure of its Internet operations and the sale of certain other assets which it considered not to be critical to the Company's business. In addition, in December 2000, the Company reorganized its structure into two operating groups: hospitality and attractions; and the music, media and entertainment group, which reflected a combination of the creative content group with the remaining businesses of the interactive media group. The Company also continued to pursue opportunities to finance its two hotel construction projects, to reduce losses in certain areas, and to improve profitability in the Company's business groups to meet operational performance expectations. See "Recent Developments."

#### HOSPITALITY AND ATTRACTIONS

The Company's hospitality and attractions group consists primarily of an interrelated group of businesses including the Opryland Hotel Nashville, the Radisson Hotel at Opryland (which is adjacent to the Opryland Hotel Nashville), the General Jackson (an entertainment paddle wheel showboat), the Springhouse Golf Club and other related businesses. Hotels currently under development in Osceola County, Florida (in the Orlando market) and Grapevine, Texas (in the Dallas-Ft. Worth market), are also a part of the hospitality and attractions group. See Note 17 to the Company's Consolidated Financial Statements for the amounts of revenues, operating income, and identifiable assets attributable to hospitality and attractions.

OPRYLAND HOTEL NASHVILLE. The Opryland Hotel Nashville, situated on approximately 172 acres in the Opryland complex, is one of the largest hotels in the United States in terms of number of guest rooms. The Company believes it has the highest ratio in the industry of meeting and exhibit space per guest room. The Opryland Hotel Nashville attracts convention business from trade associations and corporations, which accounted for approximately 80% of the hotel's revenues in each of 2000, 1999, and 1998. It also serves as a destination resort for vacationers due to its in-house entertainment events and its proximity to the Opry Mills complex, the Grand Ole Opry and the Springhouse Golf Club, the Company's 18-hole championship golf course, as well as to other attractions in the Nashville area. The Company believes that the ambiance created at the Opryland Hotel Nashville and the combination of the quality of its convention facilities and availability of live musical entertainment are factors that differentiate it from other convention hotels. In late 1999, the Company began a three-year renovation and capital improvement program to refurbish the physical facility, upgrade certain guest rooms and add features to the hotel, including adding two-line telephones, signs to help direct guests, ballroom renovations, and upgrades to lobbies and restaurants. Of the anticipated cost of \$54 million, approximately \$22.4 million had been committed as of December 31, 2000.

The following table sets forth information concerning the Opryland Hotel Nashville for each of the five years in the period ended December 31, 2000.

	YEARS ENDED DECEMBER 31,				
	2000	1999	1998	1997	1996
Average number of guest rooms	2,883	2,884	2,884	2,866	2,613
Occupancy rate	75.9%	78.0%	79.1%	85.4%	84.7%
Average daily rate ("ADR")	\$ 143.86	\$ 137.18	\$ 138.51	\$ 131.82	\$ 128.48
Food and beverage revenues (in thousands)	\$ 81,093	\$ 85,686	\$ 81,518	\$ 85,186	\$ 66,394
Total revenues (in thousands)	\$229,859	\$234,435	\$233,645	\$240,969	\$203,265

The Opryland Hotel Nashville has 2,883 guest rooms, four ballrooms with approximately 124,000 square feet, 85 banquet/meeting rooms, and total dedicated exhibition space of approximately 289,000 square feet. Total meeting, exhibit and pre-function space in the hotel exceeds 600,000 square feet.

The interior of the hotel is divided into four areas, featuring indoor gardens, restaurants and shops: the Delta, the Cascades, the Conservatory and the Magnolia. The Delta area features a themed southern rivertown scene in a 4.5 acre southern-style indoor garden, under a 15-story glass dome. The attractions of this area include a flowing waterfall that creates a winding river more than a quarter of a mile long on which guests can take a trip on a flatboat. This area also contains an 85-foot fountain and the Delta Island, a New Orleans-themed island which includes retail shops, lounges, a food court with a variety of quick-service restaurants, and seven meeting and board rooms. The Conservatory area features 10,000 tropical plants within an approximately 1.5 acre Victorian tropical garden. The Cascades area features an approximately 1.5 acre water garden, three waterfalls ranging in height from 23 to 35 feet which drop into a 12,500 square foot lake, and a nightly laser-enhanced, synchronized water show. The Magnolia area features a dramatic staircase, elegant fireplaces, and a variety of shops and restaurants.

Special productions for conventions are often staged in the hotel or on the General Jackson showboat (described below). The Springhouse Golf Club enables the hotel to attract conventions with a preference for proximity to a championship golf course and makes the hotel more attractive to vacationers. The Springhouse Golf Club hosts an annual Senior PGA Tour event, the BellSouth Senior Classic at Opryland, which will be televised on CNBC in 2001.

Opry Mills, a 1.2 million square foot entertainment and retail complex, opened in May 2000 on the site adjacent to the Opryland Hotel Nashville which previously had been occupied by the Opryland theme park. The Company believes this new dimension of shopping and entertainment will strengthen the hotel's position as an entertainment destination. See "Other Interests."

The Opryland Hotel Nashville directs its convention marketing efforts primarily to major trade, industry, and professional associations and corporations. The Company believes that the primary factors in successfully marketing the Opryland Hotel Nashville to meeting planners have been (i) the reputation of the hotel's services and facilities; (ii) the hotel's ability to offer comprehensive convention services at a single facility; (iii) the quality and variety of entertainment and activities available at the hotel and in the Opryland complex generally; and (iv) the accessibility and central location of Nashville within the United States. As of February 28, 2001, convention bookings for the balance of 2001 and for 2002 were approximately 531,800 and 432,700 guest room nights, respectively, representing approximately 60% and 41%, respectively, of available guest room nights for such periods, and the hotel had advance convention bookings extending into the year 2020. The Opryland Hotel Nashville typically books conventions several years in advance. Historically the Opryland Hotel Nashville has experienced a small percentage of cancellations, but there can be no assurance that any such bookings may not be cancelled prior to the occupancy of the booked rooms.

The Company also markets the Opryland Hotel Nashville as a destination through national and local advertising and a variety of promotional activities. As part of its marketing activities, the Company advertises promotional "packages" on TNN, CMT and through other media. Pursuant to the CBS Transitional Agreements, the Company continues to have access to promotional spots on TNN and CMT, consistent with past practices, allowing the Company to promote the Opryland Hotel Nashville and other properties on these cable networks until September 2002. In addition, as part of the divestiture of KTVT (described below), the Company will receive \$1 million worth of advertising time on KTVT annually through 2009 to promote its businesses. Such promotions include "Springtime Getaway," the International Country Music Fan Fair Celebration in June of each year, and "A Country Christmas," which begins each year in November and runs through the end of the year. The Country Christmas program has contributed to the hotel's occupancy rate during the months of November and December, traditionally a slow period for the group/convention meeting industry.

RADISSON HOTEL AT OPRYLAND. The Company owns and operates the Radisson Hotel at Opryland, a Radisson franchise hotel which is located across the street from the Opryland Hotel Nashville complex. The hotel has 303 rooms and approximately 14,000 square feet of meeting space. The Company purchased the hotel in April 1998 for approximately \$16 million. A major renovation of the guest rooms and meeting space was completed in 1999 at a cost of approximately \$7 million. In March 2000, the Company entered into a 20-year franchise agreement with Radisson in connection with the operation of this hotel. The franchise agreement contains customary terms and conditions. Pursuant to the franchise agreement, the Company will make additional capital expenditures of approximately \$2 million over two years.

THE GENERAL JACKSON. The Company operates the General Jackson, a 300-foot, four-deck paddle wheel showboat, on the Cumberland River, which flows past the Opryland complex. Its Victorian Theatre can seat 620 people for banquets and 1,000 people for theater-style presentations. The showboat stages Broadway-style shows and other theatrical productions. The General Jackson is one of many sources of entertainment that the Company makes available to conventions held at the Opryland Hotel Nashville. It contributes to the Company's revenues from convention participants as well as local business. During the day it operates cruises, primarily serving tourists visiting the Opryland complex and the Nashville area.

OPRYLAND HOTEL DEVELOPMENT. In February 1998, the Company announced plans to develop new convention hotels to expand the Opryland Hotel concept to other areas of the country. The Company's business strategy is to develop properties in selected locations across the U.S. to serve meetings and conventions in the same manner as the Opryland Hotel Nashville. The Company believes that these new convention hotels will enable the Company to capture additional convention business from groups that currently utilize the Opryland Hotel Nashville but must rotate their meetings to other locations due to their attendees' desires to visit different areas. The Company also anticipates that its new hotels will capture new group business that currently does not come to the Nashville market and will seek to gain additional business at the Opryland Hotel Nashville once these groups have experienced an Opryland Hotel in other markets.

Plans for the properties to be developed include the following components, which the Company believes are the foundation of its success with the Opryland Hotel Nashville: (i) state-of-the-art meeting facilities, including a high ratio of square footage of meeting and exhibit space per guest room; (ii) expansive atriums themed to capture geographical and cultural aspects of the region in which the property is located; and (iii) entertainment components and venues creating a guest experience not typically found in convention hotels.

The Company researched various markets in the United States and determined that markets in the southern half of the country are most desirable to convention planners due to more favorable year-round weather conditions. Two markets, Orlando, Florida, and Dallas-Fort Worth, Texas, were chosen for the first two properties to be developed. The Company entered into a 75-year ground lease with a renewal option which would extend the term until March 2098, on a 65-acre site in Osceola County, Florida. Construction of the Opryland Hotel Florida began in June 1999. The Company expects to open Opryland Hotel Florida in February 2002. The Company has acquired and leased, in the aggregate, approximately 100 acres in Grapevine, Texas, near the Dallas/Fort Worth airport. Construction consisting of development and site work for the Opryland Hotel Texas began in June 2000. The Opryland Hotel Texas is currently projected to open in 2003. Plans for each of the properties include 1,406 guest rooms for the Opryland Hotel Florida and approximately 1,500 guest rooms for Opryland Hotel Texas, with each hotel planned to have approximately 380,000 square feet of convention space.

Total net real estate, construction, and furnishings, fixtures and equipment costs for the two hotels are currently anticipated to be in the range of \$830-860 million. As of December 31, 2000, the Company has incurred approximately \$173.7 million of these costs for Opryland Hotel Florida and approximately \$18.1 million for Opryland Hotel Texas. The Opryland Hotel Texas is currently in the design and development phase, and decisions pertaining to the final design of the hotel could impact its estimated cost. In addition, costs are being incurred and additional outlays will be required related to marketing and financing of the two hotels. The Company is currently evaluating various financing alternatives for these projects. See "Management's Discussion and Analysis of Financial Condition and Results of Operations -- Liquidity and Capital Resources."

In January 2000, the Company announced plans to form a joint venture with The Peterson Companies to develop a 2,000-room convention hotel on the Potomac River in Prince George's County, Maryland (in the Washington, D.C. market). This project is subject to the availability of financing and approval of the Board of Directors, and the Company does not anticipate that construction would begin on it until after completion and opening of the Opryland Hotel Texas.

#### MUSIC, MEDIA AND ENTERTAINMENT

Until December 2000, the music, media and entertainment group had operated as two separate groups: creative content and interactive media. The Company's creative content group consisted primarily of the Grand Ole Opry, the Ryman Auditorium, the Wildhorse Saloon, Acuff-Rose Music Publishing, Word Entertainment, and other related businesses. The Company's interactive media group consisted primarily of Gaylord Digital, three radio stations, MusicCountry (formerly known as CMT International), and Z Music. See Note 17 to the Company's Consolidated Financial Statements for the

amounts of revenues, operating income (loss), and identifiable assets attributable to the operations of the Company's music, media and entertainment group.

THE GRAND OLE OPRY. The Grand Ole Opry, which celebrated its 75th anniversary in 2000, is the most widely known platform for country music in the world. The Opry features a live country music show with performances every Friday and Saturday night, as well as frequent summer matinees. The Opry House, home of the Grand Ole Opry, is located in the Opryland complex. The Grand Ole Opry moved to the Opry House in 1974 from its original home in the Ryman Auditorium in downtown Nashville.

The show is broadcast live on the Company's WSM-AM radio station every Friday and Saturday night, and TNN telecasts a 30-minute live segment every Saturday night. The Opry broadcasts are streamed on the Internet via [www.opry.com](http://www.opry.com) and [www.wsmonline.com](http://www.wsmonline.com). Pursuant to the CBS Transitional Agreements, TNN (which is now called The National Network) will continue to televise this live segment of the Grand Ole Opry until at least September 2002. The show has been broadcast since 1925 on WSM-AM, making it the longest running live radio program in the world.

The Grand Ole Opry currently has 71 performing members who are stars or other notables in the country music field. There are no financial inducements attached to membership in the Grand Ole Opry other than the prestige associated with membership. In addition to performances by members, the Grand Ole Opry presents performances by many other country music artists. Members include traditional favorites, such as Loretta Lynn and George Jones, as well as contemporary artists, like Garth Brooks, Vince Gill, and Trisha Yearwood. The following is a list of the current members of the Grand Ole Opry (including year of membership).

#### MEMBERS OF THE GRAND OLE OPRY

Bill Anderson-1961	Emmylou Harris-1992	Ray Pillow-1966
Ernie Ashworth-1964	Jan Howard-1971	Charley Pride*-1993
Clint Black-1991	Alan Jackson-1991	Jeanne Pruett-1973
Garth Brooks-1990	Stonewall Jackson-1956	Del Reeves-1966
Jim Ed Brown-1963	Jim & Jesse-1964	Riders In The Sky-1982
Bill Carlisle-1953	George Jones*-1969	Johnny Russell-1985
Roy Clark-1987	Hal Ketchum-1994	Jeannie Seely-1967
John Conlee-1981	Alison Krauss-1993	Ricky Van Shelton-1988
Wilma Lee Cooper-1957	Hank Locklin-1960	Jean Shepard-1955
Skeeter Davis-1959	Charlie Louvin-1955	Ricky Skaggs-1982
Diamond Rio-1998	Patty Loveless-1988	Connie Smith-1965
Little Jimmy Dickens*-1948	Loretta Lynn*-1962	Mike Snider-1990
Joe Diffie-1993	Barbara Mandrell-1972	Ralph Stanley-2000
Roy Drusky-1958	Martina McBride-1995	Marty Stuart-1992
Holly Dunn-1989	Mel McDaniel-1986	Pam Tillis-2000
Larry Gatlin & The Gatlin Brothers-1976	Reba McEntire-1986	Randy Travis-1986
Don Gibson-1958	Ronnie Milsap-1976	Travis Tritt-1992
Vince Gill-1991	Lorrie Morgan-1984	Porter Wagoner-1957
Billy Grammer-1959	Jimmy C. Newman-1956	Billy Walker-1960
Jack Greene-1967	The Osborne Brothers-1964	Charlie Walker-1967
Tom T. Hall-1971	Bashful Brother Oswald-1995	Steve Wariner-1996
George Hamilton IV-1960	Brad Paisley-2001	The Whites-1984
	Dolly Parton*-1969	Teddy Wilburn-1953
	Johnny Paycheck-1997	Trisha Yearwood-1999
	Stu Phillips-1967	

\* Members of the Country Music Hall of Fame.



The Opry House contains a 45,000 square foot auditorium with 4,400 seats, a television production center that includes a 300-seat studio and lighting, audio, and video control rooms, and set design and scenery shops. The Opry House is used by the Company for the production of television and other programming and by third parties such as national television networks and the Public Broadcasting System. The Opry House is also rented for concerts, theatrical productions, and special events and is used by the Opryland Hotel Nashville for convention entertainment and events. Pursuant to the CBS Transitional Agreements, TNN and CMT will have access to and use of the Opry House and certain other properties owned by the Company until at least September 2002.

RYMAN AUDITORIUM. The Ryman Auditorium, built in 1892, is listed on the National Register of Historic Places and seats approximately 2,100. The former home of the Grand Ole Opry, the Ryman Auditorium was renovated and re-opened in 1994 for concerts and musical productions. Recent concert performers have included Faith Hill, Bob Dylan, Amy Grant, The Dave Matthews Band, Ricky Skaggs, Bruce Springsteen, Hanson and Gladys Knight. The Ryman consistently has received local awards as a venue for hearing live music. In January 2000, City Search editors listed the Ryman among the top five concert venues in the United States.

Since its reopening, the Ryman Auditorium has featured musicals produced by the Company such as Always . . . Patsy Cline, Lost Highway--The Music & Legend of Hank Williams, and Bye Bye Love--The Everly Brothers Musical. In 2000, the Ryman Auditorium presented a five-show musical series highlighted by the Broadway touring production of Smokey Joe's Cafe and the return of Always . . . Patsy Cline. During 2001, the Ryman will produce a new bio-musical based on the life of country music legend Tammy Wynette.

The Grand Ole Opry continued its 75th anniversary celebration into 2001 by returning to the Ryman Auditorium for two months of performances in January and February. The Ryman Auditorium is a popular sightseeing stop for tourists in Nashville.

THE WILDHORSE SALOON. Since 1994, the Company has owned and operated the Wildhorse Saloon, a country music performance venue on historic Second Avenue in downtown Nashville. The Wildhorse Saloon has featured performers such as Tim McGraw and the Dixie Chicks. The three story, 56,000 square-foot facility includes a dance floor of approximately 1,500 square feet, a restaurant and banquet facility which seats approximately 200, and a 15' x 22' television screen which features country music videos and sporting events. The club has a broadcast-ready stage and facilities to house mobile production units from which broadcasts of live concerts may be distributed nationwide.

In May 1998, a second Wildhorse Saloon was opened at the Walt Disney World(R)Resort near Orlando, Florida, to expand the Wildhorse Saloon concept beyond Nashville. The Company acquired a 100% interest in the Wildhorse Saloon near Orlando in December 1998. In November 2000, the Company discontinued operation of the Wildhorse Saloon near Orlando under an agreement with Walt Disney World(R)Resort. As a result, the Company incurred a pre-tax loss of approximately \$16 million. The Company has decided not to open additional Wildhorse Saloons.

ACUFF-ROSE MUSIC PUBLISHING. Acuff-Rose Music Publishing is primarily engaged in the music publishing business and owns one of the world's largest, as well as Nashville's oldest, catalog of copyrighted country music songs. The Acuff-Rose catalog also includes popular music, with songs by legendary writers such as Hank Williams, Pee Wee King, Roy Orbison, and Don and Phil Everly. The Acuff-Rose catalog contains at least 70 songs that have been publicly performed over a million times. The

roster of Acuff-Rose songs includes standards such as "Oh, Pretty Woman," "Blue Eyes Cryin' in the Rain," and "When Will I Be Loved." Acuff-Rose licenses the use of its songs in films, plays, print, commercials, videos, cable, television and toys. In addition to its U.S.-based business, through various subsidiaries and sub-publishers, Acuff-Rose collects royalties on licenses granted in a number of foreign countries.

**WORD ENTERTAINMENT.** Word is one of the largest contemporary Christian music recording and distribution companies in the world, with proprietary labels and imprints featuring artists such as Amy Grant, Sixpence None the Richer, Point Of Grace, Jaci Velasquez, Shirley Caesar, and Rachael Lampa. Word produces and distributes a wide variety of contemporary Christian and inspirational music, including adult contemporary, pop, rock, gospel, praise and worship, rap, alternative, and other emerging genres, with an emphasis on positive and inspirational themes. Other significant Word operations include the creation of print music, congregational hymnals, and children's videos. Word's music publishing division includes a catalog of over 40,000 songs. Word also has entered into exclusive distribution agreements for the sale of music and video products owned by various third parties. Word's distribution activities are effected in the Christian bookstore market through its own dedicated sales force and in mainstream retail stores through Word's distribution arrangement with Epic Records.

**PANDORA.** In July 1998, the Company acquired Pandora Investment S.A., a European-based film rights acquisition and distribution company. Pandora is a worldwide distributor of feature films and syndicated television programming and conducts most of its business outside of the United States. In October 2000, Pandora entered into a one-year renewable agreement with Warner Bros. for joint production and distribution of theatrical motion picture projects with budgets of \$12 million or less. Pandora's operations were relocated from Paris, France to California at the end of 2000. In March 2001, the Company sold its interest in Pandora. See "Recent Developments."

**OKLAHOMA REDHAWKS.** Since 1993, the Company has owned an interest in OKC Athletic Club Limited Partnership, a limited partnership that owns the Oklahoma Redhaws, a minor league baseball club located in Oklahoma City, and in certain concession rights for the club. In several transactions in 1999 and 2000, the Company acquired an additional 10% interest for \$875,000, increasing its position to 75.2% of the interests in OKC Athletic Club Limited Partnership.

**CORPORATE MAGIC.** In March 2000, the Company acquired Corporate Magic, Inc., a company specializing in the production of creative and entertainment events in support of the corporate and meeting marketplace, for \$9.0 million.

**GAYLORD FILMS.** In August 2000, the Company announced the creation of a new business unit, Gaylord Films, for the development, production and distribution of major motion pictures. In October, 2000, the Company entered into a four-year agreement with Warner Bros. for the joint production and distribution of theatrical motion pictures, with \$25 million allocated to an initial major motion picture. In March 2001, the Company sold its interest in Gaylord Films. See "Recent Developments."

**OTHER INTERESTS.** The music, media and entertainment group has included an artist management company, 50% of a professional golfer management company, and a majority interest in a television production company focusing on specialty golf events. In March 2001, the Company sold its interests in three of these entities, Gaylord Production Company, Gaylord Sports Management Group, and Gaylord Event Television. See "Recent Developments."

**GAYLORD DIGITAL.** In the third quarter of 1999, the Company established Gaylord Digital to initiate an Internet strategy that would focus on the Company's three primary customer groups: country music fans, Christian music fans, and people involved in the meetings and conventions industry. It was

contemplated that Gaylord Digital's revenues would be primarily generated by e-commerce, advertising, and broadcasting.

In the second half of 1999, the Company acquired an 84% equity interest in two online operations, Musicforce.com and Lightsource.com, for \$23.4 million in cash. During the first quarter of 2000, the Company acquired the remaining 16% of Musicforce.com and Lightsource.com for an additional \$6.5 million in cash. Musicforce.com, an online e-commerce community which concentrated on contemporary Christian music, and Lightsource.com, the Christian content provider for web-based broadcasters, were to serve as the foundation for Gaylord Digital. The Company also acquired Songs.com, an e-commerce and community site dedicated to helping independent music artists connect with their fans, in December 1999.

In connection with its Internet initiative, the Company also made minority investments in a number of companies, including Intertainer, Inc., a provider of home entertainment services on demand; Edgate.com, Inc., which operates Edgate.com, an educational portal and community focused on grades K-12; CountryCool.com, Inc., an Internet portal and original content provider for country music fans and industry insiders; and RockCity.com, a website presenting short film subjects.

In early December 2000, the Company announced its intentions not to pursue its Internet strategy and to close, sell or transfer to other Company divisions the various components of Gaylord Digital. In connection with this decision, the Company eliminated the positions of approximately 85 Gaylord Digital employees and, in late December, sold Musicforce.com. In February 2001, the Company also sold Lightsource.com, the other primary component of Gaylord Digital. As a result of the termination of the Gaylord Digital operations and sale of its primary components, the Company incurred pre-tax charges of approximately \$59 million, including the write-down of the value of most of the minority investments. See Notes 4 and 5 to the Company's Consolidated Financial Statements for a description of the impairment and restructuring charges related to Gaylord Digital.

KTVT. In October 1999, CBS Corporation acquired the Company's television station KTVT, in Dallas-Fort Worth, Texas. KTVT was purchased by the Company in 1963 and operated as an independent station until becoming a CBS affiliate in July 1995. In consideration for the sale of KTVT, the Company received shares of CBS Series B convertible preferred stock with a value of \$485 million, \$4.2 million in cash, and other consideration. The Company will also receive \$1 million worth of advertising time on the station annually through 2009. As a result of the merger of CBS Corporation and Viacom, Inc. in May 2000, the Company ultimately received 11,003,000 shares of Viacom, Inc. non-voting Class B Common Stock, most of which it has monetized in a seven-year forward exchange contract. See "Other Interests."

WSM-AM AND WSM-FM. WSM-AM and WSM-FM commenced broadcasting in 1925 and 1967, respectively. The involvement of the Company's predecessors with country music dates back to the creation of the Grand Ole Opry, which has been broadcast live on WSM-AM since 1925.

WSM-AM and WSM-FM are each broadcast from the Opryland complex and have country music formats. WSM-AM went on the air in 1925 and is one of the nation's 25 "clear channel" stations, meaning that no other station in a 750-mile radius uses the same frequency for nighttime broadcasts. As a result, the station's signal, transmitted by a 50,000 watt transmitter, can be heard at night in much of the United States and parts of Canada. The Company also has radio broadcast studios in the Opryland Hotel Nashville, the Wildhorse Saloon, the Ryman Auditorium and in Opry Mills in Nashville.

WWTN-FM. In 1995, the Company acquired the assets of radio station WWTN-FM, which operates out of Nashville, Tennessee. WWTN-FM has a news/talk/sports format and is the flagship

station of the Nashville Predators, a National Hockey League club in which the Company owns a minority interest.

MUSICCOUNTRY (FORMERLY KNOWN AS CMT INTERNATIONAL). In October 1992, the Company launched CMT International in Europe. CMT International expanded its reach to include portions of Asia and the Pacific Rim, including Australia and New Zealand, with the launch of a second cable network in 1994. In 1995, CMT International launched its third cable network in Latin America. In February 1998, the Company announced its plans to expand the operations of CMT International in Asia and the Pacific Rim and Latin America and to cease operations in Europe. The Company ceased its CMT Europe satellite feed on March 31, 1998.

In September 1999, the Company acquired a 15% minority interest in the operations of two Argentine cable networks, Solo Tango and TV Argentina. In May 2000, the Company increased its ownership interest in the two networks to 50% for approximately \$5.4 million in cash. Pursuant to the terms of a program license agreement, CMT International provided a block of CMT-branded programming for airing on the TV Argentina cable network.

In 2000, the Company made the decision to rebrand its CMT International networks as MusicCountry. The global branding strategy for the channel involves a programming mix, including videos, documentaries, and shows hosted by local VJs, with a broad range of musical styles that includes rock, rhythm & blues, country, pop and contemporary music from regional artists that appeal to a target audience of 25-54 year-olds. CMT Asia-Pacific Rim was rebranded as Music Country on November 1, 2000. TV Argentina was rebranded as MusicCountry Latin America on December 1, 2000 followed by the rebranding of CMT in Brazil to MusicCountry on February 1, 2001.

As of December 31, 2000, CMT International and MusicCountry reached approximately 8.1 million subscribers on a full-time basis, consisting primarily of approximately 1.5 million subscribers in Australia and the Pacific Rim, approximately 1.7 million subscribers in Brazil and approximately 4.9 million subscribers in Argentina. In addition, MusicCountry has approximately 0.4 million part-time subscribers in Japan.

In March 2000, the Company became a partner with MegaCable, Mexico's second-largest cable television operator, in the operations of Video Rola, a 24-hour video channel featuring regional Mexican music. In 2000, the Company was responsible for the distribution, sales, and marketing of Video Rola in the United States. In January 2001, the Company converted a note into equity to increase its ownership in Video Rola to 40% and transferred the U.S. representation rights for the channel back to the partnership.

Z MUSIC. In 1994, the Company agreed to manage Z Music, Inc. in exchange for an option to purchase 95% of Z Music's outstanding capital stock. Z Music operated a cable network featuring contemporary Christian music videos, music news and artist interviews. The Company funded Z Music's operations with advances under a note receivable. During the fourth quarter of 1998, the Company foreclosed on and acquired the assets of Z Music which secured the note receivable. On June 30, 2000, the Company closed the operations of Z Music.

#### OTHER INTERESTS

The Company's other interests consist primarily of the Company's investments in Opry Mills, Bass Pro Shops, the Nashville Predators and Viacom stock. See Note 17 to the Company's Consolidated Financial Statements for the amounts of revenues, operating income, and identifiable assets attributable to the Company's corporate and other operations.

OPRY MILLS. From 1972 until the end of 1997, the Company operated the Opryland theme park, a musical show park located within the Opryland complex. The Company closed the Opryland theme park to develop Opry Mills, an entertainment/retail complex, in partnership with The Mills Corporation. The Company owns a one-third interest in the partnership.

Opry Mills is an entertainment and retail complex with 1.2 million square feet of leasable space. Opened in May 2000, Opry Mills includes more than 200 stores, restaurants and entertainment venues. Opry Mills features entertainment in an environment which includes theme restaurants, multiplex theaters, live entertainment, manufacturer's outlets, off-price retailers and category-dominant retailers. The Company believes that Opry Mills will enhance the Opryland properties, particularly the Opryland Hotel Nashville, the Grand Ole Opry, and the General Jackson, as it provides shopping, entertainment, and dining experiences for visitors to the Company's existing properties on a year-round basis. The Company estimates that approximately 8.4 million people visited Opry Mills in the 7-1/2 months it was open during 2000.

BASS PRO SHOPS. In 1993, the Company purchased a minority interest in Bass Pro, L.P. As part of a reorganization of Bass Pro in December 1999, the Company contributed its limited partnership interest to a newly formed Delaware corporation, Bass Pro, Inc. for a 19% interest. Bass Pro, Inc. owns and operates Bass Pro Shops, a retailer of premium outdoor sporting goods and fishing tackle. Bass Pro Shops serves its customers through an extensive mail order catalog operation, a retail center in Springfield, Missouri, and additional retail stores at Opry Mills in Nashville and in various other U.S. locations. The Company's properties are featured in the Bass Pro Shops catalogs.

NASHVILLE PREDATORS. The Company owns a 19.9% interest in the Nashville Hockey Club Limited Partnership, a limited partnership that owns the Nashville Predators, an expansion franchise of the National Hockey League which began its third season in the fall of 2000.

In August 1999, the Company entered into a Naming Rights Agreement with the limited partnership whereby the Company purchased the right to name the Nashville Arena as the "Gaylord Entertainment Center" and to place certain advertising within the arena. Under the agreement, which has a 20-year term, the Company is required to make annual payments, beginning at \$2,050,000 in the first year and with a 5% escalation each year thereafter, and to purchase a minimum number of tickets to Predators games each year.

MONETIZATION OF VIACOM STOCK. During May 2000, the Company entered into a seven-year secured forward exchange contract with an affiliate of Credit Suisse First Boston with respect to approximately 10.9 million shares of the Company's Viacom, Inc. Class B non-voting common stock ("Viacom Stock").

The seven-year secured forward exchange contract has a face amount of \$613.1 million and required contract payments based upon a stated 5% rate. The secured forward exchange contract protects the Company against decreases in the fair market value of the Viacom Stock while providing for participation in increases in the fair market value. By entering into the secured forward exchange contract, the Company realized cash proceeds of \$506.3 million, net of discounted prepaid contract payments related to the first 3.25 years of the contract and transaction costs totaling \$106.7 million. During October 2000, the Company prepaid the remaining contract payments related to the final 3.75 years of the contract for \$83.2 million. As a result of the prepayment of the remaining contract payments, the Company was released from the covenants in the secured forward exchange contract which limited the Company's right to sales of assets, to incur additional indebtedness and to grant liens. The Company utilized \$394.1 million of the net proceeds from the secured forward exchange contract to repay all

outstanding indebtedness under its revolving credit facility. As a result of the secured forward exchange contract, the revolving credit facility was terminated.

During the seven-year term of the secured forward exchange contract, the Company retains ownership of the Viacom Stock. The Company's obligation under the secured forward exchange contract is collateralized by a security interest in the Viacom Stock. At the end of the seven-year contract term, the Company may, at its option, elect to pay in cash rather than by delivery of the Viacom Stock.

#### RECENT DEVELOPMENTS

During the first quarter of 2001, there have been a number of significant developments which are necessary to consider the current condition and prospects of the Company.

**SALE OF FIVE BUSINESSES TO OPUBCO.** On March 9, 2001, the Company sold its stock and equity interests in five of its businesses to The Oklahoma Publishing Company ("OPUBCO") for a purchase price of \$22 million in cash and the assumption of approximately \$20 million in debt. The businesses sold were Gaylord Production Company, Gaylord Films, Pandora Films, Gaylord Sports Management Group, and Gaylord Event Television. OPUBCO owns 6.3% of the Company's common stock. Four of the Company's directors, who are the beneficial owners of an additional 27.8% of the Company's common stock, are also directors of OPUBCO and voting trustees of a voting trust that controls OPUBCO. The transaction was reviewed and approved by a special committee of the independent directors of the Company. The Company received an appraisal from a firm that specializes in valuations related to films, entertainment and service businesses as well as a fairness opinion from an investment bank.

**FINANCING ACTIVITIES.** On March 27, 2001, the Company, through special purpose entities, entered into two new loan agreements, a \$275 million senior loan (the "Senior Loan") and a \$100 million mezzanine loan (the "Mezzanine Loan") (collectively, the "2001 Loans"). The Senior Loan is secured by a first mortgage lien on the Opryland Hotel Nashville. The Mezzanine Loan is secured by the equity interest in the owner of the Opryland Hotel Nashville. See "Management's Discussion and Analysis of Financial Condition and Results of Operations - Liquidity and Capital Resources," for a description of the 2001 Loans.

#### EMPLOYEES

As of December 31, 2000, the Company had approximately 3,633 full-time ("FT") and 1,116 part-time and temporary ("PT") employees. Of these, approximately 2,745 FT and 703 PT were employed in hospitality and attractions; approximately 711 FT and 402 PT were employed in music, media and entertainment; and approximately 177 FT and 11 PT were employed in corporate and other. The Company believes its relations with its employees are good.

#### COMPETITION

**HOSPITALITY AND ATTRACTIONS.** The Company's hospitality and attractions businesses compete with all other forms of entertainment, lodging, and recreational activities. In addition to the competitive factors outlined below for each of the Company's businesses within the hospitality and attractions group, its

success is dependent upon certain factors beyond the Company's control including economic conditions, the amount of available leisure time, transportation costs, public taste, and weather conditions.

The Opryland Hotel Nashville competes with, and the Company's new hotels will compete with, other hotels throughout the United States and abroad, particularly the approximately 125 convention hotels located outside of Las Vegas, Nevada that have more than 800 rooms each, as well as the Las Vegas hotel/casinos. Many of these hotels are operated by companies with greater financial, marketing, and human resources than the Company. The Company believes that competition among convention hotels is based on, among other things, factors which include: (i) the hotel's reputation, (ii) the quality of the hotel's facility, (iii) the quality and scope of a hotel's meeting and convention facilities and services, (iv) the desirability of a hotel's location, (v) travel distance to a hotel for meeting attendees, (vi) a hotel facility's accessibility to a recognized airport, (vii) the amount of entertainment and recreational options available in and in the vicinity of the hotel, and (viii) price. The Company's hotels also compete against civic convention centers. These include the largest convention centers (e.g., Orlando, Chicago and Atlanta) as well as, for the Opryland Hotel Nashville, mid-size convention centers (between 100,000 and 500,000 square feet of meeting space located in second-tier cities).

The hotel business is management and marketing intensive. The Opryland Hotel Nashville competes with, and the Company's new hotels will compete with, other hotels throughout the United States for high quality management and marketing personnel. There can be no assurance that the Company's hotels will be able to attract and retain employees with the requisite managerial and marketing skills. The Opryland Hotel Nashville also competes with other employers for non-managerial employees in the Middle Tennessee labor market, which has had a low level of unemployment for several years. The low unemployment rate makes it difficult to attract qualified non-managerial employees and has been a substantial factor in the high turnover rate among those employees.

**MUSIC, MEDIA AND ENTERTAINMENT.** The Company's various creative content businesses compete with all other entertainment businesses. Success in the entertainment industry is dependent on taste and fashion, which may fluctuate from time to time. Word competes with numerous other companies that produce and distribute Christian and inspirational music. In addition, Word and Acuff-Rose compete with other record and music publishing companies, both Christian and secular, to sign artists and songwriters. The Company's ability to sign and re-sign popular recording artists and successful songwriters depends on a number of factors, including distribution and marketing capabilities, management teams, and the royalty and advance arrangements offered.

WSM-AM, WSM-FM, and WWTN-FM compete for advertising revenues with other radio stations in the Nashville market on the basis of formats, ratings, market share, and the demographic makeup of their audiences. Advertising rates of the radio stations are based principally on the size, market share, and demographic profile of their listening audiences. The Company's radio stations primarily compete for both audience share and advertising revenues. They also compete with the Internet, newspapers, billboards, cable networks, local cable channels, and magazines for advertising revenues. Management competence and experience, station frequency signal coverage, network affiliation, effectiveness of programming format, sales effort, and level of customer service are all important factors in determining competitive position.

MusicCountry competes for viewer acceptance with all forms of video entertainment, including other basic cable services, premium cable services, commercial television networks, independent television stations, and products distributed for the home video markets, in addition to the motion picture industry and other communications, media, and entertainment services. MusicCountry competes with internationally distributed cable networks and local broadcast television stations for available channel space on cable television systems, with other cable networks for subscriber fees from cable systems

operators, and with all forms of advertiser-supported media for advertising revenues. The Company also competes to obtain creative talents, properties, and market share, which are essential to the success of its cable networks business.

The principal competitive factors in obtaining viewer acceptance, on which cable subscriber fees and advertiser support ultimately depend, are the appeal of the networks' programming focus and the quality of their programming. Viewers' tastes in music and television, which impact the acceptance of the Company's programming, may also change from time to time. Music videos constitute substantially all of MusicCountry's programming. These videos are currently provided to the Company for promotional purposes by record companies and may also be distributed to other programming services as well as to other media.

Until October 2001, pursuant to the CBS Transitional Agreements, the Company is prohibited from owning or operating a cable network featuring country music videos or a significant amount of musical, sports, variety, or other entertainment features or series, the theme of which is perceived by the viewing public as "country entertainment." The Company is also generally prohibited, until October 2001, from providing, or making available for viewing, "country entertainment" programming on a cable network or an over-the-air broadcast television station. Notwithstanding the foregoing, the Company can own and operate MusicCountry in any area outside of the United States and Canada, provided that MusicCountry's programming, other than country music videos, will not primarily consist of programming featuring or related to "country entertainment."

#### REGULATION AND LEGISLATION

**HOSPITALITY AND ATTRACTIONS.** The Opryland Hotel Nashville is, and the Company's new hotels will be, subject to certain federal, state, and local governmental regulations including, without limitation, health, safety, and environmental regulations applicable to hotel and restaurant operations. The Company believes that it is in substantial compliance with such regulations. In addition, the sale of alcoholic beverages by a hotel requires a license and is subject to regulation by the applicable state and local authorities. The agencies involved have the power to limit, condition, suspend, or revoke any such license, and any disciplinary action or revocation could have an adverse effect upon the results of the operations of the Company's hospitality and attractions segment.

**MEDIA.** Radio broadcasting is subject to regulation under the Communications Act of 1934, as amended (the "Communications Act"). Under the Communications Act, the FCC, among other things, assigns frequency bands for broadcasting; determines the frequencies, location, and signal strength of stations; issues, renews, revokes, and modifies station licenses; regulates equipment used by stations; and adopts and implements regulations and policies that directly or indirectly affect the ownership, operation, and other practices of broadcasting stations.

Licenses issued for radio stations have terms of eight years. Radio broadcast licenses are renewable upon application to the FCC and in the past usually have been renewed except in rare cases. Competing applications will not be accepted at the time of license renewal, and will not be entertained at all unless the FCC first concludes that renewal of the license would not serve the public interest. A station will be entitled to renewal in the absence of serious violations of the Communications Act or the FCC regulations or other violations which constitute a pattern of abuse. The Company is not aware of any reason why its radio station licenses should not be renewed.

FCC regulations also limit concentrations of media ownership on both the local and national levels. FCC regulations prohibit the common ownership or control of most communications media serving the same market areas (i.e., (i) television and radio ownership; (ii) television and daily



newspapers; (iii) radio and daily newspapers; and (iv) television and cable television). The FCC's liberal waiver policy for joint television and radio ownership now covers the top 50 markets. The number of radio stations a single entity may own in the same market area depends on the number of stations operating in the local radio market, and the FCC is conducting a rulemaking proceeding to consider whether owning more than one television station in the same market area may be permitted. The FCC has also issued a notice of inquiry for the purpose of reevaluating the restriction on radio/newspaper cross ownership. There are no limits on the total number of radio stations commonly owned on a national basis.

The Communications Act also places certain limitations on alien ownership or control of entities holding broadcast licenses. The Company's Restated Certificate of Incorporation contains a provision permitting the Company to redeem common stock from certain holders if the Board of Directors deems such redemption necessary to prevent the loss or secure the reinstatement of any of its licenses or franchises. Communications companies may have officers and directors who are not U.S. citizens.

The foregoing is only a brief summary of certain provisions of the Communications Act and FCC regulations. The Communications Act and FCC regulations may be amended from time to time, and the Company cannot predict whether any such legislation will be enacted or whether new or amended FCC regulations will be adopted, or the effect on the Company of any such changes.

MusicCountry's programming and uplink services are handled in the United States. Although the operations of the Company's cable networks are not directly subject to regulation, any future legislation or regulatory actions that increase rate regulation or effect structural changes on the Company's cable networks could require cable networks to lower charges for their programming.

#### EXECUTIVE OFFICERS OF THE REGISTRANT

The following table sets forth certain information regarding the executive officers of the Company as of December 31, 2000. All officers serve at the discretion of the Board of Directors.

Name - ----	Age ---	Position -----
E. K. Gaylord II .....	43	Chairman of the Board
Dennis J. Sullivan, Jr.....	69	President and Chief Executive Officer
Roderick F. Connor, Jr.....	48	Senior Vice President and Chief Administrative Officer
David B. Jones.....	57	Executive Vice President; President, Hospitality and Attractions Group
Carl W. Kornmeyer.....	48	Executive Vice President; President, Music, Media and Entertainment Group
W. Brian Payne.....	30	Executive Vice President
Denise Wilder Warren.....	39	Senior Vice President and Chief Financial Officer

The following is additional information with respect to the above-named executive officers and directors.

Mr. E.K. Gaylord II has served as Chairman of the Board of the Company since May 1999 and, from late July until September 2000, he also served as interim President and Chief Executive Officer. He served as Vice Chairman of the Board from May 1996 until May 1999, and he has been a director of the Company since 1977. Mr. Gaylord has been the president of OPUBCO since June 1994 and is a director of OPUBCO. He also owns and operates the Lazy E Ranch in Guthrie, Oklahoma, and is a director of the National Cowboy Hall of Fame & Western Heritage Center. Mr. Gaylord is the son of Mr. Edward L. Gaylord and the brother of Mrs. Christine Gaylord Everest, both of whom are directors of the Company.

Mr. Sullivan has served as President and Chief Executive Officer of the Company, on an interim basis, since September 2000. Mr. Sullivan has continued to serve after the expiration of an employment agreement with a term of six months upon the same terms as in the agreement. From 1993 until September 2000, Mr. Sullivan engaged in a business consulting practice as an executive counselor with Dan Pinger Public Relations. Mr. Sullivan serves as a director of Fifth Third Bancorp and Anthem Inc., a health insurance company. Mr. Sullivan is the father of Mary Agnes Wilderotter, who is a director of the Company.

Mr. Connor has served as the Senior Vice President and Chief Administrative Officer of the Company since December 1997. From February 1995 to December 1997, Mr. Connor was the Vice President and Corporate Controller of the Company. Prior to February 1995, Mr. Connor was the Corporate Controller of the Company.

Mr. Jones, an Executive Vice President of the Company, has been the President of the Opryland Hospitality Group since May 1999. He served as President of the Opryland Lodging Group from May 1998 until May 1999. From 1993 until May 1998, Mr. Jones served as president and chief operating officer of John Q. Hammons Hotels, Inc., where he oversaw the development and opening of sixteen new properties.

Mr. Payne was an Executive Vice President of the Company and served as President of the interactive media group from its inception in November 1999 until December 2000. From June 1999 until November 1999, he was Vice President of the Company's Internet operations. Mr. Payne was a financial analyst for the Company from October 1996 until June 1999. Mr. Payne served as an intern at the Company from May 1995 until October 1996. Mr. Payne resigned from the Company on February 28, 2001.

Mr. Kornmeyer, an Executive Vice President of the Company, has been President of the Music, Media and Entertainment Group since December 2000. Prior to that he had been Senior Vice President of Corporate Development since November 1999 and Acting Chief Financial Officer from December 1999 until April 2000. He served as President of the Company's broadcasting, cable networks and Internet operations from October 1997 until November 1999. He served as Senior Vice President of Broadcast and Business Affairs of the Company's broadcasting and cable networks operations from March 1996 until October 1997, and as Vice President of Business Affairs of the Company's broadcasting and cable networks operations from March 1994 until February 1996.

Ms. Warren has served as Senior Vice President and Chief Financial Officer of the Company since April 2000. From 1996 until April 2000, Ms. Warren was employed by Merrill Lynch & Company, a securities and investment banking firm. At the time of her departure from Merrill Lynch, Ms. Warren was director-senior industry analyst, providing equity research coverage of the lodging, gaming and timeshare industries. The Company was among the businesses covered by Ms. Warren.

## ITEM 2. PROPERTIES

The Company owns its executive offices and headquarters located at One Gaylord Drive, Nashville, Tennessee, which consists of a four-story office building comprising approximately 80,000 square feet. The Company believes that its present facilities for each of its business segments as described below are generally well maintained.

## HOSPITALITY AND ATTRACTIONS

The Company owns the land and improvements that comprise the Opryland complex in Nashville, Tennessee. The Opryland complex includes the site of the Opryland Hotel Nashville (approximately 172 acres), the site of the Opry Mills retail complex, which is located on a portion of the approximately 200-acre site that was formerly the Opryland theme park, the General Jackson showboat's docking facility, the production and administration facilities that are currently being leased to CBS for TNN and CMT, the Opry House, and WSM Radio's offices and studios. In connection with the 2001 Loans, a first mortgage lien was granted on the Opryland Hotel Nashville, including the approximately 172 acre site on which it stands.

The Company has entered into 99-year lease agreements with The Mills Corporation for approximately 124 acres of the Opryland complex in exchange for, among other consideration, a one-third interest in the partnership formed for the development of Opry Mills.

The Company owns the Springhouse Golf Club, an 18-hole golf course situated on approximately 240 acres, and the 6.7-acre site of the Radisson Hotel at Opryland, both located near the Opryland complex.

The Company has executed a 75-year lease with a 24-year renewal option on a 65-acre site in Osceola County, Florida, on which the Opryland Hotel Florida is being constructed.

The Company has acquired, through ownership (approximately 75 acres) or ground lease (approximately 25 acres), approximately 100 acres in Grapevine, Texas, for the location of the Opryland Hotel Texas.

## MUSIC, MEDIA AND ENTERTAINMENT

The Company owns the Acuff-Rose Music Publishing building (and adjacent real estate) located on "Music Row" near downtown Nashville and an office building of approximately 40,000 square feet, also located on Music Row, for use by Word Entertainment as executive and administrative office space. Word leases approximately 36,000 additional square feet on various floors of a Nashville office building, which is used primarily for sales and administrative offices. Leases for these office properties expire on various dates ranging from August 2001 to November 2003. Word also leases sales offices and warehouse space in Delta, Canada and Milton Keynes, England. The Company and Word also guarantee the lease of warehouse space in Smyrna, Tennessee, for use in connection with warehousing and distribution, and the Company owns and uses a 100,000 square foot warehouse in Old Hickory, Tennessee.

In downtown Nashville, the Company owns the Ryman Auditorium, the Wildhorse Saloon dance hall and production facility, and an office building. The office building, which has approximately 38,800 square feet, was acquired by the Company in September 1999 to serve as administrative and executive office space for Gaylord Digital. The Company currently is considering alternatives that might be available to it with respect to ownership of this building.

The Company owns the offices and three television studios of TNN and CMT, all of which are located within the Opryland complex and contain approximately 87,000 square feet of space. Pursuant to the CBS Transitional Agreements, these facilities are leased to CBS through September 30, 2002. Master control and satellite uplink operations for MusicCountry are also located in the facilities being leased to CBS. The services for the satellite uplink operations are being provided by CBS to the Company pursuant to the CBS Transitional Agreements. MusicCountry has offices in the Company's executive office building and currently leases its transponders. MusicCountry also leases office space in Sydney, Australia, and Miami, Florida.

## ITEM 3. LEGAL PROCEEDINGS

The Company maintains various insurance policies, including general liability and property damage insurance, as well as product liability, workers' compensation, business interruption, and other policies, which it believes provide adequate coverage for the risks associated with its range of operations. Various subsidiaries of the Company are involved in lawsuits incidental to the ordinary course of their businesses, such as personal injury actions by guests and employees and complaints alleging employee discrimination. The Company believes that it is adequately insured against these claims by its existing insurance policies and that the outcome of any pending claims or proceedings will not have a material adverse effect upon its financial position or results of operations.

The Company may have potential liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA" or "Superfund"), for response costs at two Superfund sites. The liability relates to properties formerly owned by Old Gaylord. In 1991, Old Gaylord and OPUBCO, a former subsidiary of Old Gaylord, entered into a distribution agreement (the "OPUBCO Distribution Agreement"), pursuant to which OPUBCO assumed such liabilities and agreed to indemnify Old Gaylord for any losses, damages, or other liabilities incurred by Old Gaylord in connection with such matters. Under the OPUBCO Distribution Agreement, OPUBCO is required to maintain adequate reserves to cover potential Superfund liabilities. In connection with the Restructuring, Old Gaylord assigned its rights under the OPUBCO Distribution Agreement to the Company, and Old Gaylord has a right of subrogation to the Company's right to indemnification from OPUBCO. No

litigation has been commenced against the Company, Old Gaylord or OPUBCO with respect to these two Superfund sites.

Although statutorily liable private parties cannot contractually transfer liability so as to render themselves no longer liable, CERCLA permits private parties to indemnify one another against CERCLA liability pursuant to a contract, and to enforce such a contract in an appropriate court. The Company believes that OPUBCO's indemnification will fully cover the Company's Superfund liabilities, if any, and that, based on the Company's current estimates of these liabilities, OPUBCO has sufficient financial resources to fulfill its indemnification obligations under the OPUBCO Distribution Agreement.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS.

No matter was submitted to a vote of the Company's security holders during the fourth quarter of 2000.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS

(A) MARKET INFORMATION

The Company's common stock is listed on the New York Stock Exchange under the symbol GET. The following table sets forth the high and low sales prices for the Company's common stock as reported by the NYSE:

1999 ----	HIGH ----	LOW ---
First Quarter	\$31.13	\$24.25
Second Quarter	33.00	23.38
Third Quarter	31.44	28.31
Fourth Quarter	33.06	28.25
2000 ----	HIGH ----	LOW ---
First Quarter	\$30.44	\$24.50
Second Quarter	27.38	20.25
Third Quarter	28.00	19.50
Fourth Quarter	25.50	19.31

(B) HOLDERS

The approximate number of record holders of the Company's common stock on March 12, 2001, was 2,598.

(C) CASH DIVIDENDS

During 1999, the Company distributed a quarterly cash dividend of \$0.20 per share of the Company's common stock. At its quarterly meeting in February 2000, the Company's Board of Directors voted to discontinue the payment of dividends on its common stock. Accordingly, no dividends were

paid during 2000.

ITEM 6. SELECTED FINANCIAL DATA.

The information required by this item is incorporated by reference to the information under the caption "Selected Financial Data" in the Company's Annual Report to Stockholders for the year ended December 31, 2000, and is included in Exhibit 13.1 to this Form 10-K.

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS.

The information required by this item is incorporated by reference to the information under the caption "Management's Discussion and Analysis of Financial Condition and Results of Operations" in the Company's Annual Report to Stockholders for the year ended December 31, 2000, and is included in Exhibit 13.1 to this Form 10-K.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK.

The information required by this item is incorporated by reference to the information under the caption "Market Risk" within the section entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations" in the Company's Annual Report to Stockholders for the year ended December 31, 2000, and is included in Exhibit 13.1 to this Form 10-K.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA.

The information required by this item is incorporated by reference to the information on pages F-21 through F-48 of the Company's Annual Report to Stockholders for the year ended December 31, 2000, and is included in Exhibit 13.1 to this Form 10-K.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE.

Inapplicable.

PART III

ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT.

Information about our Directors is incorporated by reference to the discussion under the heading "Item 2 - Election of Three Directors" in our Proxy Statement for the 2001 Annual Meeting of Stockholders, to be filed with the Securities and Exchange Commission pursuant to Rule 14a-6.

Information required by Item 405 of Regulation S-K is incorporated by reference to the discussion under the heading "Section 16(a) Beneficial Ownership Reporting Compliance" in our Proxy Statement for the 2001 Annual Meeting of Stockholders, to be filed with the Securities and Exchange Commission pursuant to Rule 14a-6.

Certain other information concerning executive officers of the Company is included in Part I of this Form 10-K under the caption "Executive Officers of the Registrant."

## ITEM 11. EXECUTIVE COMPENSATION.

The information required by this item is incorporated by reference to the discussion under the heading "Executive Compensation" in our Proxy Statement for the 2001 Annual Meeting of Stockholders, to be filed with the Securities and Exchange Commission pursuant to Rule 14a-6.

## ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT.

The information required by this item is incorporated by reference to the discussion under the heading "Beneficial Ownership" in our Proxy Statement for the 2001 Annual Meeting of Stockholders, to be filed with the Securities and Exchange Commission pursuant to Rule 14a-6.

## ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS.

The information required by this item is incorporated by reference to the discussion under the heading "Certain Relationships and Related Transactions" in our Proxy Statement for the 2001 Annual Meeting of Stockholders, to be filed with the Securities and Exchange Commission pursuant to Rule 14a-6.

## PART IV

## ITEM 14. EXHIBITS, FINANCIAL STATEMENT SCHEDULES AND REPORTS ON FORM 8-K.

## 14(A)(1) FINANCIAL STATEMENTS

The following financial statements are filed as part of this report, with reference to the applicable pages of Exhibit 13.1 to this Form 10-K:

	Exhibit 13.1
	Page
	----
Consolidated Statements of Operations for the Years Ended December 31, 2000, 1999 and 1998 .....	17
Consolidated Balance Sheets as of December 31, 2000 and 1999 .....	18
Consolidated Statements of Cash Flows for the Years Ended December 31, 2000, 1999 and 1998.....	19
Consolidated Statements of Stockholders' Equity for the Years Ended December 31, 2000, 1999 and 1998.....	20
Notes to Consolidated Financial Statements.....	21

## 14(A)(2) FINANCIAL STATEMENT SCHEDULES

The following financial statement schedules are filed as a part of this report, with reference to the applicable pages of this Form 10-K:

Schedule II - Valuation and Qualifying Accounts for the Year Ended December 31, 2000.....	S-2
Schedule II - Valuation and Qualifying Accounts for the Year Ended December 31, 1999.....	S-3
Schedule II - Valuation and Qualifying Accounts for the Year Ended December 31, 1998.....	S-4

All other financial statement schedules for which provision is made in the applicable accounting regulations of the Securities and Exchange Commission are not required under the related instructions or are inapplicable and, therefore, have been omitted.

## 14(A)(3) EXHIBITS

See Index to Exhibits, pages 23 through 26.

## 14(B) REPORTS ON FORM 8-K

A Current Report on Form 8-K was filed with the Securities and Exchange Commission on October 19, 2000 reporting Regulation FD disclosure under Item 9.



## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

## GAYLORD ENTERTAINMENT COMPANY

By: /s/ E. K. Gaylord II

-----  
E. K. Gaylord II  
Chairman of the Board

March 30, 2001

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed by the following persons on behalf of the Registrant in the capacities and on the dates indicated.

SIGNATURE -----	TITLE -----	DATE -----
/s/ E. K. Gaylord II ----- E. K. Gaylord II	Chairman of the Board	March 30, 2001
/s/ Martin C. Dickinson ----- Martin C. Dickinson	Director	March 30, 2001
/s/ Christine Gaylord Everest ----- Christine Gaylord Everest	Director	March 30, 2001
/s/ Edward L. Gaylord ----- Edward L. Gaylord	Chairman Emeritus	March 30, 2001
/s/ Craig L. Leipold ----- Craig L. Leipold	Director	March 30, 2001
/s/ Joe M. Rodgers ----- Joe M. Rodgers	Director	March 30, 2001
/s/ Mary Agnes Wilderotter ----- Mary Agnes Wilderotter	Director	March 30, 2001
/s/ Howard Wood ----- Howard Wood	Director	March 30, 2001
/s/ Dennis J. Sullivan, Jr. ----- Dennis J. Sullivan, Jr.	President and Chief Executive Officer	March 30, 2001
/s/ Denise Wilder Warren ----- Denise Wilder Warren	Senior Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	March 30, 2001

## INDEX TO EXHIBITS

Exhibit Number -----	Description -----
2.1+	Asset Purchase Agreement, dated as of November 21, 1996 by and among Thomas Nelson, Inc., Word, Incorporated and Word Direct Partners, L.P. as Sellers and Old Gaylord as Buyer (incorporated by reference to Exhibit 2.1 to the Current Report on Form 8-K, dated January 6, 1997, of Thomas Nelson, Inc.).
2.2+	Amendment No. 1 to the Asset Purchase Agreement dated as of January 6, 1997, by and among Thomas Nelson, Inc., Word Incorporated and Word Direct Partners, L.P. as Sellers and Old Gaylord as Buyer (incorporated by reference to Exhibit 2.2 to the Current Report on Form 8-K, dated January 6, 1997, of Thomas Nelson, Inc.).
2.3+	Asset Purchase Agreement, dated as of January 6, 1997, by and between Nelson Word Limited and Word Entertainment Limited (incorporated by reference to Exhibit 2.3 to the Current Report on Form 8-K, dated January 6, 1997, of Thomas Nelson, Inc.).
2.4+	Subsidiary Asset Purchase Agreement executed on January 6, 1997 and dated as of November 21, 1996 between Word Communications, Ltd. and Word Entertainment (Canada), Inc. (incorporated by reference to Exhibit 2.4 to the Current Report on Form 8-K, dated January 6, 1997, of Thomas Nelson, Inc.).
2.5+	Agreement and Plan of Merger dated February 9, 1997 by and among Westinghouse Electric Corporation ("Westinghouse"), G Acquisition Corp. and Old Gaylord (incorporated by reference to Exhibit 2.1 to Old Gaylord's Current Report on Form 8-K dated February 9, 1997).
2.6+	Agreement and Plan of Merger, dated as of April 9, 1999, by and among the Registrant, Gaylord Television Company, Gaylord Communications, Inc., CBS Corporation, CBS Dallas Ventures, Inc. and CBS Dallas Media, Inc. (incorporated by reference to Exhibit 2 to the Registrant's Current Report on Form 8-K dated April 19, 1999).
2.7+	First Amendment to the Agreement and Plan of Merger, dated as of October 8, 1999, by and among the Registrant, Gaylord Television Company, Gaylord Communications, Inc., CBS Corporation, CBS Dallas Ventures, Inc. and CBS Dallas Media, Inc. (incorporated by reference to Exhibit 2.3 to the Registration Statement on Form S-3 of CBS Corporation, as filed with the Securities and Exchange Commission on October 12, 1999).
2.8+*	Securities Purchase Agreement, dated as of March 9, 2001, by and among the Registrant, Gaylord Creative Group, Inc., PaperBoy Productions, Inc., and Gaylord Sports, Inc.
3.1	Restated Certificate of Incorporation of the Registrant (incorporated by reference to Exhibit 3 to the Registrant's Current Report on Form 8-K dated October 7, 1997).
3.2	Restated Bylaws of the Registrant (incorporated by reference to Exhibit 3.2 to the Company's Registration Statement on Form 10, as amended (File No. 1-13079)).

- 3.3 Specimen of Common Stock certificate (incorporated by reference to Exhibit 4.1 to the Company's Registration Statement on Form 10, as amended (File No. 1-13079)).
- 10.1 Tax Disaffiliation Agreement by and among Old Gaylord, the Registrant and Westinghouse, dated September 30, 1997 (incorporated by reference to Exhibit 10.3 to the Registrant's Current Report on Form 8-K, dated October 7, 1997).
- 10.2 Agreement and Plan of Distribution, dated September 30, 1997, between Old Gaylord and the Registrant (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K dated October 7, 1997).
- 10.3 Opry Mills Limited Partnership Agreement, executed as of March 31, 1998, by and among Opry Mills, L.L.C., The Mills Limited Partnership, and Opryland Attractions, Inc. (incorporated by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 1998).
- 10.4 Tax Matters Agreement, dated as of April 9, 1999, by and among the Registrant, Gaylord Television Company, Gaylord Communications, Inc. and CBS Corporation (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K dated April 19, 1999).
- 10.5 Amended and Restated Tax Matters Agreement, dated as of October 8, 1999, by and among the Registrant, Gaylord Television Company, Gaylord Communications, Inc. and CBS Corporation (incorporated by reference to Exhibit 2.4 to the Registration Statement on Form S-3 of CBS Corporation, as filed with the Securities and Exchange Commission on October 12, 1999).
- 10.6 First Amendment to Post-Closing Covenants Agreement and Non-Competition Agreements, dated as of April 9, 1999, by and among the Registrant, CBS Corporation, Edward L. Gaylord and E. K. Gaylord II (incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K dated April 19, 1999).
- 10.7 Opryland Hotel - Florida Ground Lease, dated as of March 3, 1999, by and between Xentury City Development Company, L.C., and Opryland Hotel - Florida Limited Partnership (incorporated by reference to Exhibit 10.11 to Gaylord's Annual Report on Form 10-K for the year ended December 31, 1999).
- 10.8\* Guaranteed Maximum Price (GMP) Construction Agreement dated as of November 8, 1999, by and among Opryland Hotel - Florida, L.P. Opryland Hospitality Group, and Perini/Suitt.
- 10.9\* First Amendment to Guaranteed Maximum Price (GMP) Construction Agreement dated as of September 5, 2000 by and among Opryland Hotel - Florida, L.P., Opryland Hospitality Group d/b/a OLH, G.P., and Perini/Suitt.
- 10.10 Naming Rights Agreement dated as of November 24, 1999, by and between Registrant and Nashville Hockey Club Limited Partnership (incorporated by reference to Exhibit 10.24 to Gaylord's Annual Report on Form 10-K for the year ended December 31, 1999).

- 10.11 SAILS Mandatorily Exchangeable Securities Contract dated as of May 22, 2000, among the Registrant, OLH G.P., Credit Suisse First Boston International, and Credit Suisse First Boston Corporation, as agent (incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K dated May 23, 2000).
- 10.12 SAILS Pledge Agreement dated as of May 22, 2000, among the Registrant, Credit Suisse First Boston International, and Credit Suisse First Boston Corporation, as agent (incorporated by reference to Exhibit 10.2 to the registrant's Current Report on Form 8-K dated May 23, 2000).
- 10.13\* Amended and Restated Loan and Security Agreement dated as of March 27, 2001 by and between Opryland Hotel Nashville, LLC, and Merrill Lynch Mortgage Lending, Inc.
- 10.14\* Mezzanine Loan Agreement dated as of March 27, 2001, by and between Merrill Lynch Mortgage Capital Inc. and OHN Holdings, LLC.

EXECUTIVE COMPENSATION PLANS AND  
MANAGEMENT CONTRACTS

- 10.15\* Gaylord Entertainment Company 1997 Omnibus Stock Option and Incentive Plan.
- 10.16 The Opryland USA Inc. Supplemental Deferred Compensation Plan (incorporated by reference to Exhibit 10.11 to Old Gaylord's Registration Statement on Form S-1 (Registration No. 33-42329)).
- 10.17 Gaylord Entertainment Company Supplemental Executive Retirement Plan (incorporated by reference to Exhibit 10.31 to Old Gaylord's Annual Report on Form 10-K for the year ended December 31, 1994).
- 10.18 Amended and Restated Gaylord Entertainment Company Directors' Unfunded Deferred Compensation Plan (incorporated by reference to Exhibit 10.17 to Gaylord's Annual Report on Form 10-K for the year ended December 31, 1999).
- 10.19\* Gaylord Entertainment Company Retirement Benefit Restoration Plan
- 10.20 Form of Severance Agreement between the Registrant and certain of its executive officers (incorporated by reference to Exhibit 10.23 to Old Gaylord's Annual Report on Form 10-K for the year ended December 31, 1996).
- 10.21 Severance Agreement, dated February 1999 between the Registrant and David B. Jones (incorporated by reference to Exhibit 10.22 to Gaylord's Annual Report on Form 10-K for the year ended December 31, 1999).
- 10.22 Executive Employment Agreement of James "Tim" DuBois dated February 15, 2000, with the Registrant (incorporated by reference to Exhibit 10.23 to Gaylord's Annual Report on Form 10-K for the year ended December 31, 1999).
- 10.23\* Letter agreement dated August 10, 2000 between the Registrant and Terry E. London.
- 10.24\* Employment Agreement dated September 14, 2000 between the Registrant and Dennis J. Sullivan, Jr.

- 10.25\* Letter agreement dated September 15, 2000 between the Registrant and James "Tim" DuBois.
- 10.26\* Letter Agreement dated February 14, 2001 between the Registrant and Carl W. Kornmeyer.
- 10.27\* Severance Agreement dated February 15, 2001 between the Registrant and Denise W. Warren.
- 13.1\* Portions of the Registrant's Annual Report to Stockholders for the year ended December 31, 2000.
- 21\* Subsidiaries of Gaylord Entertainment Company.
- 23\* Consent of Independent Public Accountants.

- - - - -

+ As directed by Item 601(b)(2) of Regulation S-K, certain schedules and exhibits to this exhibit are omitted from this filing. The Registrant agrees to furnish supplementally a copy of any omitted schedule or exhibit to the Commission upon request.

\* Filed herewith.

To Gaylord Entertainment Company:

We have audited, in accordance with auditing standards generally accepted in the United States, the consolidated financial statements of Gaylord Entertainment Company as of December 31, 2000 and 1999 and for the three years ended December 31, 2000 included in this Annual Report on Form 10-K and have issued our report thereon dated February 22, 2001. Our audit was made for the purpose of forming an opinion on the basic financial statements taken as a whole. The financial statement schedules listed in response to Item 14(a)(2) of this Annual Report on Form 10-K are the responsibility of the Company's management and are presented for purposes of complying with the Securities and Exchange Commission's rules and regulations under the Securities and Exchange Act of 1934 and are not otherwise a required part of the basic financial statements. The financial statement schedules have been subjected to the auditing procedures applied in the audit of the basic financial statements and, in our opinion, fairly state, in all material respects, the financial data required to be set forth therein in relation to the basic financial statements taken as a whole.

ARTHUR ANDERSEN LLP

Nashville, Tennessee  
February 22, 2001

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GAYLORD ENTERTAINMENT COMPANY AND SUBSIDIARIES  
 SCHEDULE II - VALUATION AND QUALIFYING ACCOUNTS  
 FOR THE YEAR ENDED DECEMBER 31, 2000  
 (AMOUNTS IN THOUSANDS)

	Balance at beginning of period -----	Additions charged to -----		Deductions -----	Balance at end of period -----
		Costs and expenses -----	Other accounts -----		
1999 restructuring charges	\$ 499	(233)	--	266	\$ --
2000 restructuring charges	--	16,426	--	3,317	13,109
	-----	-----	-----	-----	-----
Total	\$ 499	16,193	--	3,583	\$13,109
	=====	=====	=====	=====	=====

GAYLORD ENTERTAINMENT COMPANY AND SUBSIDIARIES  
 SCHEDULE II - VALUATION AND QUALIFYING ACCOUNTS  
 FOR THE YEAR ENDED DECEMBER 31, 1999  
 (AMOUNTS IN THOUSANDS)

	Balance at beginning of period	Additions charged to		Deductions	Balance at end of period
		Costs and expenses	Other accounts		
1997 restructuring charges	\$2,294	--	--	2,294	\$ --
1999 restructuring charges	--	3,102	--	2,603	499
Total	\$2,294	3,102	--	4,897	\$ 499



GAYLORD ENTERTAINMENT COMPANY AND SUBSIDIARIES  
 SCHEDULE II - VALUATION AND QUALIFYING ACCOUNTS  
 FOR THE YEAR ENDED DECEMBER 31, 1998  
 (AMOUNTS IN THOUSANDS)

	Balance at beginning of period -----	Additions charged to -----		Deductions -----	Balance at end of period -----
		Costs and expenses -----	Other accounts -----		
1997 restructuring charges	\$6,073 =====	-- =====	-- =====	3,779 =====	\$ 2,294 =====

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SECURITIES PURCHASE AGREEMENT

by and between  
PAPERBOY PRODUCTIONS, INC.  
and  
GAYLORD SPORTS, INC.  
as Buyers  
and  
GAYLORD ENTERTAINMENT COMPANY  
and  
GAYLORD CREATIVE GROUP, INC.,  
as Sellers

March 9, 2001

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## SECURITIES PURCHASE AGREEMENT

This SECURITIES PURCHASE AGREEMENT (this "AGREEMENT") is made as of March 9, 2001, by PAPERBOY PRODUCTIONS, INC., a Delaware corporation ("PAPERBOY") and GAYLORD SPORTS, INC., a Delaware corporation ("GSI" and collectively with Paperboy, "BUYERS"), GAYLORD ENTERTAINMENT COMPANY, a Delaware corporation ("GET") and GAYLORD CREATIVE GROUP, INC., a Delaware corporation ("CREATIVE" and, collectively with GET, "SELLERS").

## RECITALS:

For the consideration and on the terms set forth in this Agreement, Sellers respectively desire to sell, and:

(a) PaperBoy desires to purchase:

(i) all the issued and outstanding shares (the "GPC SHARES") of Gaylord Production Company, a Tennessee corporation ("GPC"),

(ii) all the issued and outstanding limited liability company interests (the "FILMS INTERESTS") of Gaylord Films, LLC, a Delaware limited liability company ("FILMS"), and

(iii) 70 shares of the issued and outstanding Common Stock (the "TV SHARES") of Gaylord Event Television, Inc., a California corporation ("TV"), which TV Shares constitute all the equity securities of TV owned by GET and its Affiliates, and

(iv) the TV Debt (as defined herein); and

(b) GSI desires to purchase 100 Units of the issued and outstanding membership interests (the "GSM INTERESTS") of Gaylord Sports Management Group, LLC, a Tennessee limited liability company ("GSM"), which GSM Interests constitute all the membership interests of GSM owned by GET and its Affiliates.

## AGREEMENT:

The parties, intending to be legally bound, agree as follows:

1. DEFINITIONS. For purposes of this Agreement, the following terms have the meanings specified or referred to in SCHEDULE 1 (Definitions).

2. SALE AND TRANSFER OF SECURITIES AND CERTAIN INTERCOMPANY DEBT; CLOSING.

2.1 SECURITIES; TV DEBT. Subject to the terms and conditions of this Agreement, at the Closing:

(a) GET will sell and transfer the GPC Shares to PaperBoy, and PaperBoy will purchase the GPC Shares from GET;

(b) Creative will sell and transfer the TV Shares and Films Interests to PaperBoy, and PaperBoy will purchase the TV Shares and Films Interests from Creative;

(c) Creative will sell and transfer the GSM Interests to GSI, and GSI will purchase the GSM Interests from Creative; and

(d) Creative will sell and transfer to PaperBoy, and PaperBoy will purchase from Creative, all intercompany indebtedness owed by TV to GET and its Affiliates as of the Closing Date (the "TV DEBT").

2.2 PURCHASE PRICE. The purchase price for the Securities and the Acquired Debt will be Twenty-Two Million Dollars (\$22,000,000) in cash, plus the assumption of the Pandora Debt, and plus or minus the Adjustment Amount (the "PURCHASE PRICE"). The Purchase Price will be allocated by Buyers among the Securities and the Acquired Debt and delivered in writing to GET within 90 days following the Closing Date for Sellers' approval, which approval shall not be unreasonably or untimely withheld.

2.3 CLOSING. The purchase and sale (the "CLOSING") provided for in this Agreement will take place at the offices of Buyers' counsel at 901 Main Street, Suite 3100, Dallas, Texas, at 10:00 a.m. (local time) on March 9, 2001, or at such other time and place as the parties may agree. Subject to the provisions of SECTION 9 (Termination), failure to consummate the purchase and sale provided for in this Agreement on the date and time and at the place determined pursuant to this SECTION 2.3 (Closing) will not result in the termination of this Agreement and will not relieve any party of any obligation under this Agreement.

2.4 CLOSING OBLIGATIONS. At the Closing:

(a) Sellers will deliver to Buyers:

(i) certificates (the "SHARE CERTIFICATES") representing the GPC Shares and the TV Shares, duly endorsed (or accompanied by duly executed stock powers), for transfer to PaperBoy;

(ii) assignments (collectively, the "LLC ASSIGNMENTS") of the Films Interests and the GSM Interests, in a form satisfactory to PaperBoy and GSI, in favor of PaperBoy and GSI, respectively;

(iii) releases in the form of EXHIBIT 2.4(A)(III) executed by Sellers (collectively, "SELLERS' RELEASES");

(iv) [intentionally omitted];

(v) the Transition Services Agreement in the form of EXHIBIT 2.4(A)(V), executed by Sellers;

(vi) written resignations of all directors and officers of the Target Companies other than those officers who are entitled to specific management positions under the terms of a written employment agreement with any Target Company;

(vii) Assignment and Assumption Agreement in the form attached as EXHIBIT 2.4(A)(VII) assigning the TV Debt, executed by the applicable Sellers (the "TV DEBT ASSIGNMENT"); and

(viii) a certificate executed by Sellers representing and warranting to Buyers that each of Sellers' representations and warranties in this Agreement was accurate in all respects as of the date of this Agreement and is accurate in all respects as of the Closing Date as if made on the Closing Date (giving full effect to any supplements to the Disclosure Letter that were delivered by Sellers to Buyers prior to the Closing Date in accordance with SECTION 5.5 (Notification)).

(b) Buyers will deliver to Sellers:

(i) the Purchase Price by wire transfer to accounts specified by each Seller;

(ii) the Transition Services Agreement, executed by each Target Company;

(iii) the TV Debt Assignment executed by the applicable Buyers; and

(iv) a certificate executed by Buyers to the effect that, except as otherwise stated in such certificate, the representations and warranties of each Buyer in this Agreement was accurate in all respects as of the date of this Agreement and is accurate in all respects as of the Closing Date as if made on the Closing Date.

2.5 ADJUSTMENT AMOUNT. The net of those amounts set forth on SCHEDULE 2.5 plus Buyer-approved film payments pursuant to SECTION 5.3(B) and (C).

3. REPRESENTATIONS AND WARRANTIES OF SELLERS. Sellers, jointly and severally, represent and warrant to Buyers as follows:

3.1 ORGANIZATION AND GOOD STANDING. (a) Part 3.1(a) of the Disclosure Letter contains a complete and accurate list for each Target Company of its name, its jurisdiction of incorporation or organization, other jurisdictions in which it is authorized to do business. GET, Creative, GPC, and TV are each a corporation duly organized, validly existing, and in good standing under the laws of its



jurisdiction of incorporation. GPC and TV each has full corporate power and authority to conduct its business as it is now being conducted, to own or use the properties and assets that it purports to own or use, and to perform all their obligations under Applicable Contracts. Films and GSM are each a limited liability company duly organized, validly existing, and in good standing under the laws of its jurisdiction of organization, with full power and authority to conduct its business as it is now being conducted, to own or use the properties and assets that it purports to own or use, and to perform all their obligations under Applicable Contracts. Each Target Company is duly qualified to do business as a foreign corporation or limited liability company and is in good standing under the laws of each state or other jurisdiction in which either the ownership or use of the properties owned or used by it, or the nature of the activities conducted by it, requires such qualification.

(b) Sellers have delivered to Buyers copies of the Organizational Documents of each Target Company, as currently in effect.

3.2 AUTHORITY; NO CONFLICT. (a) GET has all requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated by this Agreement. Creative has all requisite power and authority to enter into this Agreement and to consummate the transactions contemplated by this Agreement. The execution and delivery of this Agreement by GET and Creative and the consummation of the transactions contemplated by this Agreement have been duly authorized by all necessary corporate action, on the part of GET and Creative, as applicable. This Agreement has been duly executed and delivered by each Seller and constitutes the legal, valid, and binding obligation of Sellers, enforceable against Sellers in accordance with its terms, subject to (i) applicable bankruptcy, insolvency, fraudulent transfer and conveyance, moratorium, reorganization, receivership and similar laws relating to or affecting the enforcement of the rights and remedies of creditors generally, (ii) principles of equity (regardless of whether considered and applied in a proceeding in equity or at law) and (iii) the discretion of the court before which any proceeding in respect of this Agreement or the Contemplated Transactions may be brought. Upon the execution and delivery by Sellers of the documents listed in SECTION 2.4(A)(I)-(VIII) to which they are a party (collectively, the "SELLERS' CLOSING DOCUMENTS"), the Sellers' Closing Documents will constitute the legal, valid, and binding obligations of Sellers, enforceable against Sellers in accordance with their respective terms, subject to (i) applicable bankruptcy, insolvency, fraudulent transfer and conveyance, moratorium, reorganization, receivership and similar laws relating to or affecting the enforcement of the rights and remedies of creditors generally, (ii) principles of equity (regardless of whether considered and applied in a proceeding in equity or at law) and (iii) the discretion of the court before which any proceeding in respect of this Agreement or the Contemplated Transactions may be brought.

(b) Except as set forth in Part 3.2(b) of the Disclosure Letter, neither the execution and delivery of this Agreement nor the consummation or performance of any of the Contemplated Transactions by Sellers will, directly or indirectly (with or without notice or lapse of time):

(i) contravene, conflict with, or result in a violation of (A) any provision of the Organizational Documents of the Target Companies, or (B) any resolution adopted by the board of directors/managers or the stockholders or interest holders of any Target Company;

(ii) contravene, conflict with, or result in a violation of, or give any Governmental Body or other Person the right to challenge any of the Contemplated Transactions or to exercise any remedy or obtain any relief under, any Legal Requirement or any Order to which any Target Company or either Seller, or any of the assets owned or used by any Target Company, may be subject at or prior to the Closing Date;

(iii) contravene, conflict with, or result in a violation of any of the terms or requirements of, or give any Governmental Body the right to revoke, withdraw, suspend, cancel, terminate, or modify, any Governmental Authorization that is held by any Target Company or that otherwise relates to the business of, or any of the assets owned or used by, any Target;

(iv) cause any Target Company to become subject to, or to become liable for the payment of, any Tax;

(v) cause any of the assets owned by any Target Company to be reassessed or revalued by any taxing authority or other Governmental Body;

(vi) contravene, conflict with, or result in a violation or breach of any provision of, or give any Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate, or modify, any Applicable Contract; or

(vii) result in the imposition or creation of any Encumbrance upon or with respect to any of the assets owned or used by any Target Company.

Except as set forth in Part 3.2(b) of the Disclosure Letter, no Seller or Target Company is or will be required to give any notice to or obtain any Consent from any Person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the Contemplated Transactions.

### 3.3 CAPITALIZATION.

(a) The authorized equity or voting securities of GPC consists solely of 1,000 shares of common stock, of which 1,000 shares are issued and outstanding. The GPC Shares constitute all the issued and outstanding equity securities of GPC. GET is and will be on the Closing Date the record and beneficial owner and holder of the GPC Shares, free and clear of all Encumbrances.

(b) The authorized equity or voting securities of TV consists solely of 100,000 shares of common stock (the "TV COMMON"), of which 100 shares are issued and outstanding. Except as set forth on Part 3.3(b) of the Disclosure Letter, the TV Shares are free and clear of all Encumbrances. The record and beneficial owners and holders of the TV Common are, and will be on the Closing Date, as follows:

STOCKHOLDER	NO. OF SHARES	% OUTSTANDING
Creative	70	70%

Terry Jastrow	25	25%
Jack Nicklaus	5	5%
Total		100%

(c) The Films Interests are the only authorized, issued, or outstanding equity or voting securities of Films. Creative is and will be on the Closing Date the record and beneficial owner and holder of the Films Interests, free and clear of all Encumbrances.

(d) GSM is authorized to issue 200 units of membership interests, all of which are issued and outstanding. Except as set forth on Part 3.3(d) of the Disclosure Letter, the GSM Interests are free and clear of all Encumbrances. The record and beneficial owners and holders of such units are and will be on the Closing Date, as follows:

MEMBER	NO. OF UNITS	% OUTSTANDING
Creative	100	50%
Phil Mickelson	50	25%
Steve Loy	50	25%
Total	200	100%

(e) Films is the record and beneficial owner of 100% of the issued and outstanding equity and voting interests of Sooner Development, LLC ("SOONER"). Films is the record and beneficial owner of 100% of the issued and outstanding equity and voting interests of Pandora, Inc., a California corporation ("PANDORA U.S."), which is the record and beneficial owner of 100% of the issued and outstanding equity and voting interests of Oleander Productions, Inc., a California corporation ("OLEANDER"), and of A Walk to Remember Productions, Inc., a California corporation ("WALK").

(f) Films is the record and beneficial owner of 100% of the issued and outstanding equity and voting interests of Pandora Investment SARL ("PANDORA SARL"). Pandora SARL is the record and beneficial owner of 100% of the issued and outstanding equity interests of Pandora EURL.

(g) TV is the record and beneficial owner of 100% of the issued and outstanding equity and voting interests of Killer Golf, Inc., a California corporation.

(h) Films is the record and beneficial owner of 100% of the issued and outstanding equity and voting interests of Deep Indigo Productions Limited, a United Kingdom company. Deep Indigo Productions Limited is the record and beneficial owner of 100% of the issued and outstanding equity and voting interests of Therese Raquin Limited, a United Kingdom company ("RAQUIN") and the record and beneficial owner of 50% of the issued and outstanding equity and voting interests of Tinsel Town Television Limited, a United Kingdom company ("TINSEL TOWN").

(i) Except as set forth in Part 3.3(i) of the Disclosure Letter, none of the Target Companies own, directly or indirectly, any capital stock or other ownership interest in any corporation, partnership, limited liability company or other entity. Attached as Part 3.3(i) of the Disclosure Letter is a true and complete entity organization chart of the Target Companies.

(j) Except for references to securities laws, no legend or other reference to any purported Encumbrance appears upon any certificate representing securities of any Target Company. All of the outstanding equity securities of each Target Company have been duly authorized and validly issued and are fully paid and nonassessable. Except as set forth on Part 3.3(j) of the Disclosure Letter, there are no Contracts relating to the issuance, sale, transfer, or voting of any equity securities or other securities of any Target Company. None of the outstanding equity securities or other securities of any Target Company was issued in violation of the Securities Act or any other Legal Requirement. Except as set forth on Part 3.3(j) of the Disclosure Letter, no Target Company owns, or has any Contract to acquire, any equity securities or other securities of any Person (other than Target Companies) or any direct or indirect equity or ownership interest in any other business.

3.4 FINANCIAL STATEMENTS. Attached as Part 3.4 of the Disclosure Letter are true, correct, and complete: (a) unaudited balance sheets of each Target Company (other than Killer Golf and Sooner, which are combined with their respective parent entities, and Tinsel Town) as of December 31, 2000 and for Pandora U.S., Oleander, and Walk as of February 28, 2001 (such balance sheets as of December 31, 2000 and as of February 28, 2001 being collectively referred to as the "TARGET BALANCE SHEETS"), and the related unaudited statements of income for the fiscal year ended December 31, 2000, for each Target Company other than Killer Golf, Sooner, Pandora U.S., Oleander, Walk and Tinsel Town. Such financial statements fairly present the financial condition and the results of operations of each Target Companies as at the respective dates of and for the periods referred to in such financial statements, all in accordance with GAAP, subject to the absence of notes; the financial statements referred to in this SECTION 3.4 reflect the consistent application of such accounting principles throughout the periods involved. No financial statements of any Person other than the Target Companies' Subsidiaries are required by GAAP to be included in the financial statements of the Target Companies.

3.5 BOOKS AND RECORDS. The books of account, minute books, stock record books, and other records of the Target Companies, all of which have been made available to Buyers, are complete and correct and have been maintained in accordance with sound business practices and the requirements of Section 13(b)(2) of the Securities Exchange Act of 1934, as amended (regardless of whether or not the Target Companies are subject to that Section), including the maintenance of an adequate system of internal controls. The minute books of the Target Companies contain accurate, complete, and up-to-date records of all meetings held of, and action taken by, the stock or other equity holders, the Boards of Directors or Managers, or committees thereof, of the Target Companies, and no meeting of any such stock or other equity holders, Board of Directors or Managers, or committees has been held for which minutes have not been prepared and are not contained in such minute books. Part 3.5 of the Disclosure Letter sets forth a list of all such minutes and actions of each Target Company. At the Closing, all of those books and records will be delivered to Buyers.

## 3.6 TITLE TO PROPERTIES; ENCUMBRANCES.

(a) Part 3.6(a) of the Disclosure Letter contains a complete and accurate list of all leaseholds owned by any Target Company. The Target Companies own all the properties and assets (whether real, personal, or mixed and whether tangible or intangible) that they purport to own, including all of the properties and assets reflected in the Target Balance Sheets (except for assets held under capitalized leases disclosed or not required to be disclosed in Part 3.6(a) of the Disclosure Letter and personal property sold or intangible assets that have expired pursuant to the terms of the underlying Contract, in either case since the date of the Target Balance Sheets, in the Ordinary Course of Business), and all of the tangible properties and assets with a value in excess of \$10,000 purchased or otherwise acquired by the Target Companies since the date of the Target Balance Sheets (except for personal property acquired and sold since the date of the Target Balance Sheets in the Ordinary Course of Business and consistent with past practice), which subsequently purchased or acquired properties and assets (other than inventory and short-term investments) are listed in Part 3.6(a) of the Disclosure Letter. All material properties and assets reflected in the Target Balance Sheets are free and clear of all Encumbrances except, with respect to all such properties and assets, (a) mortgages or security interests shown on the Target Balance Sheets as securing specified liabilities or obligations, with respect to which no default (or event that, with notice or lapse of time or both, would constitute a default) exists, (b) mortgages or security interests incurred in connection with the purchase of property or assets after the date of the Target Balance Sheets (such mortgages and security interests being limited to the property or assets so acquired), with respect to which no default (or event that, with notice or lapse of time or both, would constitute a default) exists and (c) liens for current taxes not yet due.

(b) Part 3.6(b) of the Disclosure Letter sets forth a true, correct and complete list of the locations of all of the Physical Properties, showing the related Gaylord Entertainment Assets, the physical materials, the location and the parties and laboratories with whom the materials are deposited or kept (and whether the location is a bonded warehouse), and indicating whether such Physical Properties are owned by any Target Company and whether any Target Company has access thereto. Buyers have also been provided with access to and the opportunity to inspect all such Physical Properties. There are no other locations of any Physical Properties and all amounts due to laboratories and other parties in respect of the Physical Properties have been paid in full. The Target Companies have in their possession or have access to pursuant to written agreements with laboratories, sufficient Physical Properties relating to each Gaylord Entertainment Asset, and such Physical Properties are of sufficiently high quality to enable Buyers to exploit, in a manner consistent with current operations, the Gaylord Entertainment Assets and Entertainment Related Assets owned by the Target Companies.

3.7 SUFFICIENCY AND CONDITION OF ASSETS. Except as set forth on Part 3.7 of the Disclosure Letter, the assets of the Target Companies are sufficient for the continued conduct of the Target Companies' businesses after the Closing in substantially the same manner as conducted prior to the Closing, subject to the transfer of certain intangible assets pursuant to the Assignment and Assumption Agreements. The equipment of the Target Companies are in good operating condition and repair, reasonable wear and tear excepted, and are adequate for the uses to which they are being put, and none of such equipment is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost.

## 3.8 ACCOUNTS RECEIVABLE; BANK ACCOUNTS.

(a) All accounts receivable that are reflected on the Target Balance Sheets or on the accounting records of the Target Companies as of the Closing Date (collectively, the "ACCOUNTS RECEIVABLE") represent or will represent valid obligations arising from sales actually made or services actually performed in the Ordinary Course of Business. Unless paid prior to the Closing Date, the Accounts Receivable are or will be as of the Closing Date current and collectible net of the respective reserves shown on the Target Balance Sheets or on the accounting records of the Target Companies as of the Closing Date (which reserves are adequate and calculated consistent with past practice and, in the case of the reserve as of the Closing Date, will not represent a greater percentage of the Accounts Receivable as of the Closing Date than the reserve reflected in the Target Balance Sheets represented of the Accounts Receivable reflected therein and will not represent a material adverse change in the composition of such Accounts Receivable in terms of aging). Subject to such reserves and subject to Buyers exercising Best Efforts with respect to collection thereof, each of the Accounts Receivable is an enforceable obligation of the underlying account party, without any set-off. Except as set forth on Part 3.8(a) of the Disclosure Letter, there is no contest, claim, or right of set-off, other than returns in the Ordinary Course of Business, under any Contract with any obligor of an Accounts Receivable relating to the amount or validity of such Accounts Receivable. Part 3.8(a) of the Disclosure Letter contains a complete and accurate list of all Accounts Receivable as of the date of the Target Balance Sheets, which list sets forth the aging of such Accounts Receivable.

(b) Part 3.8(b) of the Disclosure Letter provides accurate information with respect to each account maintained by or for the benefit of the Target Companies at any bank or other financial institution including the name of the bank or financial institution, the account number and the balance as of the date set forth on Part 3.8(b) of the Disclosure Letter.

3.9 INVENTORY. All inventory of the Target Companies, whether or not reflected in the Target Balance Sheets, consists of a quality and quantity usable and salable in the Ordinary Course of Business, except for obsolete items and items of below-standard quality, all of which have been written off or written down to net realizable value in the Target Balance Sheets or on the accounting records of the Target Companies as of the Closing Date, as the case may be. All inventories not written off have been priced at the lower of cost or market on an average cost basis which approximates first in, first out. The quantities of each item of inventory (whether raw materials, work-in-process, or finished goods) are not excessive, but are reasonable in the present circumstances of the Target Companies.

3.10 NO UNDISCLOSED LIABILITIES. Except as set forth in Part 3.10 of the Disclosure Letter, the Target Companies have no liabilities or obligations of any nature (whether known or unknown and whether absolute, accrued, contingent, or otherwise) except for liabilities or obligations reflected or reserved against in the Target Balance Sheets and current liabilities incurred in the Ordinary Course of Business since the respective dates thereof.

3.11 TAXES. For purposes of this SECTION 3.11 (Taxes), any reference to the Target Companies shall include any corporation which merged or was liquidated with and into the Target Companies.

(a) Each of the Target Companies has filed all Tax Returns (consolidated, combined, unitary, or similar group of which such Target Company is or was a member) that it was required to file. All such Tax Returns were correct and complete in all material respects. All Taxes owed by any of the Target Companies (whether or not shown on any Tax Return) have been paid. None of the Target Companies currently is the beneficiary of any extension of time within which to file any Tax Return. Except as disclosed on Part 3.11(a) of the Disclosure Letter, no claim has ever been made by an authority in a jurisdiction where any of the Target Companies does not file Tax Returns that it is or may be subject to taxation by that jurisdiction. There are no Encumbrances on any of the assets of any of the Target Companies that arose in connection with any failure (or alleged failure) to pay any Tax. All Taxes that the Target Companies are or were required to withhold or collect and have been duly withheld or collected and, to the extent required, have been paid to the proper authority.

(b) Each of the Target Companies has withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder, or other third party.

(c) To the Knowledge of Sellers, no Seller or director or officer (or employee responsible for Tax matters) of any of the Target Companies expects any Governmental Body to assess any additional taxes for any period for which Tax Returns have been filed. There is no dispute or claim concerning any Tax liability of any of the Target Companies either (A) claimed or raised by any Governmental Body in writing or (B) as to which any of the Sellers has Knowledge based upon personal contact with any agent of such authority. Part 3.11(c) of the Disclosure Letter lists all federal, local, and foreign income Tax Returns filed with respect to any of the Target Companies for taxable periods ended on or after December 31, 1999, and indicates those Tax Returns that have been audited, and indicates those Tax Returns that currently are the subject of audit. The Sellers have delivered to the Buyers correct and complete copies of all federal income Tax Returns, examination reports, and statements of deficiencies assessed against or agreed to by any of the Target Companies since December 31, 1999.

(d) Except for an extension of the statute of limitations with respect to the 1996 Tax return of GPC, none of the Target Companies has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency.

(e) Neither GPC, TV nor any Subsidiary of GPC or TV is a "consenting corporation" within the meaning of Section 341(f) of the IRC, and none of the assets of GPC, TV or any such Subsidiary is subject to an election under Section 341(f) of the IRC.

(f) Neither GPC, TV nor any Subsidiary of GPC or TV has been a United States real property holding corporation within the meaning of Section 897(c)(2) of the IRC during the applicable period specified in Section 897(c)(1)(A)(ii) of the IRC.

(g) Neither GPC, TV nor any Subsidiary of GPC or TV has made any payments, is obligated to make any payments, or is a party to any agreement that obligates it to make any payments that will be an "excess parachute payment" under IRC Section 280G.

(h) Neither GPC, TV nor any Subsidiary of GPC or TV has or will have any actual liability for any Taxes of any person (other than GPC and its Subsidiaries or TV and its Subsidiaries) under Treasury Regulation Section 1.1502-6 (or any similar provision of federal, state, local, or foreign law), or as a transferee or successor, by contract or otherwise.

(i) None of the assets of the Target Companies is property that is required to be treated as being owned by any other person pursuant to the provisions of former Section 168(f) of the IRC.

(j) None of the assets of the Target Companies is "tax-exempt use property" within the meaning of Section 168(h) of the IRC.

(k) None of the assets of the Target Companies directly or indirectly secures any debt the interest on which is tax exempt under Section 103(a) of the IRC.

(l) None of the Target Companies has agreed to or is required to make any adjustments pursuant to Section 481(a) of the IRC or any similar provision of state, local or foreign law by reasons of a change in accounting method proposed by GET, Creative, or the Target Companies, nor has the IRS proposed any such adjustment or change in accounting method, or has any application pending with any Taxing Authority requesting permission for any changes in accounting methods that relate to the business or operations of Target Companies.

(m) To Sellers' Knowledge, neither TV nor any Subsidiary of TV is or has been required to make a basis reduction pursuant to Treasury Regulation Section 1.1502-20(b).

(n) Except for a closing agreement with the French government related to the audit of Pandora SARL and Pandora EURL, no closing agreement pursuant to Section 7121 of the IRC (or any predecessor provision) or any similar provision of any state, local or foreign law has been entered in to by or with respect to the Target Companies.

(o) Neither Creative nor GET has made or will make an election to reattribute any losses of GPC, TV or any of their Subsidiaries under Treasury Regulation Section 1.1502-20(g).

(p) Part 3.11(p) of the Disclosure Letter sets forth the following information with respect to each of the Target Companies (or, in the case of clause (B) below, with respect to each Subsidiary constituting a Target Company) as of the most recent practicable date: (A) the estimated U.S. or local country (as appropriate) basis of the Target Company in its assets; (B) the basis of the stockholder(s) of each Subsidiary constituting a Target Company in its stock (or the amount of any excess loss account, as defined in Treasury Regulation ss.1.1502-19; (C) the amount of any net operating loss, net capital loss, unused investment or other credit, unused foreign tax, or excess charitable contribution allocable to the Target Company; and (D) the amount of any deferred gain or loss allocable to the Target Company arising out of any deferred intercompany transaction, as defined in Treasury Regulation ss.1.1502-13.

(q) None of the Target Companies will be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any (A) "closing agreement" as described in IRC ss.7121 (or any



corresponding or similar provision of state, local or foreign income Tax law) executed on or prior to the Closing Date; (B) deferred intercompany gain or any excess loss account described in Treasury Regulations under IRC ss.1502 (or any corresponding or similar provision of state, local or foreign income Tax law); (C) installment sale or open transaction disposition made on or prior to the Closing Date; or (D) prepaid amount received on or prior to the Closing Date.

(r) Sooner has been treated as a disregarded entity for federal income tax purposes for all taxable periods since Sooner's inception.

(s) Pandora EURL has been treated as a disregarded entity for federal income tax purposes for all taxable periods since its acquisition, directly or indirectly, by Films.

(t) Idea Entertainment CV has been treated as a corporation for federal income tax purposes since inception until its liquidation on December 1, 2000.

(u) Films has been treated as a disregarded entity for federal income tax purposes for all taxable periods since inception.

(v) GSM has been treated as a partnership for federal income tax purposes for all taxable periods since its inception.

(w) Pandora SARL has been treated as a disregarded entity for federal income tax purposes for all taxable periods since its acquisition, directly or indirectly, by Films.

(x) All assets reflected as depreciable or amortizable on any Tax Returns have been appropriately classified as depreciable or amortizable (as appropriate) in accordance with applicable U.S. or local-country Tax Legal Requirements.

3.12 NO MATERIAL ADVERSE CHANGE. Except as set forth on Part 3.12 of the Disclosure Letter, since the date of the Target Balance Sheets, there has not been any material adverse change in the business, operations, properties, prospects, assets, or condition of any Target Company, and, to Sellers' Knowledge, no event has occurred or circumstance exists that may result in such a material adverse change.

3.13 EMPLOYEE BENEFITS. Part 3.13 of the Disclosure Letter lists each pension, retirement, profit-sharing, deferred compensation, bonus or other incentive plan, or other employee benefit program, arrangement, agreement or understanding, or medical, vision, dental or other health plan, or life insurance or disability plan, or any other employee benefit plan, including, without limitation, any "employee benefit plan" as defined in Section 3(3) of ERISA, to which any Target Company contributes or is a party or is bound or under which it may have liability or under which employees or former employees of any Target Company (or their beneficiaries) are eligible to participate or derive a benefit (collectively, "EMPLOYEE BENEFIT PLANS"). Sellers have delivered to Buyers true, correct and complete copies of all Employee Benefit Plans. GET's Supplemental Deferred Compensation Plan, as amended and restated effective January 1, 2001, is a nonqualified plan within the meaning of section 401(a) of the

IRC. None of the assets of the Target Companies are subject to any lien in favor of, or enforceable by, the Pension Benefit Guaranty Corporation.

3.14 COMPLIANCE WITH LEGAL REQUIREMENTS; GOVERNMENTAL AUTHORIZATIONS. (a) Except as set forth in Part 3.14(a) of the Disclosure Letter:

(i) each Target Company is, and at all times during the Lookback Period, has been, in full compliance with each Legal Requirement that is or was required for the conduct or operation of its business or the ownership or use of any of its assets;

(ii) no event or circumstance exists that (with or without notice or lapse of time) (A) may constitute or result in a violation by any Target Company of, or a failure on the part of any Target Company to comply with, any Legal Requirement, or (B) may give rise to any obligation on the part of any Target Company to undertake, or to bear all or any portion of the cost of, any remedial action of any nature; and

(iii) no Target Company has, at any time during the Lookback Period, received any written, or to the Sellers' and such Target Company's Knowledge, any oral, notice or other communication from any Governmental Body or any other Person regarding (A) any actual, alleged, possible, or potential violation of, or failure to comply with, any Legal Requirement, or (B) any actual, alleged, possible, or potential obligation on the part of any Target Company to undertake, or to bear all or any portion of the cost of, any remedial action of any nature.

(b) Part 3.14(b) of the Disclosure Letter contains a complete and accurate list of each Governmental Authorization that is held by any Target Company or that otherwise relates to the business of, or to any of the assets owned or used by, any Target Company. Each Governmental Authorization listed or required to be listed in Part 3.14(b) of the Disclosure Letter is valid and in full force and effect. Except as set forth in Part 3.14(b) of the Disclosure Letter:

(i) each Target Company is, and at all times during the Lookback Period, has been, in full compliance with all of the terms and requirements of each Governmental Authorization identified or required to be identified in Part 3.14(b) of the Disclosure Letter;

(ii) no event or circumstance exists that may (with or without notice or lapse of time) (A) constitute or result directly or indirectly in a violation of or a failure to comply with any term or requirement of any Governmental Authorization listed or required to be listed in Part 3.14(b) of the Disclosure Letter, or (B) result directly or indirectly in the revocation, withdrawal, suspension, cancellation, or termination of, or any modification to, any Governmental Authorization listed or required to be listed in Part 3.14(b) of the Disclosure Letter;

(iii) no Target Company has, at any time during the Lookback Period, received any written, or to the Sellers' and such Target Company's Knowledge, any oral, notice or other communication from any Governmental Body or any other Person regarding (A) any actual, alleged, possible, or potential violation of or failure to comply with any term or requirement of any Governmental Authorization, or (B) any actual, proposed, possible, or potential revocation,

withdrawal, suspension, cancellation, termination of, or modification to any Governmental Authorization; and

(iv) all applications required to have been filed for the renewal of the Governmental Authorizations listed or required to be listed in Part 3.14(b) of the Disclosure Letter have been duly filed on a timely basis with the appropriate Governmental Bodies, and all other filings required to have been made with respect to such Governmental Authorizations have been duly made on a timely basis with the appropriate Governmental Bodies.

The Governmental Authorizations listed in Part 3.14(b) of the Disclosure Letter collectively constitute all of the Governmental Authorizations necessary to permit the Target Companies to lawfully conduct and operate their businesses in the manner they currently conduct and operate such businesses and to permit the Target Companies to own and use their assets in the manner in which they currently own and use such assets.

3.15 LEGAL PROCEEDINGS; ORDERS. (a) Except as set forth in Part 3.15(a) of the Disclosure Letter, there is no pending Proceeding:

(i) that has been commenced by or against any Target Company or that otherwise relates to or may affect the business of, or any of the assets owned or used by, any Target Company; or

(ii) that has been commenced by or against any Target Company or either of the Sellers that challenges, or that may have the effect of preventing, delaying, making illegal, or otherwise interfering with, any of the Contemplated Transactions.

To the Knowledge of Sellers and the Target Companies, (1) no such Proceeding has been Threatened, and (2) no event has occurred or circumstance exists that may give rise to or serve as a basis for the commencement of any such Proceeding. Sellers have delivered to Buyers copies of all pleadings, correspondence, and other documents relating to each Proceeding listed in Part 3.15(a) of the Disclosure Letter.

(b) Except as set forth in Part 3.15(b) of the Disclosure Letter:

(i) there is no Order to which any of the Target Companies, or any of the assets owned or used by any Target Company, is subject;

(ii) neither Seller is subject to any Order that relates to the business of, or any of the assets owned or used by, any Target Company; and

(iii) to the Knowledge of Sellers and the Target Companies, no officer, director, agent, or employee of any Target Company is subject to any Order that prohibits such officer, director, agent, or employee from engaging in or continuing any conduct, activity, or practice relating to the business of any Target Company.

(c) Except as set forth in Part 3.15(c) of the Disclosure Letter:

(i) each Target Company is, and at all times during the Lookback Period, has been, in full compliance with all of the terms and requirements of each Order to which it, or any of the assets owned or used by it, is or has been subject;

(ii) no event has occurred or circumstance exists that may constitute or result in (with or without notice or lapse of time) a violation of or failure to comply with any term or requirement of any Order to which any Target Company, or any of the assets owned or used by any Target Company, is subject; and

(iii) no Target Company has, at any time during the Lookback Period, received any written, or to the Sellers' and such Target Company's Knowledge, any oral, notice or other communication (whether oral or written) from any Governmental Body or any other Person regarding any actual, alleged, possible, or potential violation of, or failure to comply with, any term or requirement of any Order to which any Target Company, or any of the assets owned or used by any Target Company, is or has been subject.

3.16 ABSENCE OF CERTAIN CHANGES AND EVENTS. Except as set forth in Part 3.16 of the Disclosure Letter, since the date of the Target Balance Sheets, the Target Companies have conducted their businesses only in the Ordinary Course of Business and there has not been any:

(a) change in any Target Company's authorized or issued capital stock or other equity securities; grant of any stock option or right to purchase capital stock or other equity securities of any Target Company; issuance of any security convertible into such capital stock or other equity securities; grant of any registration rights; purchase, redemption, retirement, or other acquisition by any Target Company of any such capital stock or other equity securities; or declaration or payment of any dividend or other distribution or payment in respect of any such capital stock or other equity securities;

(b) amendment to the Organizational Documents of any Target Company;

(c) payment or increase by any Target Company of any bonuses, salaries, or other compensation to any stockholder, member, director, manager, officer, or (except in the Ordinary Course of Business) employee or entry into any employment, severance, or similar Contract with any director, manager, officer, or employee;

(d) adoption of, or increase in the payments to or benefits under, any profit sharing, bonus, deferred compensation, savings, insurance, pension, retirement, or other employee benefit plan for or with any employees of any Target Company;

(e) damage to or destruction or loss of any asset or property of any Target Company, whether or not covered by insurance, materially and adversely affecting the properties, assets, business, financial condition, or prospects of the Target Companies, taken as a whole;

(f) entry into, termination of, or receipt of notice of termination of (i) any license, distributorship, production, dealer, sales representative, joint venture, credit, or similar agreement, or (ii) any Contract or transaction in effect at any time during any of 1998, 1999 or 2000 involving a total remaining commitment by or to any Target Company, or reasonably expected to result in payments to or by any Target Company in 2001, in excess of \$75,000;

(g) sale (other than sales of inventory in the Ordinary Course of Business), lease, or other disposition (other than licensing of Gaylord Entertainment Assets in the Ordinary Course of Business) of any asset or property of any Target Company or mortgage, pledge, or imposition of any lien or other encumbrance on any material asset or property of any Target Company, including the sale, license, lease, or other disposition of any of the Intellectual Property Assets;

(h) cancellation or waiver of any claims or rights with a value to any Target Company in excess of \$75,000;

(i) material change in the accounting methods used by any Target Company; or

(j) agreement, whether oral or written, by any Target Company to do any of the foregoing.

3.17 CONTRACTS; NO DEFAULTS. (a) Part 3.17(a) of the Disclosure Letter contains a complete and accurate list, and Sellers have delivered to Buyers true and complete copies (provided that, with respect to Pandora SARL and Pandora EURL, the only Applicable Contracts delivered are film acquisitions in 2000 and the ten (10) largest (by dollar amount) sales contracts), of:

(i) each Applicable Contract involving performance of services or delivery of goods or materials by one or more Target Companies of an amount in excess of \$75,000 during any of 1998, 1999 or 2000, or that is reasonably expected to exceed such amount in 2001;

(ii) each Applicable Contract involving performance of services or delivery of goods or materials to one or more Target Companies of an amount in excess of \$75,000 during any of 1998, 1999 or 2000, or that is reasonably expected to exceed such amount in 2001;

(iii) each Applicable Contract that was not entered into in the Ordinary Course of Business and that involved expenditures or receipts of one or more Target Companies in excess of \$25,000 during any of 1998, 1999 or 2000, or that is reasonably expected to exceed such amount in 2001;

(iv) each lease, rental or occupancy agreement, license, installment and conditional sale agreement, and other Applicable Contract affecting the ownership of, leasing of, title to, use of, or any leasehold or other interest in, any real or personal property (except personal property leases and installment and conditional sales agreements having a value per item or aggregate payments of less than \$75,000 and with terms of less than one year or agreements with respect to Intellectual Property Assets not required to be disclosed pursuant to SECTION 3.17(V));

(v) each licensing agreement or other Applicable Contract with respect to patents, trademarks, copyrights, or other intellectual property, in any case involving aggregate payments: (A) by or to any of the Target Companies, other than Pandora SARL and Pandora EURL, in excess of \$75,000 during any of 1998, 1999 or 2000, or that is reasonably expected to exceed such amount in 2001, and (B) by or to Pandora SARL and Pandora EURL for the years 1995-2000 with respect to such licensing agreements or other Applicable Contracts involving their ten highest aggregate payments made or received;

(vi) each collective bargaining agreement and other Applicable Contract to or with any labor union or other employee representative of a group of employees;

(vii) each joint venture, partnership, and other Applicable Contract (however named) involving a sharing of profits, losses, costs, or liabilities by any Target Company with any other Person;

(viii) each Applicable Contract containing covenants that in any way purport to restrict the business activity of any Target Company or any Affiliate of a Target Company or limit the freedom of any Target Company or any Affiliate of a Target Company to engage in any line of business or to compete with any Person;

(ix) each Applicable Contract providing for payments to or by any Person based on sales, purchases, or profits, other than direct payments for goods: (A) by or to any of the Target Companies, other than Pandora SARL and Pandora EURL, in 2000 in excess of \$75,000, and (B) by or to Pandora SARL and Pandora EURL for the years 1995-2000 with respect to such Applicable Contracts involving their ten highest aggregate payments made or received;

(x) each power of attorney obligating any Target Company that is currently effective and outstanding;

(xi) each Applicable Contract entered into other than in the Ordinary Course of Business that contains or provides for an express undertaking by any Target Company to be responsible for consequential damages;

(xii) each Applicable Contract for future capital expenditures in excess of \$25,000;

(xiii) each written warranty, guaranty, and or other similar undertaking with respect to contractual performance extended by any Target Company other than in the Ordinary Course of Business;

(xiv) each Applicable Contract relating to any credit facilities or other financing arrangements (including any letters of credit);

(xv) each Applicable Contract relating to the employment of, or the performance of services by, any Person, including any employee, consultant or independent contractor, in excess of \$100,000 per year and not terminable on 30 days or less notice;

(xvi) each Applicable Contract creating or involving any agency relationship, distribution arrangement or franchise relationship with any Target Company of an amount or value in excess of \$75,000 during any of 1998, 1999 or 2000, or that is reasonably expected to exceed such amount in 2001;

(xvii) each Applicable Contract relating to the acquisition, issuance, voting, or transfer of any securities of any Target Company;

(xviii) each Applicable Contract relating to the creation of any Encumbrance with respect to any asset of any Target Company;

(xix) each Applicable Contract relating to the management or representation of any athlete by GSM which resulted in income to GSM in excess of \$75,000 during any of 1998, 1999 or 2000, or that is reasonably expected to exceed such amount in 2001;

(xx) each Contract between an athlete who is party to any management or representation agreement with GSM and a third party pursuant to which GSM received any commission of any amount or value in excess of \$75,000 during any of 1998, 1999 or 2000, or that is reasonably expected to exceed such amount in 2001.

(xxi) any other Applicable Contract pursuant to which payments were made by or to any Target Company during any of 1998, 1999 or 2000 of an amount or value in excess of \$75,000, or that is reasonably expected to exceed such amount in 2001, that has a term of more than 60 days and that may not be terminated by one or more of the Target Companies (without penalty) within 60 days after the delivery of a termination notice by applicable Target Company; and

(xxii) each amendment, supplement, and modification (whether oral or written) in respect of any of the foregoing.

Part 3.17(a) of the Disclosure Letter sets forth reasonably complete details concerning such Contracts, including the parties to the Contracts.

(b) Except as set forth in Part 3.17(b) of the Disclosure Letter:

(i) neither Seller (and no Related Person of either Seller other than any of the Target Companies) has or may acquire any rights under, and neither Seller has or may become subject to any obligation or liability under, any Contract that relates to the business of, or any of the assets owned or used by, any Target Company; and

(ii) to the Knowledge of Sellers and the Target Companies, no officer, director, agent, employee, consultant, or contractor of any Target Company is bound by any Contract that purports to limit the ability of such officer, director, agent, employee, consultant, or contractor to (A) engage in or continue any conduct, activity, or practice relating to the business of any Target

Company except agreements in favor of one of the Sellers or one of the Target Companies, or (B) assign to any Target Company or to any other Person any rights to any invention, improvement, or discovery.

(c) Except as set forth in Part 3.17(c) of the Disclosure Letter, each Contract identified or required to be identified in Part 3.17(a) of the Disclosure Letter is in full force and effect and is valid and enforceable in accordance with its terms.

(d) Except as set forth in Part 3.17(d) of the Disclosure Letter:

(i) each Target Company is, and at all times during the five years preceding the Closing Date, has been, in full compliance with all applicable terms and requirements of each Contract under which such Target Company has or had any obligation or liability or by which such Target Company or any of the assets owned or used by such Target Company is or was bound;

(ii) To the Knowledge of Sellers and the Target Companies, each other Person that has or had any obligation or liability under any Contract under which a Target Company has or had any rights is, and at all times during the five years preceding the Closing Date, has been, in full compliance with all applicable terms and requirements of such Contract;

(iii) To the Knowledge of Sellers and the Target Companies, no event has occurred or circumstance exists that (with or without notice or lapse of time) may contravene, conflict with, or result in a violation or breach of, or give any Target Company or other Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate, or modify, any Applicable Contract; and

(iv) no Target Company has given to or received from any other Person, at any time, any written, or to the Sellers' and such Target Company's Knowledge, any oral, notice or other communication regarding any actual, alleged, possible, or potential violation or breach of, or default under, any Contract which is in existence.

(e) Except as set forth on Part 3.17(e) of the Disclosure Letter, there are no renegotiations of, attempts to renegotiate, or outstanding rights to renegotiate any material amounts paid or payable to any Target Company under current or completed Contracts with any Person and, to the Knowledge of Sellers and the Target Companies, no such Person has made written demand for such renegotiation.

(f) Except as disclosed in Part 3.17(f) of the Disclosure Letter, the Applicable Contracts relating to the sale, design, manufacture, or provision of products or services by the Target Companies have been entered into in the Ordinary Course of Business and have been entered into without the commission of any act alone or in concert with any other Person, or any consideration having been paid or promised, that is or would be in violation of any Legal Requirement.

3.18 INSURANCE. (a) Sellers have delivered to Buyers:



(i) true and complete copies of insurance manuals summarizing (including policy numbers, companies and brokers) policies of insurance to which any Target Company is a party or under which any Target Company, or any director of any Target Company, is or has been covered at any time within the five (5) years preceding the date of this Agreement, including, without limitation, those policies covering the Gaylord Entertainment Assets and Entertainment Related Assets;

(ii) true and complete copies of all pending applications for policies of insurance; and

(iii) any statement by the auditor of any Target Company's financial statements with regard to the adequacy of such entity's coverage or of the reserves for claims.

(b) Part 3.18(b) of the Disclosure Letter describes:

(i) any self-insurance arrangement by or affecting any Target Company, including any reserves established thereunder;

(ii) any contract or arrangement, other than a policy of insurance, for the transfer or sharing of any risk by any Target Company; and

(iii) all obligations of the Target Companies to third parties with respect to insurance (including such obligations under leases and service agreements) and identifies the policy under which such coverage is provided.

(c) Part 3.18(c) of the Disclosure Letter sets forth, with respect to each Target Company, by year, for the current policy year and each of the five (5) preceding policy years or such shorter period during which GET has, directly or indirectly, owned such Target Company:

(i) a summary of the loss experience under each policy;

(ii) a statement describing each claim under an insurance policy for an amount in excess of \$10,000, which sets forth:

(A) the name of the claimant;

(B) a description of the policy by insurer, type of insurance, and period of coverage; and

(C) the amount and a brief description of the claim; and

(iii) a statement describing the loss experience for all claims that were self-insured, including the number and aggregate cost of such claims.

(d) Except as set forth on Part 3.18(d) of the Disclosure Letter:

(i) All policies to which any Target Company is a party or that provide coverage to any Target Company or any director or officer of a Target Company:

(A) are valid, outstanding, and enforceable;

(B) are issued by an insurer that is financially sound and reputable except with respect to coverage previously provided by Reliance National;

(C) taken together, provide reasonable and customary insurance coverage for the assets and the operations of the Target Companies for all risks normally insured against by a Person carrying on the same business or businesses as the Target Companies;

(D) are sufficient for compliance with all Legal Requirements and Contracts to which any Target Company is a party or by which any of them is bound;

(E) will continue in full force and effect following the consummation of the Contemplated Transactions with respect to events, claims, losses or injuries that occur prior to the Closing Date; and

(F) except with respect to liability and workers compensation policies that are subject to audit (and may result in either a return premium or additional premium due) do not provide for any retrospective premium adjustment or other experienced-based liability on the part of any Target Company.

(ii) No Seller or Target Company has received (A) any refusal of coverage or any notice that a defense will be afforded with reservation of rights, or (B) any notice of cancellation or any other indication that any insurance policy is no longer in full force or effect or will not be renewed or that the issuer of any policy is not willing or able to perform its obligations thereunder.

(iii) The Target Companies have paid all premiums due, and have otherwise performed all of their respective obligations, under each policy to which any Target Company is a party or that provides coverage to any Target Company or director thereof.

(iv) The Target Companies have given notice to the insurer of all claims that may be insured thereby.

3.19 ENVIRONMENTAL MATTERS. Except as set forth in Part 3.19 of the Disclosure Letter:

(a) Compliance with Environmental Law. Each Target Company has complied and is in compliance in all material respects with all applicable Environmental Laws. No violation by any Target Company is being alleged of any applicable Environmental Law.

## (b) Other Environmental Matters.

(i) No Target Company or Seller, or to the Knowledge of Sellers and the Target Companies, any other Person has caused or taken any action that will result in, and no Target Company is subject to, any material liability or obligation on the part of any Target Company, or the Buyers or any of their Affiliates, relating to (x) the environmental conditions on, under, or about the Facilities or other properties or assets owned, leased, operated or used by any predecessor thereto at the present time or in the past, including without limitation, the air, soil and groundwater conditions at the Facilities or such properties or (y) any past or present Hazardous Activity.

(ii) The Sellers have disclosed and made available to Buyers all information, including, without limitation, all studies, analyses and test results, in the possession, custody or control of or otherwise known to any Seller relating to (x) the environmental conditions on, under or about the Facilities or other properties or assets owned, leased, operated or used by any of the Target Companies or any predecessor in interest thereto at the present time or in the past, and (y) any Hazardous Materials used, managed, handled, transported, treated, generated, stored or Released by any of the Target Companies or, to the Knowledge of Sellers and the Target Companies, any other Person on, under, about or from any of the Facilities, or otherwise in connection with the use or operation of any of the properties and assets of any Target Company.

3.20 EMPLOYEES. (a) Part 3.20(a) of the Disclosure Letter contains a complete and accurate list of the following information for each employee, manager (in the context of a limited liability company), or director of the Target Companies, including each employee on leave of absence or layoff status: employer; name; job title; current compensation paid or payable and any change in compensation since January 1, 2001; vacation accrued; and service credited for purposes of vesting and eligibility to participate under any Target Company's pension, retirement, profit-sharing, thrift-savings, deferred compensation, stock bonus, stock option, cash bonus, employee stock ownership (including investment credit or payroll stock ownership), severance pay, insurance, medical, welfare, or vacation plan, other Employee Pension Benefit Plan or Employee Welfare Benefit Plan, or any other employee benefit plan or any Director Plan provided by any Target Company.

(b) Except as set forth on Part 3.20(b) of the Disclosure Letter, no employee or director of any Target Company is a party to, or is otherwise bound by, any agreement or arrangement, including any confidentiality, noncompetition, or proprietary rights agreement, between such employee or director and any other Person ("PROPRIETARY RIGHTS AGREEMENT") that in any way adversely affects or will affect (i) the performance of his duties as an employee or director of the Target Companies, or (ii) the ability of any Target Company to conduct its business, including any Proprietary Rights Agreement with Sellers or the Target Companies by any such employee or director. To Sellers' Knowledge, no director, officer, or other key employee of any Target Company intends to terminate his employment with such Target Company.

(c) Except as set forth on Part 3.20(c) of the Disclosure Letter, none of the Target Companies is a party to any oral or written (i) employment agreement or consulting agreement (in excess

of \$100,000 per year) not terminable on 30 days or less notice, (ii) agreement with any executive officer or other key employee of any Target Company the benefits of which are contingent or vest, or the terms of which are materially altered, upon the occurrence of a transaction involving the Target Companies of the nature contemplated by this Agreement, or (iii) agreement with respect to any executive officer or other key employee of any Target Company providing any term of employment or compensation guarantee in excess of \$100,000.

(d) Sellers shall be responsible for all payments to each retired employee or director of the Target Companies, or their dependents, pursuant to any benefits or scheduled benefits in the future from or on behalf of any Target Company or any Seller, including, without limitation, and pension benefit, pension option election, retiree medical insurance coverage and retiree life insurance coverage.

(e) Part 3.20(e) of the Disclosure Letter contains all of the information required by SECTION 3.20(A) with respect to employees of the applicable Sellers whose duties primarily involve the provision of services on behalf of or to any of the Target Companies.

3.21 LABOR RELATIONS; COMPLIANCE. Except as set forth on Part 3.21 of the Disclosure Letter, no Target Company has been or is a party to any collective bargaining or other labor Contract and there has not been, there is not presently pending or existing, and to Sellers' Knowledge there is not Threatened, (a) any strike, slowdown, picketing, work stoppage, or employee grievance process, (b) any Proceeding against or affecting any Target Company relating to the alleged violation of any Legal Requirement pertaining to labor relations or employment matters, including any charge or complaint filed by an employee or union with the National Labor Relations Board, the Equal Employment Opportunity Commission, or any comparable Governmental Body, organizational activity, or other labor or employment dispute against or affecting any of the Target Companies or their premises, or (c) any application for certification of a collective bargaining agent. To Sellers' Knowledge, no event has occurred or circumstance exists that could provide the basis for any work stoppage or other labor dispute. Each Target Company has complied in all respects with all Legal Requirements relating to employment, equal employment opportunity, nondiscrimination, immigration, wages, hours, benefits, collective bargaining, the payment of social security and similar taxes, occupational safety and health, and plant closing. No Target Company is liable for the payment of any compensation, damages, taxes, fines, penalties, or other amounts, however designated, for failure to comply with any of the foregoing Legal Requirements.

3.22 INTELLECTUAL PROPERTY AND RELATED MATTERS. (a) Intellectual Property Assets: The term "INTELLECTUAL PROPERTY ASSETS" includes:

(i) the names "Gaylord Production Company," "Gaylord Event Television," "Gaylord Films," "Gaylord Sports Management," "Pandora," all fictional business names, trading names, registered and unregistered trademarks, service marks, brands and applications, including, without limitation, those marks constituting or relating to the Gaylord Entertainment Assets, and Entertainment Related Assets (collectively, "MARKS");

(ii) all patents, patent applications, and inventions and discoveries that may be patentable (collectively, "PATENTS");

(iii) all copyrights in both published works and unpublished works, including without limitation, those copyrights in or relating to the Gaylord Entertainment Assets and Entertainment Related Assets (collectively, "COPYRIGHTS");

(iv) all know-how, trade secrets, confidential information, customer lists (other than the identity of athletes represented by GSM, Persons with endorsement Contracts with such athletes and Persons who sponsor or advertise on events produced by TV), software, technical information, data, process technology, plans, drawings, and blue prints material to the operations of any Target Company (collectively, "TRADE SECRETS");

owned, used, or licensed by any Target Company as licensee or licensor, including without limitation the Gaylord Rights. The Intellectual Property Assets owned, used, or licensed by the Target Companies constitute all the Intellectual Property Assets necessary to enable the Target Companies to conduct their respective businesses in the manner in which such businesses are being conducted.

(b) Gaylord Entertainment Assets. Part 3.22(b) of the Disclosure Letter sets forth a true, correct and complete list and description of all of the Gaylord Entertainment Assets and Gaylord Rights by title and the medium for which each such Gaylord Entertainment Asset or Gaylord Right was originally produced. Except as set forth on Part 3.22(b) of the Disclosure Letter, the Target Companies own and control all Gaylord Rights and all of the Entertainment Related Assets (i) as are necessary for the distribution, exhibition and exploitation of the Gaylord Entertainment Assets and Entertainment Related Assets and Gaylord Rights in all manners and means and in such media as currently conducted and as proposed to be conducted and (ii) throughout the universe in perpetuity, without violating or infringing any laws or rights of third parties.

(c) Agreements. Part 3.22(c) of the Disclosure Letter contains a complete and accurate list and summary description, including any royalties paid or received by the Target Companies in excess of \$75,000, of all Contracts relating to the Intellectual Property Assets, including, without limitation, the Acquisition Agreements and License Agreements, to which any Target Company other than Pandora SARL and Pandora EURL is a party or by which any Target Company other than Pandora SARL and Pandora EURL is bound pursuant to which such Target Company made or received payments in excess of \$75,000 during any of 1998, 1999 or 2000, or pursuant to which such Target Company reasonably expects to make or receive payments to exceed such amount in 2001, and except for any license implied by the sale of a product and perpetual, paid-up licenses for commonly available software programs under which a Target Company is the licensee, including, without limitation, the Acquisition Agreements. Except as set forth on Part 3.22(c) of the Disclosure Letter, there are no outstanding and, to Sellers' Knowledge, no Threatened disputes or disagreements with respect to any such agreement.

(d) Necessary Know-How.

(i) The Intellectual Property Assets are all those necessary for the operation of the Target Companies' businesses as they are currently conducted. One or more of the Target Companies is the owner of all right, title, and interest in and to each of the Intellectual Property Assets, free and clear of all Encumbrances, and has the right to use without payment to a third

party all of the Intellectual Property Assets, except for (A) License Agreements disclosed on Part 3.22(K) of the Disclosure Letter, and (B) Intellectual Property Assets used in accordance with Contracts pursuant to which such Target Company did not make or receive payments in excess of \$75,000 during any of 1998, 1999 or 2000, and pursuant to which such Target Company reasonably expects to make or receive payments less than such amount in 2001 .

(ii) To the Knowledge of Sellers, except as set forth in Part 3.22(d) of the Disclosure Letter, no employee of any Target Company has entered into any Contract that restricts or limits in any way the scope or type of work in which the employee may be engaged or requires the employee to transfer, assign, or disclose information concerning his work to anyone other than one or more of the Target Companies.

(e) Patents. None of the Target Companies own any Patents.

(f) Trademarks.

(i) Part 3.22(f) of the Disclosure Letter contains a complete and accurate list and summary description of all Marks. To the Knowledge of Sellers, one or more of the Target Companies is the owner of all right, title, and interest in and to each of the Marks, free and clear of all Encumbrances.

(ii) Part 3.22(f) of the Disclosure Letter sets forth a true, correct and complete list of all domain names for which any Target Company is the sole and exclusive owner and which have been registered by such Target Company.

(iii) All Marks that have been registered with the United States Patent and Trademark Office are currently in compliance with all formal legal requirements (including the timely post-registration filing of affidavits of use and incontestability and renewal applications), are valid and enforceable, and are not subject to any maintenance fees or taxes or actions falling due within ninety days after the Closing Date.

(iv) No registered Mark has been or is now involved in any opposition, invalidation, or cancellation and, to Sellers' Knowledge, no such action is Threatened with the respect to any of the Marks.

(v) To Sellers' Knowledge, there is no trademark or trademark application of any third party that would potentially interfere with a Mark.

(vi) To Sellers' Knowledge, no Mark is infringed or has been challenged or Threatened in any way. None of the Marks used by any Target Company infringes or is alleged to infringe any trade name, trademark, or service mark of any third party.

(vii) All products and materials containing a Mark bear the proper federal registration notice where permitted by law.

(viii) True, correct and complete copies of all registrations, applications, extensions and renewals related to the Marks and necessary to protect the rights of any Target Company to use and license such Marks have been provided to Buyers.

(ix) Sellers will take all reasonable actions, at no cost or expense to Sellers, requested by Buyers that are necessary or desirable to maintain the validity of the Marks and the domain names, the applications to register the Marks and registration of the Marks and the domain names.

(g) Copyrights and Related Matters.

(i) Part 3.22(g)(i) of the Disclosure Letter contains a complete and accurate list and summary description of all Copyrights owned by one of the Target Companies. One or more of the Target Companies is the owner of all right, title, and interest in and to each of such Copyrights, free and clear of all Encumbrances.

(ii) All the Copyrights have been registered and are currently in compliance with formal legal requirements, are valid and enforceable, and are not subject to any maintenance fees or taxes or actions falling due within ninety days after the date of Closing.

(iii) True, correct and complete copies of all registrations, applications, renewals and extensions related to the Copyrights and necessary to protect the rights of any Target Company to use and license such Copyrights have been provided to Buyers.

(iv) To Sellers' Knowledge, no Copyright is infringed or has been challenged or Threatened in any way. None of the subject matter of any of the Copyrights infringes or is alleged to infringe any copyright of any third party or, with respect to those Copyrights listed on Part 3.22(g)(i) of the Disclosure Letter and except as set forth in Part 3.22(g)(iv) of the Disclosure Letter, is a derivative work based on the work of a third party.

(v) All works encompassed by the Copyrights have been marked with the proper copyright notice.

(vi) Except as set forth in Part 3.22(g) of the Disclosure Letter, no adverse holding, decision or judgment has been rendered against any Target Company or any predecessor-in-interest by any Governmental Body that would limit, cancel, or question the validity of any copyright in any of the Gaylord Entertainment Assets or Entertainment Related Assets.

(vii) The Company will take all reasonable actions, at no cost or expense to Sellers, requested by Buyers which are necessary or desirable to maintain the validity of all Copyrights and all Copyright registration in or relating to the Entertainment Assets and Entertainment Related Assets.

(h) Music. All public performance master use and synchronization rights to the musical compositions recorded in the Gaylord Entertainment Assets and Entertainment Related Assets are, to the

extent required for the purposes of the intended exploitation of the Gaylord Entertainment Assets, Entertainment Related Assets and Gaylord Rights as of the date they were first used: (a) owned or controlled by one or more of the Target Companies and licensed to the American Society of Composers, Authors and Publishers, Broadcast Music, Inc., the Society of European Stage Authors and Composers, or similar organizations in other countries such as the Performing Rights Society Limited; (b) in the public domain throughout the world; or (c) otherwise owned by or licensed to one or more of the Target Companies. All public performance, mechanical, synchronization and other royalties, fees and payments heretofore payable in respect of the musical compositions and recordings contained in the Gaylord Entertainment Assets and Entertainment Related Assets have been fully paid.

(i) Literary Properties. One or more of the Target Companies own, are licensed or otherwise possess the necessary right, title and interest in the Literary Properties to permit the exploitation of the Gaylord Entertainment Assets and Entertainment Related Assets in their present formats for purposes of the intended exploitation of the Gaylord Entertainment Assets, and Entertainment Related Assets, subject to the applicable terms of any applicable collective bargaining agreements. The Target Companies own all the Gaylord Rights in and to the text and/or illustrations of such books and other publications, and all such books and other publications are still in print. The Target Companies have provided to Buyers true, correct and complete copies and summaries of all agreements under which the Target Companies acquired any Rights in any Literary Properties.

(j) Profit Participations. The Sellers have provided to Buyers true, correct and complete copies of all agreements under which third parties are entitled to shares of revenues relating to any Gaylord Entertainment Assets or Entertainment Related Assets pursuant to which such third parties received or were entitled to receive revenues in excess of \$75,000 during any of 1998, 1999 or 2000, or reasonably expected to exceed such amount in 2001, including without limitation any Royalties and Participations. Except as set forth in Part 3.22(j) of the Disclosure Letter, no union, collective bargaining, guild or other agreement prevents any Target Company from exploiting the Gaylord Entertainment Assets and Entertainment Related Assets. All profits, participations and Royalties and Participations owned by any Target Company for any periods through the Closing have been fully and accurately accounted, paid and discharged. Except as set forth in Part 3.22(j) of the Disclosure Letter, there are no audits or audit claims pending or, to the best knowledge of the Sellers, threatened against any Target Company relating to any profit participation or Royalties and Participations.

(k) License Agreements. The Target Companies have provided to Buyers true, correct and complete copies of all License Agreements involving aggregate payments by or to any of the Target Companies in excess of \$75,000 during any of 1998, 1999 or 2000, or reasonably expected to exceed such amount in 2001, and relating to all Gaylord Entertainment Assets and Entertainment Related Assets, specifying the licensees (or buyer), rights granted, territories, the date when such rights become available under such License Agreements, and all amounts payable (or the methods by which such amounts are determined) under the License Agreements ("LICENSE PAYMENTS") with respect to the Gaylord Entertainment Assets and Entertainment Related Assets. Except for such License Agreements, none of the Sellers or any other Person has sold, assigned, licensed or otherwise disposed of any of the Gaylord Entertainment Assets, Entertainment Related Assets and Gaylord Rights. Except as set forth in Part 3.22(k) of the Disclosure Letter, the License Agreements and the License Payments are freely assignable and are subject to no valid offsets, counterclaims or defenses. No Target Company nor any of its



Affiliates has made any agreement to discount, reduce or postpone any License Payment and, except as set forth in Part 3.22(k) of the Disclosure Letter, no dispute currently exists as to the payment of any License Payments payable under any License Agreements entered into with respect to the Gaylord Entertainment Assets.

(l) Obligations. All advances, guarantees, Residuals, Royalties and Participations, and other amounts (including, without limitation, any financing obligation) payable prior to the date hereof by any Target Company, its Affiliates or any predecessors-in-interest of any of the foregoing under or in connection with the Entertainment Agreements or otherwise in respect of the Gaylord Entertainment Assets and Entertainment Related Assets have been fully paid and all other obligations of any Target Company, of its Affiliates or any predecessors-in-interest of any of the foregoing under or in connection with the Entertainment Agreements required to be performed prior to the date hereof (including, without limitation, delivery obligations) have been fully performed and there is no condition or event which upon notice or lapse of time or both would constitute a breach of default by any Target Company or any of its Affiliates under any of the Entertainment Agreements.

(m) Affiliates. No Person other than the Target Companies, has any Rights in and to the Gaylord Rights.

(n) Rights Relating to Future Productions. Part 3.22(n) of the Disclosure Letter sets forth a true, correct and complete list of all Persons that have (or will have) any rights to participate in the development, production, distribution or financing of any Gaylord Entertainment Assets or Entertainment Related Assets in an amount in excess of \$75,000 during any of the three years immediately preceding the Closing Date, or reasonably expected to exceed such amount in 2001. Except as set forth in Part 3.22(n) of the Disclosure Letter, there are no Persons that have (or will have) any rights to participate in the development, production, distribution or financing of any Gaylord Entertainment Assets or Entertainment Related Assets produced by any Target Company after the Closing, or any Persons that own, have or control any Rights relating to any of the foregoing.

(o) No Violations or Conflicts. To Sellers' Knowledge, the use by any Target Company and any of its licensees and assignees of the Gaylord Entertainment Assets and Entertainment Related Assets and exploitation of the Gaylord Rights will not infringe or violate any intellectual property or other rights of any third parties, including, without limitation, any copyrights, trademarks, trade names, service marks, patents, domain names or other rights. To Sellers' Knowledge, the exploitation by any Target Company of the Gaylord Entertainment Assets, Entertainment Related Assets and Gaylord Rights does not libel, defame or violate the right of publicity or privacy of any Person. The Sellers have obtained proper and effective licenses or grants of authority to use the results and proceeds of the services of performers and other persons connected with the production of the Gaylord Entertainment Assets and Entertainment Related Assets and the names and likenesses of such persons in connection with the distribution and exploitation of the Gaylord Entertainment Assets, Entertainment Related Assets and Gaylord Rights.

(p) Trade Secrets.

(i) With respect to each Trade Secret, the documentation relating to such Trade Secret is current, accurate, and sufficient in detail and content to identify and explain it and to allow its full and proper use without reliance on the knowledge or memory of any individual.

(ii) Sellers and the Target Companies have taken all reasonable precautions to protect the secrecy, confidentiality, and value of their Trade Secrets.

(iii) One or more of the Target Companies has good title and an absolute (but not necessarily exclusive) right to use the Trade Secrets. The Trade Secrets are not part of the public knowledge or literature, and, to Sellers' Knowledge, have not been used, divulged, or appropriated either for the benefit of any Person (other than one or more of the Target Companies) or to the detriment of the Target Companies. No Trade Secret is subject to any adverse claim or has been challenged or threatened in any way.

3.23 CERTAIN PAYMENTS. No Target Company or director, officer, agent, or employee of any Target Company, or to Sellers' Knowledge any other Person associated with or acting for or on behalf of any Target Company, has directly or indirectly (a) made any contribution, gift, bribe, rebate, payoff, influence payment, kickback, or other payment to any Person, private or public, regardless of form, whether in money, property, or services (i) to obtain favorable treatment in securing business, (ii) to pay for favorable treatment for business secured, (iii) to obtain special concessions or for special concessions already obtained, for or in respect of any Target Company or any Affiliate of a Target Company, or (iv) in violation of any Legal Requirement, (b) established or maintained any fund or asset that has not been recorded in the books and records of the Target Companies.

3.24 DISCLOSURE. (a) No representation or warranty of Sellers in this Agreement and no statement in the Disclosure Letter omits to state a material fact necessary to make the statements herein or therein, in light of the circumstances in which they were made, not misleading.

(b) No notice given pursuant to SECTION 5.5 (Notification) will contain any untrue statement or omit to state a material fact necessary to make the statements therein or in this Agreement, in light of the circumstances in which they were made, not misleading.

(c) Except as set forth on Part 3.24(c) of the Disclosure Letter, there is no fact known to either Seller that has specific application to either Seller or any Target Company (other than general economic or industry conditions) and that materially adversely affects or, as far as either Seller can reasonably foresee, materially threatens, the assets, business, prospects, financial condition, or results of operations of the Target Companies (on a consolidated basis) that has not been set forth in this Agreement or the Disclosure Letter.

3.25 RELATIONSHIPS WITH RELATED PERSONS. Except as set forth on Part 3.25 of the Disclosure Letter, no Seller or any Affiliate of Sellers or of any Target Company has, or has had, any interest in any property (whether real, personal, or mixed and whether tangible or intangible), used in or pertaining to the Target Companies' businesses. No Seller or any Affiliate of Sellers or of any Target Company is, or has owned (of record or as a beneficial owner) an equity interest or any other financial or profit interest in, a Person that has (i) had business dealings or a material financial interest in any transaction with any Target Company other than business dealings or transactions conducted in the Ordinary Course of Business with the Target Companies at substantially prevailing market prices and on substantially prevailing market terms, or (ii) engaged in competition with any Target Company with respect to any line of the products or services of such Target Company (a "COMPETING BUSINESS") in any market presently served by such Target Company except for less than one percent of the outstanding capital stock of any Competing Business that is publicly traded on any recognized exchange or in the over-the-counter market. Except as set forth in Part 3.25 of the Disclosure Letter, no Seller or any Affiliate of Sellers or of any Target Company is a party to any Contract with, or has any claim or right against, any Target Company.

3.26 BROKERS OR FINDERS. Sellers and their agents have incurred no obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement.

3.27 PANDORA DEBT. The unpaid balance (including principal and interest) of the non-trade indebtedness of Pandora EURL and Pandora SARL (including all amounts borrowed under credit facilities with La Banque Generale Du Phenix Et Du Credit Chimique and Banque Internationale a Luxembourg, S.A.) as of the date hereof, is \$19,318,256 plus interest accrued from February 1, 2001 to the date hereof.

4. REPRESENTATIONS AND WARRANTIES OF BUYERS. Each Buyer represents and warrants to Sellers as follows:

4.1 ORGANIZATION AND GOOD STANDING. Each Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware.

4.2 AUTHORITY; NO CONFLICT. (a) This Agreement constitutes the legal, valid, and binding obligation of Buyers, enforceable against Buyers in accordance with its terms. Upon the execution and delivery by Buyers of the documents listed in SECTIONS 2.4(B)(II)-(IV) (collectively, the "BUYERS' CLOSING DOCUMENTS"), the Buyers' Closing Documents will constitute the legal, valid, and binding obligations of Buyers, enforceable against each Buyer in accordance with their respective terms. Each Buyer has the absolute and unrestricted right, power, and authority to execute and deliver this Agreement and the Buyers' Closing Documents and to perform its obligations under this Agreement and the Buyers' Closing Documents.

(b) Except as set forth in SCHEDULE 4.2, neither the execution and delivery of this Agreement by each Buyer nor the consummation or performance of any of the Contemplated Transactions by each Buyer will give any Person the right to prevent, delay, or otherwise interfere with any of the Contemplated Transactions pursuant to:

(i) any provision of each Buyer's Organizational Documents;

(ii) any resolution adopted by the board of directors or the sole stockholder of each Buyer;

(iii) any Legal Requirement or Order to which a Buyer may be subject; or

(iv) any Contract to which Buyer is a party or by which a Buyer may be bound.

Except as set forth in SCHEDULE 4.2, each Buyer is not and will not be required to obtain any Consent from any Person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the Contemplated Transactions.

4.3 INVESTMENT INTENT. Each Buyer is acquiring the Securities for its own account and not with a view to their distribution within the meaning of Section 2(11) of the Securities Act.

4.4 CERTAIN PROCEEDINGS. There is no pending Proceeding that has been commenced against either of the Buyers and that challenges, or may have the effect of preventing, delaying, making illegal, or otherwise interfering with, any of the Contemplated Transactions. To each Buyer's Knowledge, no such Proceeding has been Threatened.

4.5 BROKERS OR FINDERS. Each Buyer and their officers and agents have incurred no obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement and will indemnify and hold Sellers harmless from any such payment alleged to be due by or through a Buyer as a result of the action of a Buyer or its officers or agents.

## 5. COVENANTS OF SELLERS PRIOR TO CLOSING DATE.

5.1 ACCESS AND INVESTIGATION. Between the date of this Agreement and the Closing Date, Sellers will, and will cause each Target Company and its Representatives to, (a) afford each Buyer and its Representatives (collectively, "BUYERS' ADVISORS") full and free access to each Target Company's personnel, properties (including subsurface testing), contracts, books and records, and other documents and data, (b) furnish Buyers and Buyers' Advisors with copies of all such contracts, books and records, and other existing documents and data as Buyer may reasonably request, and (c) furnish Buyers and Buyers' Advisors with such additional financial, operating, and other data and information as Buyers may reasonably request; provided, however, that the Target Companies will not be obligated to provide any information to Buyers' Advisors that it has already provided to Buyer during the course of Buyers' due diligence investigation.

5.2 OPERATION OF THE BUSINESSES OF THE TARGET COMPANIES. Between the date of this Agreement and the Closing Date, Sellers will, and will cause each Target Company to:

(a) conduct the business of such Target Company only in the Ordinary Course of Business;

(b) use their commercially reasonable Best Efforts to preserve intact the current business organization of such Target Company, keep available the services of the current officers, employees, and agents of such Target Company, and maintain the relations and good will with suppliers, customers, landlords, creditors, employees, agents, and others having business relationships with such Target Company;

(c) confer with Buyers concerning operational matters of a material nature; and

(d) otherwise report periodically to Buyers concerning the status of the business, operations, and finances of such Target Company.

5.3 NEGATIVE COVENANTS. Except as otherwise expressly permitted by this Agreement, between the date of this Agreement and the Closing Date, Sellers will not, and will cause each Target Company not to, without the prior consent of Buyers:

(a) take any affirmative action, or fail to take any reasonable action within their or its control, as a result of which any of the changes or events listed in SECTION 3.16 (Absence of Certain Changes and Events) is likely to occur;

(b) acquire or commit to acquire any additional Entertainment Assets;

(c) incur or commit to incur any indebtedness (other than trade payables incurred in the Ordinary Course of Business); or

(d) repay any intercompany indebtedness owed by Pandora SARL or Pandora EURL to Sellers or their Affiliates.

5.4 REQUIRED APPROVALS. As promptly as practicable after the date of this Agreement, Sellers will, and will cause each Target Company to, make all filings required by Legal Requirements to be made by them in order to consummate the Contemplated Transactions. Between the date of this Agreement and the Closing Date, Sellers will, and will cause each Target Company to, (a) cooperate with Buyers with respect to all filings that Buyers elect to make or is required by Legal Requirements to make in connection with the Contemplated Transactions, and (b) cooperate with Buyers in obtaining all Consents identified in SCHEDULE 4.2.

5.5 NOTIFICATION. Between the date of this Agreement and the Closing Date, each Seller will promptly notify Buyers in writing if such Seller or any Target Company becomes aware of any fact or condition that causes or constitutes a Breach of any of Sellers' representations and warranties as of the date of this Agreement, or if such Seller or any Target Company becomes aware of the occurrence after the date of this Agreement of any fact or condition that would (except as expressly contemplated by this Agreement) cause or constitute a Breach of any such representation or warranty had such representation or warranty been made as of the time of occurrence or discovery of such fact or condition. Should any such fact or condition require any change in the Disclosure Letter if the Disclosure Letter were dated the date of the occurrence or discovery of any such fact or condition, Sellers will promptly deliver to Buyers

a supplement to the Disclosure Letter specifying such change. During the same period, each Seller will promptly notify Buyers of the occurrence of any Breach of any covenant of Sellers in this SECTION 5 (Covenants of Sellers Prior to Closing Date) or of the occurrence of any event that may make the satisfaction of the conditions in SECTION 7 (Conditions Precedent to Buyers' Obligations to Close) impossible or unlikely.

5.6 PAYMENT OF INDEBTEDNESS BY RELATED PERSONS. Sellers will cause all indebtedness owed to a Target Company by either Seller or any Related Person of either Seller (other than a Target Company) for goods or services provided by the applicable Target Company to such Seller or such Related Person to be paid in full prior to Closing.

5.7 NO NEGOTIATION. Until such time, if any, as this Agreement is terminated pursuant to SECTION 9 (Termination) and unless GET's Special Committee of Independent Directors determines in good faith that it is necessary to do so to comply with its fiduciary obligations to the stockholders of GET, Sellers will not, and will cause each Target Company and each of their Representatives not to, directly or indirectly solicit, initiate, or encourage any inquiries or proposals from, discuss or negotiate with, provide any non-public information to, or consider the merits of any unsolicited inquiries or proposals from, any Person (other than Buyers) relating to any transaction involving the sale of the business or assets (other than in the Ordinary Course of Business) of any Target Company, or any of the capital stock of any Target Company, or any merger, consolidation, business combination, or similar transaction involving any Target Company.

5.8 BEST EFFORTS. Between the date of this Agreement and the Closing Date, Sellers will use their Best Efforts to cause the conditions in SECTIONS 7 (Conditions Precedent to Buyers' Obligations to Close) and 8 (Conditions Precedent to Sellers' Obligations to Close) to be satisfied.

#### 6. COVENANTS OF BUYERS PRIOR TO CLOSING DATE.

6.1 APPROVALS OF GOVERNMENTAL BODIES. As promptly as practicable after the date of this Agreement, each Buyer will, and will cause each of its Related Persons to, make all filings required by Legal Requirements to be made by them to consummate the Contemplated Transactions. Between the date of this Agreement and the Closing Date, each Buyer will, and will cause each Related Person to, cooperate with Sellers with respect to all filings that Sellers are required by Legal Requirements to make in connection with the Contemplated Transactions, and (ii) cooperate with Sellers in obtaining all Consents identified in Part 3.2 of the Disclosure Letter; provided that this Agreement will not require Buyers to dispose of or make any change in any portion of its business or to incur any other burden to obtain a Governmental Authorization.

6.2 BEST EFFORTS. Except as set forth in the proviso to SECTION 6.1 (Approvals of Governmental Bodies), between the date of this Agreement and the Closing Date, each Buyer will use its Best Efforts to cause the conditions in SECTIONS 7 (Conditions Precedent to Buyers' Obligations to Close) and 8 (Conditions Precedent to Sellers' Obligations to Close) to be satisfied.

7. CONDITIONS PRECEDENT TO BUYERS' OBLIGATIONS TO CLOSE. Each Buyer's obligation to purchase the Securities and to take the other actions required to be taken by such Buyer at the Closing is

subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Buyers, in whole or in part):

7.1 ACCURACY OF REPRESENTATIONS. (a) All of Sellers' representations and warranties in this Agreement (considered collectively), and each of these representations and warranties (considered individually), must have been accurate in all material respects as of the date of this Agreement, and, except for those that are expressly made as of a specific date, must be accurate in all material respects as of the Closing Date as if made on the Closing Date, without giving effect to any supplement to the Disclosure Letter.

(b) Each of Sellers' representations and warranties in SECTIONS 3.3 (Capitalization), 3.4 (Financial Statements), 3.12 (No Material Adverse Change), and 3.24 (Disclosure) must have been accurate in all respects as of the date of this Agreement, and must be accurate in all respects as of the Closing Date as if made on the Closing Date, without giving effect to any supplement to the Disclosure Letter.

7.2 SELLERS' PERFORMANCE. (a) All of the covenants and obligations that Sellers are required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), must have been duly performed and complied with in all material respects.

(b) Each document required to be delivered pursuant to SECTION 2.4 (Closing Obligations) must have been delivered, and each of the other covenants and obligations in SECTIONS 5.4 (Required Approvals) and 5.8 (Best Efforts) must have been performed and complied with in all respects.

7.3 CONSENTS. Each of the Consents identified in Part 3.2(b) of the Disclosure Letter, except for such Consents listed in Paragraphs 1(e) and 1(f) of Part 3.2(b) of the Disclosure Letter, and each Consent identified in SCHEDULE 4.2, must have been obtained and must be in full force and effect.

7.4 TV DEBT ASSIGNMENT. The applicable Sellers must have executed the TV Debt Assignment.

7.5 ADDITIONAL DOCUMENTS. Each of the following documents must have been delivered to Buyers:

(a) an opinion of Sherrard & Roe, PLC, dated the Closing Date, in the form of EXHIBIT 7.5(A);

(b) such other documents as Buyers may reasonably request for the purpose of (i) enabling its counsel to provide the opinion referred to in SECTION 8.5(A), (ii) evidencing the accuracy of any of Sellers' representations and warranties, (iii) evidencing the performance by either Seller of, or the compliance by either Seller with, any covenant or obligation required to be performed or complied with by such Seller, (iv) evidencing the satisfaction of any condition referred to in this SECTION 7 (Conditions Precedent to Buyers' Obligations to Close), or (v) otherwise facilitating the consummation or performance of any of the Contemplated Transactions.

7.6 NO PROCEEDINGS. Since the date of this Agreement, there must not have been commenced or Threatened against Buyers, or against any Person affiliated with Buyers, any Proceeding (a) involving any challenge to, or seeking damages or other relief in connection with, any of the Contemplated Transactions, or (b) that may have the effect of preventing, delaying, making illegal, or otherwise interfering with any of the Contemplated Transactions.

7.7 NO CLAIM REGARDING STOCK OWNERSHIP OR SALE PROCEEDS. There must not have been made or Threatened by any Person any claim asserting that such Person (a) is the holder or the beneficial owner of, or has the right to acquire or to obtain beneficial ownership of, any of the Securities, or (b) is entitled to all or any portion of the Purchase Price payable for the Securities.

7.8 NO PROHIBITION. Neither the consummation nor the performance of any of the Contemplated Transactions will, directly or indirectly (with or without notice or lapse of time), materially contravene, or conflict with, or result in a material violation of, or cause Buyers or any Person affiliated with Buyers to suffer any material adverse consequence under, (a) any applicable Legal Requirement or Order, or (b) any Legal Requirement or Order that has been published, introduced, or otherwise formally proposed by or before any Governmental Body.

7.9 FAIRNESS OPINION. GET shall have received a fairness opinion from a nationally-recognized investment banker in form and substance satisfactory to GET's Special Committee of Independent Directors.

7.10 EMPLOYEE EQUITY INCENTIVES. GET fully accelerates vesting of all stock options, restricted stock awards, and other equity incentives issued to David Pritchett or Terry Pefanis as of the Closing Date.

7.11 INTERCOMPANY DEBT. Since December 31, 2000, no payments on any intercompany debt owed by Pandora EURL and Pandora SARL to GET and its Affiliates have been made. As of the Closing Date, all intercompany debt owed by the Target Companies to GET and its Affiliates (other than the Acquired Debt) shall be converted into equity and contributed to the paid-in capital of the respective Target Companies.

7.12 PANDORA DEBT. As of the Closing Date, the balance of all non-trade indebtedness of Pandora EURL and Pandora SARL shall not exceed \$19,318,256 plus interest accrued thereon from February 1, 2001 to the Closing Date and plus \$1,300,000 if and when that certain Letter of Credit dated April 28, 2000, issued by Natexus Banque for the benefit of Pandora SARL is drawn upon in connection with the completion and delivery of "Crooked Earth" (the "PANDORA DEBT").

7.13 TRANSFER OF SELLER EMPLOYEES. The applicable Sellers shall have transferred employment of those employees of such Sellers listed on Part 3.20(e) of the Disclosure Letter to the applicable Target Companies.

7.14 CONTINUING EMPLOYEES. The persons set forth on Part 7.14 of the Disclosure Letter (the "CONTINUING EMPLOYEES") will be, at Closing, the only employees of the Target Companies.



7.15 TARGET COMPANY ASSIGNMENTS AND ASSUMPTIONS. The applicable Sellers shall have assigned the Contracts listed on Part 7.15 of the Disclosure Letter to the applicable Target Company.

7.16 ENDEAVOR. GET shall have paid (a) all amounts due, as of the Closing Date, under that certain Engagement Letter dated September 1, 2000, between GET and Endeavor ("ENDEAVOR"); and (b) the \$8,333.34 product search fee due in March, 2001 .

7.17 FILM PAYMENTS. GET shall have paid or caused to be paid all amounts set forth on SCHEDULE 2.5 Paragraph 1 in full.

8. CONDITIONS PRECEDENT TO SELLERS' OBLIGATIONS TO CLOSE. Sellers' obligation to sell the Securities and to take the other actions required to be taken by Sellers at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Sellers, in whole or in part):

8.1 FAIRNESS OPINION. GET shall have received a fairness opinion from a nationally-recognized investment banker in form and substance satisfactory to GET's Special Committee of Independent Directors.

8.2 ACCURACY OF REPRESENTATIONS. All of each Buyer's representations and warranties in this Agreement (considered collectively), and each of these representations and warranties (considered individually), must have been accurate in all material respects as of the date of this Agreement and must be accurate in all material respects as of the Closing Date as if made on the Closing Date.

8.3 EACH BUYER'S PERFORMANCE. (a) All of the covenants and obligations that Buyers are required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), must have been performed and complied with in all material respects.

(b) Buyers must have delivered each of the documents required to be delivered by Buyers pursuant to SECTION 2.4 (Closing Obligations) and must have made the cash payments required to be made by Buyers pursuant to SECTION 2.4(B)(I).

8.4 CONSENTS. Each of the Consents identified in Part 3.2(b) of the Disclosure Letter and each Consent identified on SCHEDULE 4.2 must have been obtained and must be in full force and effect.

8.5 ADDITIONAL DOCUMENTS. Buyers must have caused the following documents to be delivered to Sellers:

(a) an opinion of Haynes and Boone, LLP, dated the Closing Date, in the form of EXHIBIT 8.5(A); and

(b) such other documents as Sellers may reasonably request for the purpose of (i) enabling their counsel to provide the opinion referred to in SECTION 7.5(A), (ii) evidencing the accuracy of any

representation or warranty of Buyers, (iii) evidencing the performance by Buyers of, or the compliance by Buyers with, any covenant or obligation required to be performed or complied with by Buyers, (ii) evidencing the satisfaction of any condition referred to in this SECTION 8 (Conditions Precedent to Sellers' Obligations to Close), or (v) otherwise facilitating the consummation of any of the Contemplated Transactions.

8.6 NO INJUNCTION. There must not be in effect any Legal Requirement or any injunction or other Order that (a) prohibits the sale of the Securities by Sellers to Buyers, and (b) has been adopted or issued, or has otherwise become effective, since the date of this Agreement.

8.7 TV DEBT ASSIGNMENT. PaperBoy shall have executed the TV Debt Assignment.

8.8 NO MATERIAL ADVERSE EFFECT. There shall have been no Material Adverse Effect from the date of this Agreement until the Closing Date.

## 9. TERMINATION.

9.1 TERMINATION EVENTS. This Agreement may, by notice given prior to or at the Closing, be terminated:

(a) by either Buyers, on one hand, or Sellers, on the other hand, if a material Breach of any provision of this Agreement has been committed by the other party and such Breach has not been waived;

(b) (i) by Buyers if any of the conditions in SECTION 7 (Conditions Precedent to Buyers' Obligations to Close) has not been satisfied as of the Closing Date or if satisfaction of such a condition is or becomes impossible (other than through the failure of Buyers to comply with their obligations under this Agreement) and Buyers have not waived such condition on or before the Closing Date; or (ii) by Sellers, if any of the conditions in SECTION 8 (Conditions Precedent to Sellers' Obligations to Close) has not been satisfied of the Closing Date or if satisfaction of such a condition is or becomes impossible (other than through the failure of Sellers to comply with their obligations under this Agreement) and Sellers have not waived such condition on or before the Closing Date;

(c) by mutual consent of Buyers and Sellers; or

(d) by either Buyers, on one hand, or Sellers, on the other, if the Closing has not occurred (other than through the failure of any party seeking to terminate this Agreement to comply fully with its obligations under this Agreement) on or before June 30, 2001, or such later date as the parties may agree upon.

9.2 EFFECT OF TERMINATION. Each party's right of termination under SECTION 9.1 (Termination Events) is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. If this Agreement is terminated pursuant to SECTION 9.1 (Termination Events), all further obligations of the parties under this Agreement will terminate, except that the obligations in SECTIONS 11.1 (Expenses) and 11.3 (Confidentiality) will survive;

provided, however, that if this Agreement is terminated by a party because of the Breach of the Agreement by the other party or because one or more of the conditions to the terminating party's obligations under this Agreement is not satisfied as a result of the other party's failure to comply with its obligations under this Agreement, the terminating party's right to pursue all legal remedies will survive such termination unimpaired.

10. INDEMNIFICATION; TAX MATTERS; CERTAIN COVENANTS.

10.1 SURVIVAL; RIGHT TO INDEMNIFICATION NOT AFFECTED BY KNOWLEDGE. (a)

All representations, warranties, covenants, and obligations in this Agreement, the Disclosure Letter, the supplements to the Disclosure Letter, the certificate delivered pursuant to SECTION 2.4(A)(VIII), and any other certificate or document delivered pursuant to this Agreement will survive the Closing. The right to indemnification, payment of Damages or other remedy based on such representations, warranties, covenants, and obligations will not be affected by any investigation conducted with respect to, or any Knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Closing Date, with respect to the accuracy or inaccuracy of or compliance with, any such representation, warranty, covenant, or obligation. The waiver of any condition based on the accuracy of any representation or warranty, or on the performance of or compliance with any covenant or obligation, will not affect the right to indemnification, payment of Damages, or other remedy based on such representations, warranties, covenants, and obligations.

(b) For purposes of this SECTION 10 (Indemnification; Tax Matters; Certain Covenants), each statement or other item of information set forth in the Disclosure Letter shall be deemed to be a representation and warranty made by the Sellers in this Agreement.

10.2 INDEMNIFICATION AND PAYMENT OF DAMAGES BY SELLERS. Sellers,

jointly and severally, will indemnify and hold harmless each Buyer, the Target Companies, and their respective Representatives, stockholders, controlling persons, and affiliates (collectively, the "INDEMNIFIED PERSONS") for, and will pay to the Indemnified Persons the amount of, any loss, liability, claim, damage (including incidental and consequential damages), expense (including costs and reasonable attorneys' fees incurred in defense or investigation of any such claim or in asserting any indemnification rights hereunder), whether or not involving a third-party claim (collectively, "DAMAGES"), arising, directly or indirectly, from or in connection with:

(a) any Breach of any representation or warranty made by Sellers in this Agreement (without giving effect to any supplement to the Disclosure Letter), the Disclosure Letter, the supplements to the Disclosure Letter, or any other certificate or agreement with Buyers delivered by Sellers pursuant to this Agreement;

(b) any Breach of any representation or warranty made by Sellers in this Agreement as if such representation or warranty were made on and as of the Closing Date without giving effect to any supplement to the Disclosure Letter, other than any such Breach that is disclosed in a supplement to the Disclosure Letter and is expressly identified in the certificate delivered pursuant to SECTION 2.4(A)(VIII) as having caused the condition specified in SECTION 7.1 (Accuracy of Representations) not to be satisfied;

(c) any Breach by either Seller of any covenant or obligation of such Seller in this Agreement;

(d) (i) any and all Taxes with respect to the Target Companies for any taxable period ending (or deemed, pursuant to SECTION 10.10(B), to end) on or before the Closing Date, (ii) any and all Taxes allocated to GET and/or Creative pursuant to SECTION 10.10(C), (iii) any and all Taxes with respect to the operations of GET, Creative or any Affiliate, other than those operations conducted by the Target Companies and its Subsidiaries, (iv) any and all Taxes of any member of a consolidated, combined, or unitary group of which any of the Target Companies is or was a member arising under Treasury Regulation Section 1.1502-6 or under any comparable or similar provision under state, local or foreign laws or regulations and including any liability for Taxes as transferee or successor or pursuant to any contractual obligation for any period that ends (or deemed pursuant to SECTION 10.10(B) to end) on or before the Closing Date, and (v) any liability for federal, state, local or foreign Taxes with respect to any gain realized by GET, Creative or their Affiliates (including, without limitation, the Target Companies) upon the sale of the Target Companies (including without limitation any income or gain resulting or deemed to result from the Section 338(h)(10) Election);

(e) any product sold, licensed, or created by, or any services provided by, any Target Company prior to the Closing Date;

(f) any matter disclosed in the following Parts of the Disclosure Letter:

(i) Part 3.7 Paragraph 1 (7373 N. Scottsdale Rd),

(ii) Part 3.8(a) Paragraph 3 (Turner),

(iii) Part 3.10 Paragraph 14 (Endeavor) to the extent due or payable on or prior to the Closing Date, Paragraph 16 (DGA), Paragraph 19 (Pro-Sports) to the extent due or payable on or prior to the Closing Date, and Paragraph 20 (ACTRA) to the extent due or payable on or prior to the Closing Date,

(iv) Part 3.17(d) Paragraph 7 (Jastrow Car Payments) to the extent due and payable prior to the Closing Date, and

(v) Part 3.15(a) Paragraph 3 (Earth Girls).

(g) any claim by Paul Stankowski or Bugle Boy Industries, Inc.;

(h) any claim by Roscoe O. Hambric ("HAMBRIC") arising out of his relationship with GSM and GET, or any claims based on Hambric's actions or conduct (including any negligence);

(i) any claim for commissions or other compensation brought by or through Dan Harrell;

(j) any claim brought by International Management Group based on GSM's employment of David Yates;

(k) with respect to the closing and relocation of Pandora EURL's Paris office: (i) all liabilities incurred on or prior to the Closing Date, and (ii) up to \$100,000 of liabilities (other than employee severance and benefit obligations) incurred after the Closing Date;

(l) all amounts (if any) payable within nine (9) months following the Closing Date under that certain Verbal Agreement disclosed in Schedule 2.15.2 of that certain Asset Purchase Agreement dated April, 1998 by and among Idea Entertainment, Inc., a Delaware corporation, Cornerstone Sports Group, Inc., a Delaware corporation, Cornerstone Sports Inc., a Texas corporation, and Hambric;

(m) any claims against GET or any of its Affiliates (specifically including Films) (i) by The Walt Disney Company or any of its Affiliates arising on or since April 17, 2000, and (ii) by Commotion Pictures, Inc. or any of its Affiliates relating to the issue described in that certain letter to Hunt Lowry from Andrew Jameson of Commotion Pictures, dated January 5, 2001;

(n) any claim by or through either Phil Mickelson or Steve Loy regarding any right of first refusal pertaining to the GSM Interests;

(o) all claims by or in respect of any Target Company employee, other than the Continuing Employees, relating to employee termination or severance liabilities incurred on or prior to the Closing;

(p) all development, production, and other liabilities incurred prior to the Closing Date in connection with "Donnie Darko:" and

(q) any claim by any Person for brokerage or finder's fees or commissions or similar payments based upon any agreement or understanding alleged to have been made by any such Person with either Seller or any Target Company (or any Person acting on their behalf) in connection with any of the Contemplated Transactions.

Notwithstanding anything to the contrary set forth herein, the Indemnified Persons shall not include any officers, directors or employees of any of the Target Companies who served at any time prior to the Closing Date.

Except for remedies based upon fraud and except for equitable remedies, the remedies provided in this SECTION 10.2 (Indemnification and Payment of Damages by Sellers) will be exclusive of any other remedies that may be available to Buyers or the other Indemnified Persons. Sellers' indemnification obligations hereunder shall be net of any insurance proceeds actually received by any Indemnified Persons.

10.3 NO CONTRIBUTION. The Sellers shall not have and shall not exercise or assert (or attempt to exercise or assert), any right of contribution, right of indemnity or other right or remedy against any Target Company in connection with any indemnification obligation or any other liability to which such Sellers may become subject under or in connection with this Agreement.

10.4 INDEMNIFICATION AND PAYMENT OF DAMAGES BY BUYERS. Each Buyer will indemnify and hold harmless Sellers, and will pay to Sellers the amount of any Damages arising, directly or indirectly, from or in connection with (a) any Breach of any representation or warranty made by Buyers in this Agreement or in any certificate delivered by Buyers pursuant to this Agreement, (b) any Breach by Buyers of any covenant or obligation of Buyers in this Agreement, or (c) any claim by any Person for brokerage or finder's fees or commissions or similar payments based upon any agreement or understanding alleged to have been made by such Person with Buyers (or any Person acting on its behalf) in connection with any of the Contemplated Transactions.

10.5 LIMITATIONS. If the Closing occurs, Sellers will have no liability (for indemnification or otherwise) with respect to any representation or warranty, or covenant or obligation to be performed and complied with prior to the Closing Date, other than those in SECTIONS 3.3 (Capitalization), 3.11 (Taxes), 3.13 (Employee Benefits), and 3.19 (Environmental Matters), unless on or before eighteen (18) months following the Closing Date, Buyers notify Sellers of a claim specifying the factual basis of that claim in reasonable detail to the extent then known by Buyers. A claim with respect to SECTIONS 3.3 (Capitalization), 3.11 (Taxes), 3.13 (Employee Benefits), or 3.19 (Environmental Matters), or a claim for indemnification or reimbursement not based upon any representation or warranty (including indemnification claims under SECTION 10.2 (Indemnification and Payment of Damages by Sellers) or any covenant or obligation to be performed and complied with prior to the Closing Date, may be made at any time up to the applicable statute of limitations. If the Closing occurs, Buyers will have no liability (for indemnification or otherwise) with respect to any representation or warranty, or covenant or obligation to be performed and complied with prior to the Closing Date, unless on or before eighteen (18) months following the Closing Date, Sellers notify Buyers of a claim specifying the factual basis of that claim in reasonable detail to the extent then known by Sellers. The aggregate liability of Sellers' pursuant to this Agreement shall not exceed, in any event, the Purchase Price; provided, however, that such limitation shall not apply to a claim with respect to SECTIONS 3.3 (Capitalization), 3.11 (Taxes), 3.13 (Employee Benefits), or 3.19 (Environmental Matters).

10.6 BASKET-SELLERS. Sellers will have no liability (for indemnification or otherwise) with respect to the matters described in clause (a), clause (b) or, to the extent relating to any failure to perform or comply prior to the Closing Date, clause (c) of SECTION 10.2 (Indemnification and Payment of Damages by Sellers) until the total of all Damages with respect to such matters exceeds \$220,000 and then only for the amount by which such Damages exceed \$220,000. However, this SECTION 10.6 (Basket-Sellers) will not apply to any Breach of any of Sellers' representations and warranties of which either Seller had Knowledge at any time prior to the date on which such representation and warranty is made or any intentional Breach by either Seller of any covenant or obligation, and Sellers will be jointly and severally liable for all Damages with respect to such Breaches.

10.7 BASKET-BUYERS. Buyers will have no liability (for indemnification or otherwise) with respect to the matters described in clause (a) or (b) of SECTION 10.4 (Indemnification and Payment of Damages by Buyers) until the total of all Damages with respect to such matters exceeds \$220,000, and then only for the amount by which such Damages exceed \$220,000. However, this SECTION 10.7 (Basket-Buyers) will not apply to any Breach of any of Buyers' representations and warranties of which Buyers had Knowledge at any time prior to the date on which such representation and warranty is made or any

intentional Breach by Buyers of any covenant or obligation, and Buyers will be liable for all Damages with respect to such Breaches.

10.8 PROCEDURE FOR INDEMNIFICATION--THIRD PARTY CLAIMS. (a) Promptly after receipt by an indemnified party under SECTION 10.2 (Indemnification and Payment of Damages by Sellers) or 10.4 (Indemnification and Payment of Damages by Buyers) of notice of (i) any Threatened claim that exceeds \$220,000 individually or in the aggregate with all prior Damages then incurred by the indemnified party (a "CLAIM") or (ii) the commencement of any Proceeding against it, such indemnified party will, if a claim is to be made against an indemnifying party under such Section, give notice to the indemnifying party of the commencement of such Claim or Proceeding; provided, however, that the failure to notify the indemnifying party will not relieve the indemnifying party of any liability that it may have to any indemnified party, except to the extent that the indemnifying party demonstrates that the defense of such action is prejudiced by the indemnifying party's failure to give such notice; provided further that no notice to an indemnifying party shall be required for any Proceeding relating to a Claim for which notice has already been given pursuant to this SECTION 10.8 (Procedure for Indemnification--Third Party Claims).

(b) If any Claim or Proceeding referred to in SECTION 10.8(A) is brought against an indemnified party and it gives notice to the indemnifying party of the commencement of such Proceeding, the indemnifying party will be entitled to participate in such Claim or Proceeding and, to the extent that it wishes (unless (i) the indemnifying party is also a party to such Claim or Proceeding and the indemnifying party determines in good faith that joint representation would be inappropriate, or (ii) the indemnifying party fails to provide reasonable assurance to the indemnified party of its financial capacity to defend such Claim or Proceeding and provide indemnification with respect to such Claim or Proceeding), to assume the defense of such Claim or Proceeding with counsel reasonably satisfactory to the indemnified party and, after notice from the indemnifying party to the indemnified party of its election to assume the defense of such Claim or Proceeding, the indemnifying party will not, as long as it diligently conducts such defense, be liable to the indemnified party under this SECTION 10 (Indemnification; Remedies) for any fees of other counsel or any other expenses with respect to the defense of such Claim or Proceeding, in each case subsequently incurred by the indemnified party in connection with the defense of such Claim or Proceeding, other than reasonable costs of investigation. If the indemnifying party assumes the defense of a Claim or Proceeding, (i) no compromise or settlement of such claims may be effected by the indemnifying party without the indemnified party's consent unless (A) there is no finding or admission of any violation of Legal Requirements or any violation of the rights of any Person and no effect on any other claims that may be made against the indemnified party, and (B) the sole relief provided is monetary or other damages that are paid or otherwise satisfied in full by the indemnifying party; and (ii) the indemnified party will have no liability with respect to any compromise or settlement of such claims effected without its consent. If notice is given to an indemnifying party of the commencement of any Proceeding and the indemnifying party does not, within ten days after the indemnified party's notice is given, give notice to the indemnified party of its election to assume the defense of such Claim or Proceeding, the indemnified party shall defend such matter in good faith and shall not settle such matter without the indemnifying party's consent (which will not be unreasonably withheld or delayed).

(c) Notwithstanding the foregoing, if an indemnified party determines in good faith that there is a reasonable probability that a Claim or Proceeding may adversely affect it or its Affiliates other than as a result of monetary damages for which it would be entitled to indemnification under this Agreement, the indemnified party may, by notice to the indemnifying party, assume the exclusive right to defend, compromise, or settle such Claim or Proceeding, but the indemnifying party will not be bound by any determination of a Claim or Proceeding so defended or any compromise or settlement effected without its consent (which may not be unreasonably withheld).

(d) Sellers hereby consent to the non-exclusive jurisdiction of any court in which a Proceeding is brought against any Indemnified Person for purposes of any claim that an Indemnified Person may have under this Agreement with respect to such Proceeding or the matters alleged therein, and agree that process may be served on Sellers with respect to such a claim anywhere in the world.

10.9 PROCEDURE FOR INDEMNIFICATION--OTHER CLAIMS. A claim for indemnification for any matter not involving a third-party claim may be asserted by notice to the party from whom indemnification is sought.

10.10 CERTAIN TAX MATTERS. The following provisions shall govern the allocation of responsibility as between Buyers and Sellers for certain tax matters following the Closing Date:

(a) Election Pursuant to Section 338(h)(10). At PaperBoy's election, GET and any appropriate Affiliate will join with PaperBoy in making an election pursuant to Section 338(h)(10) of the Code (and any corresponding provisions under state, local or foreign law) (collectively, a "SECTION 338(H)(10) ELECTION") with respect to the acquisition of GPC, Pandora U.S., Oleander and Walk pursuant to this Agreement. In no event more than 120 days after the Closing Date, PaperBoy shall deliver to GET notice of its intention to file the Section 338(h)(10) Election together with PaperBoy's calculation of (a) the Modified Aggregate Deemed Sales Price (b) the allocation thereof among the assets of GPC, Pandora U.S., Oleander and Walk in accordance with the principles of Treasury Regulation Section 1.338(h)(10)-1(f)(1)(ii) (the "DEEMED SALES PRICE ALLOCATION"). GET shall not unreasonably withhold its consent to such allocation. The term "MODIFIED AGGREGATE DEEMED SALES PRICE" shall mean an amount resulting from the Section 338(h)(10) Election, determined pursuant to Treasury Regulation Section 1.338(h)(10)-1(f) without regard to items described in Treasury Regulation Section 1.338(h)(10)-1(f)(4). PaperBoy shall be responsible for the preparation and filing of all forms and documents required in connection with the Section 338(h)(10) Election. PaperBoy shall provide GET with copies of (A) any necessary corrections, amendments or supplements to Form 8023, (B) all attachments required to be filed therewith pursuant to applicable Treasury Regulations, and (C) any comparable forms and attachments with respect to any applicable state, foreign or local elections included as part of the Section 338(h)(10) Election. GET shall execute and deliver to PaperBoy within ten days of its receipt such documents and forms as are required to properly complete the Section 338(h)(10). GET and PaperBoy shall cooperate fully with each other and make available to each other such Tax data and other information as may be reasonably required in order for PaperBoy to (x) timely file the Section 338(h)(10) Election and any other required statements or schedules (or any amendments or supplements thereto) and (y) compute the Modified Aggregate Deemed Sales Price and the Deemed Sales Price Allocation. In the event PaperBoy notifies GET of its intention to file the Section 338(h)(10) Election within 120 days of the Closing Date, GET and PaperBoy shall take no action which is inconsistent with the Section 338(h)(10) Election or its



validity under the Code and the applicable Treasury Regulations. PaperBoy, the Target Companies, GET and their Affiliates will file all Tax Returns (including amended returns and claims for refund) and information reports in a manner consistent with such allocation.

(b) Short Tax Year. Buyers, GET and Creative agree that if any of the Target Companies is permitted but not required under applicable foreign, state or local tax laws to treat the Closing Date as the last day of the taxable period, Buyers, GET, and Creative shall treat such day as the last day of a taxable period.

(c) Allocations. Any Taxes for a taxable period beginning before the Closing Date and ending after the Closing Date with respect to the Target Companies shall be apportioned between Sellers and Buyers for purposes of SECTION 10.1(D) based on the portion of the period ending on the Closing Date and the portion of the period subsequent to the Closing Date, and each such portion of such period shall be deemed to be a taxable period (whether or not it is in fact a taxable period). Any allocation of income or deductions required to determine any Taxes for a taxable period beginning before the Closing Date and ending after the Closing Date shall be made by means of a closing of the books and records of the Target Companies as of the close of business on the Closing Date, provided that exemptions, allowances or deductions that are calculated on an annual basis (including, but not limited to, depreciation and amortization deductions) shall be allocated between the period ending on the Closing Date and the period after the Closing Date in the same proportion as the applicable exemption, allowance or deduction is allocated between the period ending on the Closing Date and the period after the Closing Date for federal income tax purposes.

(d) Transfer Taxes, etc. Sellers will pay all state, county, or local sales, excise, value added, use, registration, stamp, or other transfer taxes and similar taxes, levies, charges or fees required to be paid on the transfer of any of the Securities or attributable to the Section 338(h)(10) Election. The parties will cooperate in providing each other with appropriate resale exemption certification and other similar tax and fee documentation.

(e) Refunds. Sellers shall be entitled to any refunds or credits of Taxes for any time period prior to the Closing, except that Buyers shall be entitled to any Tax benefit up to approximately \$634,000 attributable to Films for the periods prior to January 1, 2001.

(f) Tax Period Ending on or Before the Closing Date. With the exception of the Tax Return for GSM, Sellers shall prepare or cause to be prepared and file or cause to be filed all Tax Returns for the Target Companies for all periods ending on or prior to the Closing Date which are filed after the Closing Date. To the extent that a position taken on any such Tax Return may affect the Tax liability of any Target Company for a taxable period ending after the Closing Date, such Tax Return shall report all items in a manner consistent with prior practice, unless otherwise agreed to by GET and Buyers, to the extent such reporting is allowable without risk of the imposition of penalties or additions to Tax as determined by GET in consultation with its Tax advisors. GET shall provide Buyers a copy of such proposed Tax Returns at least 20 days prior to the filing of such Tax returns, except that (i) in the case of a Tax Return relating to a monthly taxable period, the copy shall be provided to Buyers at least six days prior to the filing of such Tax Return and (ii) in the case of a Tax Return due within 90 days following the Closing Date, the copy shall be provided to Buyers in such shorter period of time prior to filing as GET shall reasonably determine to be practicable. Buyer may provide comments to

GET, which comments shall be delivered within five days of receiving such copies from GET.

(g) Tax Periods Beginning Before and Ending After the Closing Date.

Buyers shall prepare or cause to be prepared and file or cause to be filed any Tax Returns of the Target Companies for Tax periods which begin before the Closing Date and end after the Closing Date. With respect to any state or local Tax Return for taxable periods beginning before the Closing Date and ending after the Closing Date, Buyers shall cause the Target Companies to consult with GET concerning such Tax Return and to report all items with respect to the period ending on the Closing Date in a manner consistent with past practice, unless otherwise agreed by GET and Buyers to the extent such reporting is allowable without risk of the imposition of penalties or additions to Tax as determined by Buyers in consultation with its Tax advisors. The Target Companies shall provide GET a copy of their proposed Tax Returns at least twenty days prior to the filing of such Tax Return, except that (i) in the case of a Tax Return relating to a monthly taxable period, the copy shall be provided to GET at least six days prior to the filing of such Tax Return and (ii) in the case of a Tax Return due within 90 days following the Closing Date, the copy shall be provided to GET in such shorter period of time prior to filing as Buyers shall reasonably determine to be practicable. GET may provide comments to the Target Companies, which comments shall be delivered within five days of receiving such copies from the Target Companies.

(h) Cooperation on Tax Matters.

(i) Buyers, the Target Companies and Sellers shall, as and to the extent reasonably requested by the other party, cooperate fully with, and make available to, each other such Tax data and other information relating to the Target Companies as may be reasonably required in connection with (a) the preparation or filing of any Tax Return, election, consent or certification, or any claim for refund, (b) any determination of any Tax attribute, or of any Tax liability, or (c) any audit, examination or other proceeding in respect of Taxes ("TAX DATA"). Such cooperation shall include without limitation making their respective employees and independent auditors reasonably available on a mutually convenient basis for all reasonable purposes, including (without limitation) to provide explanations and background information and to permit the copying of the books, records, schedules, workpapers, notices, revenue agent reports, settlement or closing agreements and other documents containing the Tax Data ("TAX DOCUMENTATION"). The Target Companies and Sellers agree (A) to retain the Tax Data and the Tax Documentation until the expiration of one year after the applicable statute of limitations (including extensions thereof); provided, however, that in the event an audit, examination, investigation or other proceeding has been instituted prior to the expiration of the applicable statute of limitations, the information shall be retained until there is a final determination thereof (and the time for any appeal has expired), and to abide by all record retention agreements entered into with any taxing authority, and (B) to give the other party reasonable written notice prior to transferring, destroying or discarding any such books and records and, if the other party so requests, the Target Companies or Sellers, as the case may be, shall allow the other party to take possession of such books and records.

(ii) Buyers and Sellers further agree, upon request, to use their Best Efforts to obtain any certificate or other document from any governmental authority or any other Person as may

be necessary to mitigate, reduce or eliminate any Tax that could be imposed (including, but not limited to, with respect to the transactions contemplated hereby).

(iii) Buyers and Seller further agree, upon request, to provide the other party with all information that either party may be required to report pursuant to Section 6043 of the Code and all Treasury Regulations promulgated thereunder.

(iv) GET and Creative shall have the right, at their own expense, to control any audit or examination by any Taxing Authority ("TAX AUDIT"), initiate any claim for refund, or contest, resolve and defend against any assessment, notice of deficiency, or other adjustment or proposed adjustment relating to any and all consolidated, combined or unitary Tax Returns for any taxable period ending on or before the Closing Date that include any of the Target Companies; provided, however, that GET or Creative, as the case may be, shall consult with Buyers with respect to the resolution of any issue that could affect Buyers or the Target Companies and provide to Buyers for their review all relevant documents regarding any such issue. Buyers shall have the right, at its own expense, to control any other Tax Audit, initiate any other claim for refund, and contest, resolve and defend against any other assessment, notice of deficiency or other adjustment or proposed adjustment; provided, however, that Buyers shall consult with GET with respect to the resolution of any issue for which GET could be required to indemnify the Buyers Indemnitees pursuant to SECTION 10.1(D) hereof, provide to GET for its review all relevant documents regarding any such issue, provide GET with a copy of any written submission to be sent to a Taxing Authority prior to the submission thereof, take any position in respect of such issue that position is not binding on any of the Target Companies or any of its Affiliates for any post-Closing period and the issue is not recurring in nature, and not settle any such issue, or file any amended return relating to the adjustment as it relates to an issue the resolution of which would be binding on any of the Target Companies or any of its Affiliates for any post-Closing period or is in respect of an issue that is recurring in nature, the resolution of such issue shall be under the joint control of GET and Buyers. Each Party shall furnish the other Parties with its cooperation in a manner comparable to that described in SECTION 10.10 (Certain Tax Matters) to effect the purposes of this SECTION 10.10(H)(IV).

(i) Tax Agreements. All Tax Agreements with respect to or involving any Target Company shall be terminated as of the Closing Date and, after the Closing Date, the Target Companies shall not be bound thereby or have any liability thereunder.

10.11 GAYLORD DIGITAL, LLC. GET, on one hand, and Buyers, on the other hand, shall each pay or cause to be paid, when due, 50% of the annual payments and any other sums due to Aaron Baddeley in accordance with the terms of that certain Letter of Intent dated April 4, 2000, between Baddeley and Gaylord Digital, LLC ("DIGITAL") and GSM (the "BADDELEY AGREEMENT"). Buyers acknowledge that nothing herein shall be construed to adversely affect Digital's rights and benefits to which Digital may be entitled to under the terms of the Baddeley Agreement.

10.12 MEDICAL REIMBURSEMENTS. Sellers shall pay and otherwise remain responsible for all medical and health related amounts (including, without limitation, all incurred-but-not-reported claims

but only to the extent incurred prior to the Closing Date) due and payable to employees of the Target Companies up to and including the Closing Date.

11. GENERAL.

11.1 EXPENSES. Except as otherwise expressly provided in this Agreement, each party to this Agreement will bear its respective expenses incurred in connection with the preparation, execution, and performance of this Agreement and the Contemplated Transactions, including all fees and expenses of agents, representatives, counsel, financial advisors, and accountants. Sellers will cause the Target Companies not to incur any out-of-pocket expenses in connection with this Agreement. In the event of termination of this Agreement, the obligation of each party to pay its own expenses will be subject to any rights of such party arising from a breach of this Agreement by another party.

11.2 PUBLIC ANNOUNCEMENTS. Any public announcement or similar publicity with respect to this Agreement or the Contemplated Transactions will be issued, if at all, at such time and in such manner as Buyers and Sellers mutually determine. Unless consented to by Buyers in advance or required by Legal Requirements, prior to the Closing Sellers shall, and shall cause the Target Companies to, keep this Agreement strictly confidential and may not make any disclosure of this Agreement to any Person. Sellers and Buyers will consult with each other concerning the means by which the Target Companies' employees, customers, and suppliers and others having dealings with the Target Companies will be informed of the Contemplated Transactions, and Buyers, at their request, will have the right to be present for any such communication.

11.3 CONFIDENTIALITY. Between the date of this Agreement and the Closing Date, Buyers and Sellers will maintain in confidence, and will cause the directors, officers, employees, agents, and advisors of Buyers and the Target Companies to maintain in confidence, and not use to the detriment of another party or a Target Company any written, oral, or other information obtained in confidence from another party or a Target Company in connection with this Agreement or the Contemplated Transactions, unless (a) such information is already known to such party or to others not bound by a duty of confidentiality or such information becomes publicly available through no fault of such party, (b) the use of such information is necessary or appropriate in making any filing or obtaining any consent or approval required for the consummation of the Contemplated Transactions, or (c) the furnishing or use of such information is required by or necessary or appropriate in connection with legal proceedings or to comply with Legal Requirements.

If the Contemplated Transactions are not consummated, each party will return or destroy all of such information in whatever media it may exist.

11.4 NOTICES. All notices, consents, waivers, and other communications under this Agreement must be in writing and will be deemed to have been duly given when (a) delivered by hand (with written confirmation of receipt), (b) sent by fax (with written confirmation of receipt), provided that a copy is mailed by registered mail, return receipt requested, or (c) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and fax numbers set forth below (or to such other addresses and fax numbers as a party may designate by notice to the other parties):

## Sellers:

Gaylord Entertainment Company or Gaylord Creative Group, Inc.  
One Opryland Drive  
Nashville, TN 37214  
Attn: President

with a copy to:

Sherrard & Roe, PLC  
424 Church Street  
Suite 2000  
Nashville, TN 37219  
Attn: Thomas J. Sherrard, Esq.  
Fax: 615.742.4523

## Buyers:

PaperBoy Productions, Inc. or Gaylord Sports, Inc.  
9000 N. Broadway  
Oklahoma City, OK 73114  
Attn: Mr. David C. Story  
Fax: 405.475.3969

with a copy to:

Haynes and Boone, LLP  
901 Main Street  
Suite 3100  
Dallas, TX 75201  
Attn: Wilson Chu, Esq.  
Fax: 214.200.0588

11.5 JURISDICTION; SERVICE OF PROCESS. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may be brought against any of the parties in the courts of the State of Dallas, Dallas County, or, if it has or can acquire jurisdiction, in the United States District Court for the Northern District of Texas, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any party anywhere in the world.

11.6 FURTHER ASSURANCES. The parties agree (a) to furnish upon request to each other such further information, (b) to execute and deliver to each other such other documents, and (c) to do such

other acts and things, all as the other party may reasonably request for the purpose of carrying out the intent of this Agreement and the documents referred to in this Agreement.

11.7 WAIVER. The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any party in exercising any right, power, or privilege under this Agreement or the documents referred to in this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by applicable law, (a) no claim or right arising out of this Agreement or the documents referred to in this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party; (b) no waiver that may be given by a party will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on one party will be deemed to be a waiver of any obligation of such party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

11.8 ENTIRE AGREEMENT AND MODIFICATION. This Agreement supersedes all prior agreements between the parties with respect to its subject matter (including the Letter of Intent between The Oklahoma Publishing Company and GET dated February 7, 2001) and constitutes (along with the documents referred to in this Agreement) a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. This Agreement may not be amended except by a written agreement executed by the party to be charged with the amendment.

11.9 DISCLOSURE LETTER. (a) The disclosures in the Disclosure Letter, and those in any Supplement thereto, must relate only to the representations and warranties in the Section of the Agreement to which they expressly relate and not to any other representation or warranty in this Agreement.

(b) In the event of any inconsistency between the statements in the body of this Agreement and those in the Disclosure Letter (other than an exception expressly set forth as such in the Disclosure Letter with respect to a specifically identified representation or warranty), the statements in the body of this Agreement will control.

11.10 ASSIGNMENTS, SUCCESSORS, AND NO THIRD-PARTY RIGHTS. Neither party may assign any of its rights under this Agreement without the prior consent of the other parties, which will not be unreasonably withheld, except that each Buyer may assign any of its rights (but not its obligations) under this Agreement to any Subsidiary of such Buyer. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon, and inure to the benefit of the successors and permitted assigns of the parties. Nothing expressed or referred to in this Agreement will be construed to give any Person other than the parties to this Agreement any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement. This Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the parties to this Agreement and their successors and assigns.

11.11 SEVERABILITY. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

11.12 SECTION HEADINGS, CONSTRUCTION. The headings of Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All references to "Section" or "Sections" refer to the corresponding Section or Sections of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms.

11.13 TIME OF ESSENCE. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

11.14 GOVERNING LAW. This Agreement will be governed by the laws of the State of Delaware.

11.15 COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

11.16 USE OF NAME. Buyers and GET hereby agree that Buyers and their Affiliates and GET and its Affiliates shall have the right to use the name "Gaylord," and neither Seller shall challenge either Buyer's, and vice versa, right to use such name.

11.17 TURNER CLAIM. Buyers hereby agree and acknowledge that the applicable Target Company will assign to Creative, within a reasonable time after the Closing and upon terms mutually agreeable to Buyers and Sellers, all rights such Target Company may have against any third party with respect to the dispute disclosed on Part 3.8(a) Paragraph 3 of the Disclosure Letter, and that such assignment does not constitute a breach of any of the provisions hereof.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first written above.

BUYERS:

PAPERBOY PRODUCTIONS, INC.

By: /s/ E. K. Gaylord II  
-----  
E. K. GAYLORD II, President

GAYLORD SPORTS, INC.

By: /s/ E. K. Gaylord II  
-----  
E. K. GAYLORD II, President

SELLERS:

GAYLORD ENTERTAINMENT  
COMPANY

By: /s/ Dennis J. Sullivan, Jr.  
-----  
DENNIS J. SULLIVAN, JR.,  
President and Chief Executive Officer

GAYLORD CREATIVE GROUP, INC.

By: /s/ Carl Kornmeyer  
-----  
CARL KORNMEYER, President



GUARANTEED MAXIMUM PRICE  
CONSTRUCTION AGREEMENT

This GUARANTEED MAXIMUM PRICE (GMP) CONSTRUCTION AGREEMENT (this "Agreement") is dated this 8th day November 1999 between [OPRYLAND HOTEL - FLORIDA, L.P.] Opryland Hospitality Group One Gaylord Drive, Nashville, TN 37214, a Gaylord Entertainment Company ("Owner"), and Perini/Suitt, a joint venture, 151 Southhall Lane, Suite 210, Maitland, FL 32751 ("Contractor"), a General Contractor.

RECITALS

The owner is developing the Project (as defined below) and wishes to engage Contractor to act as the General Contractor to assist in such development and to perform certain other duties, all on the terms and conditions set forth in this Agreement.

ARTICLE 1  
DEFINITIONS

1.1 BASIC DEFINITIONS. Certain capitalized terms are defined throughout this Agreement. In addition, when used herein, the following terms shall have the meanings provided below:

1.1.1 "ARCHITECT" means Hnedak Bobo Group, 104 South Front Street, Memphis, TN 38103.

1.1.2 "CONTRACT DOCUMENTS" shall mean this Agreement, the Drawings, the Specifications, other documents listed in this Agreement, and Modifications executed after the date of this Agreement.

1.1.3 "DRAWINGS" means the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams, a copy of which is set forth in Exhibit A.

1.1.4 "MODIFICATION" means (i) a written amendment to this Agreement signed by both parties, (ii) a Change Order, (iii) a Construction Change Directive or (iv) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, instructions to bidders, sample forms, the Contractor's bid or portions of addenda relating to bidding requirements).

1.1.5 "PROJECT" means Opryland Hotel Florida, consisting of: approximately 65.3 acre property with two acre lake at entrance and a Project total of approximately 2,056,000 sf. including 135,286 sf of Glazed Atriums and 400,000 sf of Meeting and Pre-Function space with 178,000 sf exhibition, two ballrooms (50,000 sf and 30,000 sf) with a 35'x90' fully equipped stage in the larger ballroom and over 45 break out meeting rooms; 1404 guest rooms and suites; three specialty restaurants, lobby lounge and piano lounge; 15,000 sf of retail space; 14 executive meeting and board rooms in the hotel; two outdoor swimming pool areas with cabanas and pool food and beverage

venue; 20,000 sf full service spa and fitness center; interior atriums, restaurants, retail and public spaces will be of themed construction; BOH (Back of House) and service areas to support this facility; 2,422 +/- car surface parking area.

1.1.6 "PROJECT MANUAL" means the volume to be assembled for the Work, which shall include, at a minimum, the bidding requirements, sample forms, and Specifications, administrative procedures and such other information as the Owner may deem necessary.

1.1.7 "SPECIFICATIONS" means that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services, a copy of which are set forth in Exhibit A.

1.1.8 "SUBSTANTIAL COMPLETION" shall be as described in Paragraph 10.8.

1.1.9 "WORK" means the construction and services required to construct the Project as specified by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations.

1.2 OTHER TERMS. Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

## ARTICLE 2. GENERAL TERMS

2.1 THE WORK OF THIS CONTRACT. The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

2.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION. The date of commencement of the Work shall be the date specified by the Owner in a written notice delivered to the Contractor, regardless of any delay thereafter by the Contractor in actually commencing the Work. If, prior to the commencement of the Work, the Owner requires time to file mortgages, mechanic's liens and other security interests, the Owner's time requirement shall be as follows: The Contractor shall achieve Substantial Completion of the entire Work on December 1, 2001. Except for, force majeure, as permitted in this agreement, in Paragraph 9.1.3 (I through vi) contractor substantiates that in no event shall Substantial Completion be no later than December 31, 2001. The "Contract Time" shall mean the period of time from the date of commencement to Substantial Completion.

2.3 GUARANTEED MAXIMUM PRICE (GMP). For all Work performed and services rendered by Contractor with respect to the Work. The Owner agrees to pay Contractor an amount equal to the total of the Cost of the Work, plus the Contractor's Fee, but in no event will the compensation paid by the Owner to Contractor for the Work be an amount in excess of \_\_\_\_\_ (the Guaranteed Maximum Price or "GMP"), subject to additions or deductions by Change Order as provided in the Contract Documents. GMP documents shall be defined as not less than 75% construction documents for all disciplines, including interior design. Owner and Contractor acknowledge that, as of the date of this Agreement, the parties have not finalized all materials and information necessary to finalize the GMP for the Project.

The parties acknowledge that the GMP for the Project is anticipated to be finalized in a range of \$274,000,000 to \$277,000,000. The parties agree to continue to negotiate in good faith to finalize the GMP within 45 days from the date of issuance of 75% GMP documents. Once the final GMP, within the range set forth above, has been agreed to by the parties, this contract shall be amended to incorporate the final GMP. In no event will the Owner be obligated to pay Contractor the full GMP unless the Cost of the Work is equal to or in excess of the GMP. The GMP may also be referred to in the Contract Documents as the Contract Sum. Costs which would cause the GMP to be exceeded will be paid by the Contractor without reimbursement by the Owner. 2.3.1 The GMP includes consideration of \$10,000.00 paid by the Owner to Contractor in exchange for Contractor's commitment to undertake the indemnification obligations contained in the Agreement. The parties acknowledge that they understand the extent of the indemnification and that the specific consideration paid by the Owner is fair and adequate consideration for indemnity and is considered paid in the Owner's first installment of the Contract Sum payable under this Agreement.

2.3.2 CONTRACTOR'S FEE. Contractor's fee and general conditions for the Work will be a fixed amount of \$18,800,000, less any OCIP credits and permit fees, and includes all of Contractor's overhead and profit for the project as well as the general conditions requirements as outlined in the specifications. Contractor will include in each monthly progress Application for Payment a line item for an equal portion of the percent complete of work for that period of its Contractor's Fee over the term of the Agreement.

2.3.3 CONTINGENCY. An amount equal to 2% of the cost of work is to be used as contingency and will be held outside of the GMP. Contingency will be used to cover additional, unanticipated or other unestimated costs which are necessary to complete the Work, however, the Contingency will not be used for any additional costs associated with performing Changes to the Work. The Owner has the right to determine the allocation of the Contingency and Contingency will not be used without the written authorization of the Owner. Upon completion of the Work, should there be any remaining Contingency, it will be credited to the Owner and will not be subject to any Shared Savings to Contractor.

2.3.3.1 Contractor shall be allowed to utilize any buyout contingencies within the GMP to be used at their discretion to cover items not clearly defined but implied on drawings issued not 100% completed, missed scope, or discrepancies as noted in paragraph 4.1.4.1, special conditions not specified, etc. Any savings accrued shall be per paragraph 2.3.4.

2.3.4 SHARED SAVINGS. Upon completion of the Work if the total cost of the Work is less than the final GMP (taking into account any adjustments made during the term of the Agreement), the Owner and Contractor will be entitled to share this savings as follows. Contractor will receive an amount equal to 25% of the difference between the actual cost of the Work and the final GMP. The first \$200,000.00 of any savings shall be applied to any preconstruction costs over the agreed \$275,000.00 before the shared 25% is calculated. Contractor's portion of these Shared Savings will be added to Contractor's Fee, as part of Contractor's Final Payment.

2.3.5 INCENTIVES. It is the Owners intent for the Contractor to manage this project in a safe, organized and claim free environment, and the Owner is willing to offer to the Contractor incentives based on savings accrued in the OCIP and Subguard programs.

2.3.5.1 OCIP. Based on the safety performance of the Contractor and Subcontractors, if, at the end of the Project there are minimal losses or claims, and if the Owner realizes 90% of the potential OCIP projected savings, then the Owner will reimburse to the Contractor \$450,000.00.

a. If at the end of the Project the Owner realizes savings less than the 90%, then for each percentage increment of potential OCIP savings below 90%, the Contractors share of savings shall also be reduced by the same percentage and be deducted from the total of \$450,000.00.

b. In the event of any major lost time accident that reduces the Owners potential OCIP savings to 50% or less, then the Contractor will not receive any reimbursement.

2.3.5.2. SUBGUARD. Based on the performance of the Contractor to professionally manage the construction administration of the Project, to minimize any cost exposure, claims, and the Owner realizes 90% of the potential Subguard projected savings, the Owner will reimburse to the Contractor \$450,000.00.

a. If at the end of the Project, the Owner realizes savings less than the 90% as in stated in paragraph 2.3.5.2, then, for each percentage increment of potential Subguard savings below 90%, the Contractors share of savings shall also be reduced by the same percentage and be deducted from the total \$450,000.00.

b. In the event of any major claim, from either the Contractor, subcontractors or vendors, that reduces the Owners potential Subguard savings to 50% or less, then the Contractor will not receive any reimbursement.

2.3.5.3. BONUS. If the Contractor has achieved Substantial Completion, as defined in paragraph 10.8, of the Convention Center and related BOH (Back of House) support areas, by April 15, 2001, then the Owner shall pay a bonus of \$350,000.00 to the Contractor. If the Contractor fails to achieve Substantial Completion by the date stated herein, then the Owner has the option not to pay the bonus and will enforce the liquidated damages as stated in paragraph 2.3.6.

a. If the Contractor fails to achieve the overall Project Substantial Completion of December 31, 2001, but has achieved Substantial Completion of the Convention Center, the Owner has the option to reject the bonus for the Convention Center and enforce the liquidated damages as stated in paragraph 2.3.6.

b. If the Contractor fails to achieve the overall Substantial Completion and beyond, which delays the Owner from opening the Hotel on February 2,2002, the Contractor will not be allowed any shared savings or bonus, except for Convention Center Bonus if achieved, whatsoever, and the Owner will enforce the liquidated damages as stated in

paragraph 2.3.6.

2.3.5.4. If Contractor is due any shared savings or bonus monies, the Owner shall make 75% payment within ninety (90) days of substantial completion, and on the last day of the one year warranty period of Substantial Completion pay the remainder.

2.3.6 LIQUIDATED DAMAGES. Since the actual damages to the Owner as a result of the Contractor's failure to achieve Substantial Completion of the Work by the Substantial Completion Date are difficult or impossible to determine, the Contractor shall pay the Owner \$20,000 per calendar day for the Convention Center, if not substantially complete by April 15, 2001, and \$10,000 per calendar day for the entire Project, if not substantially complete by December 1, 2001, up to February 2, 2002, after the Substantial Completion Date, as it may be extended, for every day the Work is not substantially completed, as liquidated damages, in lieu of actual damages related solely to a delay in Substantial Completion. If the Contractor fails to achieve the overall Substantial Completion date, which delays the Hotel opening of February 2, 2002, then the Contractor shall pay the Owner \$20,000 per day, as liquidated damages for each day the Hotel cannot be in substantial operation. Contractor's total liability for liquidated damages shall not exceed Three Million and No/100 (\$3,000,000.00) Dollars.

#### 2.4 PROGRESS PAYMENTS.

2.4.1 Based upon Applications for Payment (as defined in Paragraph 10.3) submitted to the Architect by the Contractor and certificates for payment issued by the Architect, the Owner shall make progress payments on account of the GMP to the Contractor. The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

2.4.2 Provided that a Certificate of Payment (as defined in Paragraph 10.4) is received by the Owner not later than the 25th day of a month, the Owner shall make payment to the Contractor not later than the 10th day of the following month. If a Certificate of Payment is received by the Architect after such date, payment shall be made by the Owner not later than 14 days after the Architect issues the certificate of payment with respect to such application.

2.4.3 Applications for payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by such Application for Payment. Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

2.4.3.1 Take that portion of the GMP properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the GMP allocated to that portion of the Work in the Schedule of Values (as defined in Paragraph 10.2), less retainage of 10%. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included. The retainage for the Fixed Fee and General Conditions shall be 5%.

2.4.3.2 Add that portion of the GMP properly allocable to materials and equipment delivered and suitably stored at the Project site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the Project site at a location agreed upon in writing), less retainage of 10 %.

2.4.3.3 Subtract the aggregate of previous payments made by

the Owner.

2.4.3.4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Paragraph 10.5.

2.4.4 The progress payment amount determined in accordance with Subparagraph 2.4.4 shall be further modified under the following circumstances:

2.4.4.1 Upon Substantial Completion, of the entire Project, a sum sufficient to increase the total payments to the full amount of the GMP, less such amounts as the Architect and the Owner shall determine for incomplete Work, retainage applicable to such work, unsettled claims and in accordance with Paragraph 2.3.

2.4.4.2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Subparagraph 10.10.3.

2.4.5 Reduction or limitation of retainage, if any, shall be as follows: 10% retainage shall be held until both time and cost to complete attains 50% of the GMP, at such time no other monies will be withheld. At Substantial Completion retainage will be reduced to 2.5% of the GMP. The Owner reserves the right to withhold any reduction "partial or full" if any portion of the Project is behind schedule, or any portions of the Work are deemed unacceptable. The Owner will consider the reduction and/or release of retainage on a case by case basis during the course of construction.

2.4.6 Except with the Owner's prior written approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the Project site.

2.5 FINAL PAYMENT. Final Payment, constituting the entire unpaid balance of the GMP, shall be made by the Owner to the Contractor when the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Subparagraph 13.2.2, a final Certificate for Payment has been issued by the Architect and the Contractor has otherwise satisfied the conditions of Paragraph 10.10.

### ARTICLE 3 OWNER

3.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER.

3.1.1 The Owner upon reasonable written request shall furnish to the Contractor in writing information which is necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, and the Owner's interest therein at the time of execution of the Agreement and, within five days after any change, information of such change in title, recorded or unrecorded.

3.1.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the Project site of the Project, and a legal description of such site.

3.1.3 Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. The Owner, through the Contractor, shall secure and pay for the building permit.

3.2 OWNER'S RIGHT TO STOP THE WORK. If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 13.2 or fails to carry out Work in accordance with the Contract Documents, the Owner, by written order, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

3.3 OWNER'S RIGHT TO CARRY OUT THE WORK. If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Program Manager and Architect and their respective consultants and Contractors additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

#### ARTICLE 4 CONTRACTOR

##### 4.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR.

4.1.1 The Contractor shall, prior to commencement of the work and continuously throughout the performance of the work, carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Subparagraph 3.2.2 and shall at once report to the Program Manager and Architect errors, inconsistencies or omissions discovered. The Contractor shall not be liable to the Owner, Program Manager or Architect for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the Contractor recognized or in the exercise of reasonable care should have recognized such error, inconsistency or omission and failed to report it to the Program Manager and Architect. If the Contractor performs any construction activity when it knows or in the exercise of reasonable care should have known such performance involved an error, inconsistency or omission in the Contract Documents without such notice to the Program Manager and Architect, the Contractor shall assume responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

4.1.2 The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported in writing to the Program Manager and Architect at once.

4.1.3 The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Paragraph 4.10.

4.1.4 The Contractor represents that the Contractor, Subcontractors, material and equipment suppliers have compared the Drawings, Specifications and OHG standards and have compared and reviewed all general and specific details on the original drawings and specification, and made site observations as necessary, and that all known or discovered conflicts, discrepancies, errors and omissions, have been either corrected or clarified prior to issuance of 100% complete Documents. Contractor is aware of the importance of document coordination and acknowledges that Contractor and Subcontractors will not be allowed any change orders for field coordination issues relating to document review per this paragraph.

4.1.4.1 The Owner acknowledges that the documents are not 100% complete and it is the Owners intent not to change the design concept as indicated on the documents. Notwithstanding the foregoing, it is the intent of the contract documents to describe a functionally complete facility, and it is intended that contractor shall furnish all labor, materials, tools, equipment and other items necessary for the proper execution and completion of the work in accordance therewith, including all work incidental to or reasonably inferable from the contract documents as being necessary to produce the intended results, unless it is specifically indicated in the contract documents that such work is to be performed by others, and to complete the work in a satisfactory manner, ready for use, occupancy and operation by Owner. Notwithstanding anything in this contract to the contrary, in no event shall Contractor be liable for failure of the Architect to meet its professional design responsibility.

4.1.5 Based on known conditions and representations set forth in this Contract, Contractor represents that the Guaranteed Maximum Price represents the total cost for completion of the Work and therefore, the Contractor's review and comparison of the specifications has taken into consideration the total and complete Work with respect to 4.1.4 above.

4.1.6 Should contractor knowingly fail to report in writing any error in the Contract documents or, having reported an error, fail to wait for the Owner or Architects instructions prior to proceeding with the Work, then any work performed by or on behalf of Contractor will be at Contractor's own risk and expense, and Contractor will be liable for all damages and corrective action resulting from its action. Further, any defective Work performed by or on behalf of Contractor as a result of an undiscovered error in the Contract Documents, which a reasonably prudent Contractor should have discovered will be at Contractor's own risk and expense, and Contractor will be liable for all damages and corrective action resulting from its action.

#### 4.2 SUPERVISION AND CONSTRUCTION PROCEDURES.

4.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Contract, as provided in Subparagraphs 5.3.2.2 and 5.3.2.3.

4.2.2 The Contractor will employ, during the Project's progress an adequate and appropriate number of staff to successfully execute the Work. This staff will include, but not be limited to a Project Manager, Project Superintendent, Safety Representative and other assistants and supervisory personnel as are approved in writing by the owner. Contractor will designate a sufficient number of representatives and that there will be at least two authorized representatives on



the Project Site at all times during which the Work is being performed. Any personnel whether specifically named in the Agreement or approved by the Owner and upon the Owner's demand will be replaced by another person satisfactory to the Owner, and none will be removed or changed in status without the Owners written approval. The Project Manager, Project Executive, Project Manager or Superintendent will represent the Contractor and all directions given to them will be binding. Contractor may request confirmation of directions in writing. If a replacement is necessary as described in this subparagraph, it will not be considered a change in Work or claim for extra compensation.

4.2.3 The Contractor agrees and certifies to the Owner that following key personnel, currently in the employ of the Contractor, shall be committed to this Project until Substantial Completion or as otherwise agreed to in writing by the Owner. These personnel are: Project Executive Sam Sabin; Preconstruction Manager Mark Weishaar, Contract Manager Val Hanson; Project Manager Convention Center Bob Ryan, Project Manager Hotel Charlie Grainger, General Superintendent Larry Ryan, Hotel Superintendent Jerry Lee Peterson, Convention Center Superintendent Tom Beech, MEP Coordinators Duane Ford, Pete Butterowe, Bob Murphy, VP Field Operations Mark Caspers. The Contractor shall submit an organization chart reflecting the persons listed in this agreement showing the reporting relationships and responsibilities. (Exhibit \_\_\_\_\_)

4.2.4 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Program Manager or Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

4.2.5 The Contractor shall inspect portions of the Project related to the Contractor's Work in order to determine that such portions are in proper condition to receive subsequent Work.

4.2.6 Contractor will be responsible to the Owner for the acts and omissions of its employees. It will also be responsible to the Owner for the acts and omissions of its Subcontractors of any tier, their agents and employees, and of other persons performing any of the Work, in the same manner as if they were the acts and omissions of persons directly employed by Contractor.

4.2.7 Further, notwithstanding the fact that a dispute, controversy or other question may have arisen between the parties relating to the execution or progress of the Work the interpretation of the Contract Documents, the payment of any monies, the delivery of any materials or any other matter whatsoever, Contractor will not be relieved of its obligations to perform and otherwise complete the Work in a timely manner or to otherwise perform in accordance with the Contract Documents, pending the determination of such dispute, controversy or other question.

4.3 LABOR AND MATERIALS. Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

4.4 WARRANTY. The Contractor warrants to the Owner, Program Manager and Architect that materials and equipment furnished under the Contract will be of good quality and new, unless

otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. The Contractor's warranty obligations shall extend for a period of one year from the date of substantial completion of the work to be performed and excludes remedy for damage or defect caused by abuse, modifications not made or authorized by the Contractor or its agents, employees or Contractors, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Owner, Program Manager or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Contractor makes no other warranties, express or implied.

4.5 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK. If the Owner prefers to accept defective or non-conforming Work, it may do so instead of requiring its removal and correction, in which case an appropriate amount will be offset against any amounts then or thereafter due to Contractor; or, if the appropriate amount of offset is determined after final payment (or if there is not then or thereafter due to Contractor an amount sufficient to cover the offset available to the Owner, Contractor will, upon demand, pay the appropriate amount (of the difference after offset, as applicable) to the Owner.

#### 4.6 PERMITS, FEES AND NOTICES.

4.6.1 Except for the building permit, Contractor shall secure and pay for all permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded.

4.6.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Work. Contractor shall also comply with Factory Mutual Standards bearing on the conduct of this Work. The Contractor shall be responsible for any and all damages incurred by the Owner resulting from the Contractor's failure to comply with said laws, ordinances, codes and regulations.

4.6.3 If the Contractor observes that portions of the Contract Documents are not in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, the Contractor shall promptly notify the Program Manager, Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification. If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Program Manager, Architect and Owner, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs.

#### 4.7 ALLOWANCES.

4.7.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities against which the Contractor makes reasonable objection.

4.7.2 Unless otherwise provided in the Contract Documents, (i) materials and equipment under an allowance shall be selected by the Owner to avoid delay in the Work; (ii) allowances shall cover the cost to the Contractor of materials and equipment delivered at the Project site and all required taxes, less applicable trade discounts unless installation costs are specified as part of the allowance; (iii) Contractor's costs for unloading and handling at the Project site, labor, installation costs and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum and not in the allowances.

4.7.3 Contractor acknowledges that the inclusion of the Allowances will not be considered to mean that Contractor is entitled to receive payment in the same amount nor will it be subject to any Shared Savings to Contractor, if any. Contractor will not be entitled to additional job and field overhead, general conditions, home office overhead, fee and/or profit due to an adjustment from the allowance amount to the actual Direct Cost of the allowance item. The Contract Documents provide that, after a firm price is agreed upon between the Owner and Contractor from that portion of the Work at issue, an adjustment either up or down to the GMP (contract Sum) will be made equal to any difference between the specified allowance and the firm price.

4.7.4 Allowance items are detailed in Exhibit \_\_\_ attached hereto.

4.8 SUPERINTENDENT. The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. 4.9 CONTRACTOR'S CONSTRUCTION SCHEDULE.

4.9.1 The Contractor, within 30 days after being awarded the Contract, shall prepare and submit for the Owner's and Program Manager's approval a Contractor's Construction Schedule for the Work and shall cause the completion of the Work to comply with such schedule. (Included as part of this contract as Exhibit \_\_\_\_\_) Such schedule shall not exceed time limits current under the Contract Documents, shall be revised at monthly intervals as required by the conditions of the Work and Project, shall be related to the entire Project construction schedule to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The Schedule shall be based on a Critical Path (CPM) bar chart analysis of construction activities and sequential operations needed for the orderly performance and completion of any separable parts of any and all Work in accordance with the Contract.

4.9.2 The Construction Schedule shall be complete in all respects, covering, in addition to activities and interfaces with other Contractors at the site of Work, offsite activities such as design, fabrication, an allowance for normal weather delays, submittals, procurement and jobsite delivery of Contractor furnished material and equipment. The schedule shall be a Critical Path Method (CPM) type bar chart drawn to a time scale using precedence type diagramming or bar chart with sufficient detail to conform to the requirements outlined herein. In addition, the Contractor, within 30 days after being awarded the contract, shall submit a detailed written narrative description of its plan for performing the Work to meet the Construction Schedule.

4.9.3 The Construction Schedule shall include the following:

- (a) The location of each start and finish of activities by building;

- (b) Activities showing schedule early/late start and early/late finish;
- (c) Brief description of each activity;
- (d) Relations between activities;
- (e) Indication of activities with less than one (1) month of float;
- (f) contractual and other major milestones.

4.9.4 The original submittal of the CPM Schedule or Bar Chart and each periodic monthly update of same shall be accompanied by a separate listing of all activities on the Schedule which shall include the following:

- (a) A listing of all activities by activity description, each identified by mode or activity number;
- (b) The duration of each activity;
- (c) Earliest start and finish dates for each activity;
- (d) Latest start and finish dates for each activity;
- (e) Float time for each activity;
- (f) As each duration, start date, finish date and float times of each activity become actual, it shall be noted as such on the periodic monthly update of the activities listing;
- (g) As each activity is completed, it shall be noted as such on the periodic monthly update of the activities listing.

4.9.5 The Contractor shall cooperate with the Program Manager in scheduling and performing the Contractor's Work to avoid conflict, delay in or interference with the Work of Other Contractors or the construction or operations of the Owner's agents, employees and Contractors. The Contractor shall incorporate into the schedule, the Owners area turnover milestones as noted in the Owners construction turnover schedule dated July 26, 1999 in Exhibit -----.

4.9.6 Float or slack time associated with one chain of activities is defined as the amount of time between earliest start date and latest start date or between earliest finish date and latest finish date for such activities, as described in an approved Schedule for the Work, including any revisions or updates to the Schedule. Float time, as identified in this Paragraph, shall be neither to the benefit of the Owner or the Contractor, but shall be deemed for the beneficial use of the project, subject to the provisions as outlined in the Project specifications dated October 20, 1999, Section 01325. The Contractor agrees that the Project shall receive the benefit of any float, and delays to construction activities which do not affect the overall completion of the Work shall not entitle the Contractor to an extension of the Contract Substantial Completion date.

4.9.7 The Contractor shall prepare and keep current, for the Program Manager's and Architect's approval, a schedule of submittals which is coordinated with the Contractor's Construction Schedule and allow the Program Manager and Architect reasonable time to review submittals.

4.9.8 The Contractor shall promptly inform Owner, in writing of any proposed change in the Schedule and narrative and shall furnish Owner with a revised Schedule and narrative within (10) calendar days after approval by Owner of such change. The Schedule, activities listing and narrative shall be kept current, taking into account the actual progress of Work and shall be updated and submitted to the Owner every thirty (30) calendar days. The revised Schedule, activities listing and narrative shall be sufficient to meet the requirements for the completion of the separable parts of any and all Work as set forth in the Contract. Monthly Progress Pay Requests will not be approved until the receipt by the Owner of these updates.

#### 4.10 DOCUMENTS AND SAMPLES AT THE PROJECT SITE.

4.10.1 The Contractor shall maintain at the Project site for the Owner one record copy of the Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Program Manager, Architect and Owner and shall be delivered to the Program Manager for submittal to the Owner upon completion of the Work.

##### 4.10.2 When used herein:

4.10.2.1 "Shop Drawings" shall mean drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work;

4.10.2.2 "Product Data" shall mean illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work; and

4.10.2.1 "Samples" shall mean physical examples, which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

4.10.3 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents.

4.10.4 The Contractor shall review, approve and submit to the Program Manager and Architect, in accordance with the schedule and sequence approved by the Program Manager and Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents. Submittals made by the Contractor, which are not required by the Contract Documents, may be returned without action by minor change in the work or Change Order.

4.10.5 The Contractor shall not perform any portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect. Such Work shall be in accordance with approved submittals.

4.10.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

4.10.7 The Contractor shall not be relieved of responsibility for deviations, errors or omissions from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and the Architect has given written approval to the specific deviation.

4.10.8 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Program Manager and Architect on previous submittals.

4.10.9 Informational submittals upon which the Program Manager and Architect are not expected to take responsive action may be so identified in the Contract Documents.

4.10.10 ,The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Owner and Architect have specified to the contractor all performance and design criteria that such service must satisfy. Pursuant to this Subparagraph 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

4.11 USE OF SITE. The Contractor shall confine operations at the Project site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the Project site with Materials or equipment. The Contractor shall coordinate the Contractor's operations

with, and secure the approval of, the Program Manager and Owner before using any portion of the Project site and/or any adjacent off-site staging areas.

4.12 CUTTING AND PATCHING. The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner's agents, employees and Contractors or of Other Contractors by cutting, patching, excavating or otherwise altering such construction. The Contractor shall not cut or otherwise alter such construction by the Owner or the Owner's agents or Contractors without the written consent of the Program Manager and Owner.

4.13 CLEANUP. The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials. If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

4.13.1 Final Clean-Up. Prior to Substantial Completion, the Contractor shall employ experienced persons or a professional team to make a Final Clean-Up of the Project or such portions of the Project as the Owner may designate. Such Clean-Up shall leave all surfaces, equipment, finishes, fixtures, furnishings and other similar items in a condition requiring only ordinary care to maintain. The Contractor shall be responsible to reclean as directed any areas soiled or dirtied as a result of performing corrective or uncompleted Work.

4.14 ACCESS TO WORK. The Contractor shall provide the Owner, Program Manager and Architect access to the Work in preparation and progress wherever located and at any time during the course of construction.

4.15 ROYALTIES AND PATENTS. The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of patent rights and shall hold the Owner, Program Manager and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect and Owner.

4.16 INDEMNIFICATION.

4.16.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Program Manager, Architect, Owner's, Program Manager's and Architect's consultants, contractors and agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, for bodily injury (including death) or property damage (other than property to be insured by Owner) arising out of or resulting from performance of the Work, to the extent caused by negligent, willful or fraudulent acts or omissions of the Contractor, a Subcontractor, Sub-subcontractor or anyone directly or indirectly employed by them or anyone for

whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 4.16.

4.16.2 In claims against any person or entity indemnified under this Paragraph 4.16 by an employee of the Contractor, a Subcontractor, Sub-subcontractor or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 4.16 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor, a Subcontractor or Sub-subcontractor under workers compensation acts, disability benefit acts or other employee benefit acts.

4.16.3 The obligations of the Contractor under this Paragraph 4.16 shall not extend to the liability of the Program Manager, Architect, their consultants, and agents and employees of any of them arising out of (i) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (ii) the giving of or the failure to give directions or instructions by the Program Manager, Architect, their consultants, and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

4.17 OTHER CONTRACTORS. The Contractor shall cooperate with any other Contractors who contract with Owner in connection with the Project (the "Other Contractors").

4.18 Neither contractor nor its affiliates shall be liable for any consequential damages, whether based upon contract, negligence or other legal theory. This provision shall not limit Contractor's liability for liquidated damages expressly assumed under this Agreement.

#### ARTICLE 5 ADMINISTRATION OF THE CONTRACT

5.1 MODIFICATION OF DUTIES. The duties, responsibilities and limitations of authority of the Program Manager and Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, and either the Program Manager or Architect, as applicable, which consent shall not be unreasonably withheld or delayed.

5.2 REPLACEMENT OF ARCHITECT OR PROGRAM MANAGER. In case of termination of employment of the Program Manager or Architect, the Owner shall appoint a replacement Program Manager or Architect, with the Contractor's consent, which shall not be unreasonably withheld or delayed, and whose status under the Contract Documents shall be that of the former Program Manager or Architect, respectively.



### 5.3 ADMINISTRATION OF THE CONTRACT

5.3.1 GENERAL. The Program Manager and Architect will provide administration of the Contract as described in the Contract Documents, and will be the Owner's representatives (i) during construction, (ii) until final payment is due and (iii) with the Owner's concurrence, from time to time during the correction period described in Paragraph 13.2. The Program Manager and Architect will advise and consult with the Owner and will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with other provisions of the Contract.

5.3.2 PROGRAM MANAGER DUTIES. The Program Manager will have the following duties and responsibilities:

5.3.2.1 The Architect and Program Manager will monitor in general that the Work is being performed in accordance with the requirements of the Contract Documents, will keep the Owner informed of the progress of the Work, and will endeavor to avoid any defects or deficiencies in the Work.

5.3.2.2 The Contractor will provide for coordination of the activities of the Other Contractors with the Work of the Contractor.

5.3.2.3 The Contractor shall participate with Other Contractors and the Program Manager and Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement.

5.3.2.4 The Program Manager will assist the Contractor with the schedule and coordinate the activities of any Owner Contractor and Suppliers in accordance with the latest approved Project construction schedule.

5.3.2.5 The Program Manager will review and certify all Applications for Payment by the Contractor, including final payment. The Contractor will assemble each of the Subcontractors and Vendors Applications for Payment into a Project Application and Project Certificate for Payment. After reviewing and certifying the amounts due the Contractor and the Other Contractors, the Program Manager will submit the Project Application and Project Certificate for Payment, along with the applicable Contractors' Applications and Certificates for Payment, to the Architect.

5.3.2.6 The Contractor will receive and review and approve all Shop Drawings, Product Data and Samples, coordinate them with information received from Other Contractors, and transmit to the Architect those recommended for approval.

5.3.2.7 The Program Manager's actions will be taken with such reasonable promptness as to cause no delay in the Work of the Contractor or in the activities of Other Contractors, the Owner, or the Architect.

5.3.2.8 The Program Manager will assist the Architect in conducting inspections to determine the dates of Substantial Completion and final completion, and will receive and forward to the Architect written warranties and related documents required by the Contract and assembled by

the Contractor. The Program Manager will forward to the Architect a final Project Application and Project Certificate for Payment upon compliance with the requirements of the Contract Documents.

5.3.2.9 The Architect will prepare Change Orders and Construction Change Directives.

5.3.2.10 The Contractor will maintain at the Project site for the Owner one record copy of all Contracts, Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record all changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. These will be available to the Architect and the Program Manager, and will be delivered to the Owner upon completion of the Project.

5.3.3 ARCHITECT DUTIES. The Architect will have the following duties and responsibilities:

5.3.3.1 The Architect will have two full time representatives on the Project site to review the progress and quality of the completed Work and to determine if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. On the basis of on-site observations, the Architect will keep the Owner informed of progress of the Work, and will endeavor to avoid defects and deficiencies in the Work. The duties, responsibilities and limitations of authority of such Project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

5.3.3.2 Based on the Architect's observations and evaluations of Applications for Payment, and the recommendations of the Program Manager, the Architect will review and certify the amounts due the Contractors and will issue a certificate for payment.

5.3.3.3 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work of the Contractor or in the activities of the Other Contractors, the Owner, or the Program Manager, while allowing sufficient time in the Architect's professional judgment to permit adequate review. The Architect's review of the Contractor's submittals shall not relieve the Contractor of its obligations under this Agreement.

5.3.3.4 The Architect will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of the Program Manager, Owner or Contractor. The Architect's response to such requests will be made with reasonable promptness and within any time limits agreed upon. Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings.

5.3.4 REJECTION OF WORK. The Architect will have authority to reject Work which does not conform to the Contract Documents, and to require additional inspection or testing, in accordance with Subparagraphs 15.5.2 and 15.5.3, whether or not such Work is fabricated, installed or completed, but will take such action only after notifying the Program Manager and Owner. Subject to review by the Architect, the Program Manager will have the authority to reject Work which does not conform to the Contract Documents. Whenever the Program Manager considers it necessary or

advisable for implementation of the intent of the Contract Documents, the Program Manager will have authority to require additional inspection or testing of the Work in accordance with Subparagraphs 15.5.2 and 15.5.3, whether or not such Work is fabricated, installed or completed.

5.3.5 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall communicate through the Program Manager, and shall contemporaneously provide the same communications to the Architect. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with Other Contractors shall be through the Program Manager and shall be contemporaneously provided to the Architect.

#### 5.4 CLAIMS AND DISPUTES

5.4.1 DEFINITION. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of the terms of the Contract Documents, payment of money, extension of time or other relief with respect to the terms of the Contract Documents. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

5.4.2 DECISION OF ARCHITECT. Claims, including those alleging an error or omission by the Contractor, but excluding those alleging an error or omission by the Architect, shall be referred initially to the Architect for action as provided in Paragraph 5.5. A decision by the Architect, as provided in Subparagraph 5.5.4, shall be required as a condition precedent to arbitration or litigation of a Claim between the Contractor and Owner as to all such matters arising prior to the date final payment is due, regardless of (1) whether such matters relate to execution and progress of the Work or (2) the extent to which the Work has been completed. The decision by the Architect in response to a Claim shall not be a condition precedent to arbitration or litigation in the event (1) the position of Architect is vacant, (2) the Architect has not received evidence or has failed to render a decision within agreed time limits, (3) the Architect has failed to take action required under Subparagraph 5.5.4 within 30 days after the Claim is made, (4) 45 days have passed after the Claim has been referred to the Architect or (5) the Claim relates to a mechanic's lien.

5.4.3 TIME LIMITS ON CLAIMS. Claims by either party must be made within 7 days after occurrence of the event giving rise to such Claim or within 7 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made by written notice. No additional Claim will be made after the initial Claim has been implemented by Change Order and will not be considered.

5.4.4 CONTINUING CONTRACT PERFORMANCE. Pending final resolution of a Claim including arbitration, unless otherwise agreed in writing the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents, except for the amounts to be in dispute.

5.4.5 WAIVER OF CLAIMS; FINAL PAYMENT. The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

5.4.5.1 liens, Claims, security interests or encumbrances arising out of the Contract Documents and unsettled;

5.4.5.2 failure of the Work to comply with the requirements of the Contract Documents; or

5.4.5.3 terms of special warranties required by the Contract Documents.

5.4.6 CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS. If conditions are encountered at the Project site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 7 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, performance for any part of the Work, will recommend an equitable adjustment in the Contract Sum and/or Contract Time. If the Architect determines that the conditions at the Project site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 7 days after the Architect has given notice of the decision. If the Owner and Contractor cannot agree on an adjustment in the Contract Sum and/or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to Paragraph 5.5.

5.4.7 CLAIMS FOR ADDITIONAL COST. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work and such Claim shall be made and prosecuted in accordance with the terms of this Agreement. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 11.3.

5.4.8 CLAIMS FOR ADDITIONAL TIME. If the Contractor wishes to make a Claim for an increase in the Contract Time beyond Substantial Completion, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary. If adverse weather conditions are the basis for a Claim for an increase in the Contract Time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.

5.4.8.1 If the Contractor's performance of this Contract is delayed, which delay is beyond the reasonable control and without fault or negligence of the Contractor, or by changes ordered in the Work and that such delay or change in the Work impacts the CRITICAL PATH, then the Contract time shall be extended by Change Order as may be determined by the Contractor, Program Manager and Architect and agreed to by the Owner. Any extension of time agreed to, will be subject to the penalties pursuant to paragraph 2.3.6. Except for Force Majure, as permitted in this agreement, in Paragraph 9.1.3 (I through vi) in no event shall Substantial Completion extend beyond December 31, 2001.

5.4.8.2 The Contractor must request the extension of time in writing and must provide the following information within the time periods stated hereafter. Failure to submit such information and in compliance with the time requirements hereinafter stated, shall constitute a waiver by the Contractor and a denial of the claim for extension of time:

- (a) Nature of the delay or change in the Work;
- (b) Dates of commencement/cessation of the delay or change in the Work;
- (c) Activities on the current progress schedule affected by the delay or change in the Work;
- (d) Identification and demonstration that the delay or change in Work impacts the Critical Path;
- (e) Identification of the source of delay or change in the Work;
- (f) Anticipated impact extent of the delay or change in the Work; and
- (g) Recommended action to minimize the delay.

5.4.8.3 The Contractor shall not be entitled to any extensions of time for delays resulting from any cause unless it shall have notified the Owner, in writing, within five (5) working days after the commencement of such delay and, within ten (10) days of commencement of the delay provide, in writing, the information stated above.

5.4.9 INJURY OR DAMAGE TO PERSON OR PROPERTY. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 7 days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter.

## 5.5 RESOLUTION OF CLAIMS AND DISPUTES

5.5.1 The Architect will review Claims and take one or more of the following preliminary actions within ten days of receipt of a Claim: (i) request additional supporting data from the claimant, (ii) submit a schedule to the parties indicating when the Architect expects to take action, (iii) reject the Claim in whole or in part, stating reasons for rejection, (iv) recommend approval of the Claim by the other party or (v) suggest a compromise. The Architect may also, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim.

5.5.2 If a Claim has been resolved, the Architect will prepare or obtain appropriate documentation.

5.5.3 If a Claim has not been resolved, the party making the Claim shall, within ten days after the Architect's preliminary response, take one or more of the following actions: (i) submit

additional supporting data requested by the Architect, (ii) modify the initial Claim or (iii) reaffirm its initial Claim.

5.5.4 If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Architect, the Architect will notify the parties in writing that the Architect's decision will be made within seven days, which decision shall be final and binding on the parties but subject to arbitration. Upon expiration of such time period, the Architect will render to the parties the Architect's written decision relative to the Claim, including any change in the Contract Sum. If there is a surety and there appears to be a possibility of a Contractor's default, the Architect shall notify the surety and request the surety's assistance in resolving the controversy.

## 5.6 ARBITRATION

5.6.1 CONTROVERSIES AND CLAIMS SUBJECT TO ARBITRATION. Any controversy or Claim arising out of or related to the Contract, or the breach thereof, shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction thereof, except those waived as provided for in Subparagraph 5.4.5. Such controversies or Claims upon which the Architect has given notice and rendered a decision as provided in Subparagraph 5.5.4 shall be subject to arbitration upon written demand of either party. Arbitration may be commenced when 45 days have passed after a Claim has been referred to the Architect as provided in Paragraph 5.4 and no decision has been rendered.

5.6.2 RULES AND NOTICES FOR ARBITRATION. Claims between the Owner and Contractor not resolved under Paragraph 5.5 shall, if subject to arbitration under Subparagraph 5.6.1, be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect, unless the parties mutually agree otherwise. Notice of demand for arbitration shall be filed in writing with the other party to the Agreement between the Owner and Contractor and with the American Arbitration Association, and copies shall be filed with the Architect.

5.6.3 CONTRACT PERFORMANCE DURING ARBITRATION. During arbitration proceedings, the Owner and Contractor shall comply with Subparagraph 5.4.4.

5.6.4 WHEN ARBITRATION MAY BE DEMANDED. Demand for arbitration of any Claim may not be made until the earlier of (1) the date on which the Architect has rendered a final written decision on the Claim, (2) the tenth day after the parties have presented evidence to the Architect or have been given reasonable opportunity to do so, if the Architect has not rendered a final written decision by that date, or (3) the occurrence of any of the five events described in Subparagraph 5.4.2. A demand for arbitration shall be made before the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations. If the Architect renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence, but shall not supersede arbitration proceedings unless the decision is acceptable to all parties concerned.

5.6.5 LIMITATION ON CONSOLIDATION OR JOINDER. No arbitration arising out of or relating to the Contract Documents shall include, by consolidation or joinder or in any other manner, the Program Manager, the Architect, or the Program Manager's or Architect's employees or consultants,

except by written consent containing specific reference to the Agreement and signed by the Program Manager, Architect, Owner, Contractor and any other person or entity sought to be joined. No arbitration shall include, by consolidation or joinder or in any other manner, parties other than the Owner, Contractor, Other Contractors as described in Article 6 and other persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration. No persons or entities other than the Owner, Contractor or Other Contractors shall be included as an original third party or additional third party to an arbitration whose interest or responsibility is insubstantial. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a dispute not described therein or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

5.6.6 JUDGMENT ON FINAL AWARD. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

5.6.7 It shall be established that arbitration proceedings will be in Nashville, Tennessee.

#### ARTICLE 6 SUBCONTRACTORS

6.1 DEFINITIONS. A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the Project site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include Other Contractors or Subcontractors of Other Contractors. A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the Project site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

6.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK. Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Program Manager for review by the Owner, Program Manager and Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Program Manager will promptly reply to the Contractor in writing stating whether or not the Owner, Program Manager or Architect, after due investigation, has reasonable objection to any such proposed person or entity. The Contractor shall not contract with a proposed person or entity to whom the Owner, Program Manager or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection. If the Owner, Program Manager or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner, Program Manager or Architect has no reasonable objection. However, no increase in the Contract Sum shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required. The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner, Program Manager or Architect makes reasonable objection to such change.

6.2.1 Contractor shall obtain bids from all subcontractors and suppliers of materials or equipment fabricated especially for the Work. After receiving the bids, the Contractor shall analyze them and provide the Owner and Program Manager with a tally sheet reflecting the bids, including all supported data, and recommendations for awards. Along with its recommendations Contractor shall provide all pertinent data required for a decision upon the award, and certifying that, to the best of its knowledge, the bid of the recommended subcontractor or supplier is bona fide and reasonable. The Owner will then determine, based on the advice of the contractor and Program Manager, which bids will be accepted.

6.2.2 Contractor shall invite bids from and enter into contracts and material orders with only subcontractors and suppliers who have been approved by the Program Manager and the Owner. When the Program Manager and the Owner have determined to whom to award each subcontract and purchase order, Contractor shall contract solely in its own name and behalf, not in the name or behalf of the Program Manager and the Owner, with the specified subcontractor or supplier.

6.2.3 Contractor's subcontract form or forms shall be subject to approval of the Program Manager and the Owner and shall provide that the subcontractor perform its portion of the Work in accordance with all applicable provisions of the Contract Documents. All subcontracts shall, so far as practicable, contain unit prices and any other feasible formula for use and determination of the costs of changes in the Work.

6.3 SUBCONTRACTUAL RELATIONS. By appropriate written agreement, the contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor has to the Owner, Program Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Program Manager and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. The Contractor shall require each Subcontractor to enter into similar agreements with Sub-Subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-Subcontractors.

6.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS. Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that (i) assignment is effective only after termination of the Contract by the Owner for cause pursuant to Paragraph 14.2 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and (ii) assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

ARTICLE 7  
CONSTRUCTION BY OWNER OR BY



## OTHER CONTRACTORS

7.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD OTHER CONTRACTS. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own employees, agents or other Contractors, which may include persons or entities under separate contracts not administered by the Contractor. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided elsewhere in the Contract Documents.

7.2 MUTUAL RESPONSIBILITY.

7.2.1 The Contractor shall afford the Owner's agents, employees and subcontractors, Program Manager and Other Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with the operations of such parties as required by the Contract Documents.

7.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner's agents, employees and Other Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Program Manager and Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to report shall constitute an acknowledgment that such construction or operations is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

7.2.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

7.2.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or Other Contractors as provided in Subparagraph 11.2.5.

7.2.5 Claims and other disputes and matters in question between the Contractor and Other Contractors shall be subject to the provisions of Paragraph 5.5.

7.2.6 The Owner and Other Contractors shall have the same responsibilities for cutting and patching as are described for the Contractor in Paragraph 4.12.

7.3 OWNER'S RIGHT TO CLEAN UP. If a dispute arises among the Contractor, Other Contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Paragraph 4.13, the Owner may clean up and allocate the cost among those responsible as the Program Manager determines to be appropriate.

ARTICLE 8  
CHANGES IN THE WORK

8.1 CHANGES

8.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order (as defined below), Construction Change Directive (as defined below) or order for a minor change in the Work, subject to the limitations stated in this Article 8 and elsewhere in the Contract Documents.

8.1.2 A Change Order shall be based upon agreement among the Owner, Program Manager, Architect and Contractor; a Construction Change Directive requires agreement by the Owner, Program Manager and Architect and may or may not be agreed to by the Contractor; and an order for a minor change in the Work may be issued by the Architect alone.

8.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly to perform each such change, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

8.1.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted. No subcontracts or purchased orders shall be issued on a unit cost basis unless Contractor receives prior written authorization from the Owner.

8.2 CHANGE ORDERS.

8.2.1 A "Change Order" is a written instrument prepared by the Architect and signed by the Owner, Architect and Contractor, stating their agreement upon all of the following: (i) a change in the Work; and (ii) the amount of the adjustment in the Contract Sum or Contract Time, if any.

8.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Subparagraph 8.3.3.

8.3 CONSTRUCTION CHANGE DIRECTIVES.

8.3.1 A "Construction Change Directive" is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum. The Owner may, by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, with the Contract Sum or Contract Time being adjusted accordingly.

8.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

8.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

8.3.3.1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

8.3.3.2 unit prices stated in the Contract Documents or subsequently agreed upon;

8.3.3.3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

8.3.3.4 as provided in Subparagraph 8.3.6.

8.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Program Manager and Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

8.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum. Such agreement shall be effective immediately and shall be recorded as a Change Order.

8.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be recommended by the Program Manager on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum or Contract Time, a reasonable allowance for overhead and profit. In such case, and also under Clause 8.3.3.3, the Contractor shall keep and present, in such form as the Program Manager may prescribe, an itemized accounting together with appropriate supporting data. Costs for the purposes of this Subparagraph 8.3.6 shall be as listed below but not limited to the following:

8.3.6.1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers compensation insurance;

8.3.6.2 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

8.3.6.3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

8.3.6.4 costs of premiums for all bonds (if any) and insurance, permit fees, and sales, use or similar taxes related to the Work; and

8.3.7 Pending final determination of cost to the Owner, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Program Manager. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change, but only after the total changes to the

base GMP exceeds 3%, and thereafter the Contractor will be allowed to add 5% to changes after reaching the 3% threshold, excluding OCIP and Subguard credits.

8.3.8 If the Owner and Contractor do not agree with the adjustment in Contract Sum or the method for determining it, the adjustment or the method shall be referred to the Architect for determination.

8.3.9 When the Owner and Contractor agree with the determination made by the Architect concerning the adjustments in the Contract Sum or Contract Time otherwise reach agreement upon the adjustments, such agreement shall be effective immediately issued through the Architect and shall be recorded by preparation and execution of an appropriate Change Order.

8.4 MINOR CHANGES IN THE WORK. The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order issued to the Owner and Contractor through the Architect and shall be binding on the Owner and Contractor unless the Owner objects to such change. The Contractor shall carry out such written orders promptly.

## ARTICLE 9 TIME

### 9.1 PROGRESS AND COMPLETION.

9.1.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing this Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

9.1.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the Project site or elsewhere prior to the effective date of insurance required by this Agreement to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance, however. The date of commencement of the work shall be July 26, 1999.

9.1.3 The Contractor warrants that it will achieve Substantial Completion of the Work on or before (the "Substantial Completion Date") December 1, 2001. the Contractor shall not be allowed any extension of the Substantial Completion Date except for delays due to (i) natural disasters, (ii) fires or unavoidable casualties, (iii) national emergencies, (iv) more than thirty (30) days of severe weather (as verified and agreed to in writing by Owner and Contractor), (v) Owner caused delays (as verified and agreed to in writing by Owner and contractor), or (vi) delays in inspections by fire department and/or building inspectors, assuming all necessary filings have been timely made and the construction has been completed in accordance with the Plans and Specifications, which prevent construction activities on the critical path to achieving the Substantial Completion Date. For each working day in which one of these events prevents construction activities critical to the Substantial Completion Date, the Substantial Completion date shall be extended as mutually agreeable between the Owner and Contractor. Except for Force Majure, as permitted in this agreement, in Paragraph 9.1.3 (I through vi) , in no event shall the Contractor be allowed to extend the Substantial Completion date beyond December 31, 2001.

9.1.4 The Substantial Completion Date may be modified by Owner and Contractor in the event of a change in the scope of the Work if agreed to in writing at the time of the change in the scope of the Work.

9.1.5 The Contractor shall achieve Substantial Completion within the Contract Time.

## 9.2 DELAYS AND EXTENSIONS OF TIME.

9.2.1 If the Contractor is delayed at any time in progress of the Work by an act or neglect of the Owner's agents, employees and Contractors, Program Manager, Architect, any of the Other Contractors or an employee of any of them, or by changes ordered in the Work, fire, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending arbitration, or by other causes which the Architect, based on the recommendation of the Program Manager, determines may justify delay, then the Contract Time shall be extended by Change Order for such time as the Owner may reasonably determine.

9.2.2 Claims relating to time shall be made in accordance with applicable provisions of Paragraph 5.5. This Paragraph 9.2 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

## ARTICLE 10 PAYMENTS AND COMPLETION

10.1 GMP. The GMP, including authorized adjustments as provided in this Agreement, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

10.2 SCHEDULE OF VALUES. Before the first Application for Payment, the Contractor shall submit to the Architect, and the Program Manager, a schedule of values allocated to various portions of the Work (the "Schedule of Values"), prepared in such form and supported by such data to substantiate its accuracy as the Program Manager and Architect may require. This schedule, unless objected to by the Program Manager or Architect, and upon approval by Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

10.2.1 Within thirty (30) days following the Contractor's receipt of written Notice to Proceed, in any event before the first Progress Payment is made, the Contractor shall submit to the Program Manager and Architect and obtain approval of the following data:

10.2.1.1 A payment application format based upon the Trade Payment Breakdown to include the following information:

- (a) Each line item shall be broken down by subcontractor, trade and work activity;
- (b) Each line item shall be broken down by area, floor or building;
- (c) No application line item will be more than fifteen percent (15%) of the total Contract or Subcontractor total Contract amount unless waived by Owner;

- (d) Each line item shall be broken down by material and labor;
- (e) Subcontractor and vendor payment applications;
- (f) Certified payrolls (used to determine OCIP credits);
- (g) Lien releases substantiating the previous application for payment, including material vendors and lower tier Subcontractors that comply with the then-current provisions of the Florida Statutes;
- (h) Any other evidence of performance of the Work, the costs of and payment for as the Owner may consider necessary or desirable in order to complete the application for payment.

10.2.1.2 A Cash Flow Schedule that forecasts the total monthly cash requirements for the duration of the Contract period.

10.2.1.2(A) Thereafter, the Contractor shall resubmit an update of the Cash Flow Schedule on a monthly basis. Approval of each Payment Request is contingent upon this submittal.

### 10.3 APPLICATIONS FOR PAYMENT.

10.3.1 At least fifteen days before the date established for each progress payment, the Contractor shall submit to the Program Manager and Architect an itemized "Application for Payment" completed in accordance with the Schedule of Values. Such application shall be notarized and supported by such data substantiating the Contractor's right to payment as the Owner, Program Manager or Architect may require, such as copies of requisitions from Subcontractors and material suppliers and reflecting retainage.

10.3.1.1 Such applications shall include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives but not yet included in Change Orders.

10.3.1.2 Such applications shall not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.

10.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the Project site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the Project site at a location agreed upon in writing. Payment for materials and equipment stored on or off the Project site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, as itemized below.

- (a) The Owner approves the purchase of the material prior to purchase by the Contractor.

- (b) An applicable purchase order is provided listing the materials in detail and identifying this specific contract; by name.
- (c) Evidence that proper storage security is provided.
- (d) The Owner is furnished legal title (free of liens or encumbrances of any kind) to the material that is stored or stockpiled.
- (e) Any off-site stored material shall be secured in a bonded warehouse.
- (f) Once any Stored Material is paid for by Owner, it shall not be removed from the designated storage area except for incorporation into the work or upon subsequent approval of the Owner.
- (g) No disbursements or applications for disbursements stored at locations other than the Project, unless otherwise approved in writing by the Owner.

10.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, materialmen, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work or otherwise make a claim by or through Contractor.

#### 10.4 CERTIFICATES FOR PAYMENT.

10.4.1 The Contractor will assemble a Project Application for Payment by combining the applications for progress payments from Sub Contractors suppliers and vendors and, after certifying the amounts due on such applications, forward them to the Program Manager and Architect no later than the first day of each month.

10.4.2 Within seven days after the Program Manager and Architect's receipt of the Project Application for Payment, the Architect will either issue to the Owner a certificate, with a copy to the Contractor, for such amount as the Architect determines is properly due (each, a "Certificate for Payment"), or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Subparagraph 10.5.1. Such notification will be forwarded to the Contractor by the Program Manager.

10.4.3 The issuance of a separate Certificate for Payment or a Project Certificate for Payment will constitute representations made separately by the Architect to the Owner, based on their individual observations at the Project site and the data comprising the Application for Payment submitted by the Contractor, that the Work has progressed to the point indicated and that, to the best of the Program Manager's and Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The issuance of a separate Certificate for Payment or a Project Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a separate Certificate for Payment

or a Project Certificate for Payment will not be a representation that the Program Manager or Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed the Contractor's construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

10.4.4 No approval of an Application for Payment, progress payment or any partial or entire use or occupancy of the Project by the Owner will constitute an acceptance of any Work which is not in accordance with the Contract Documents; and regardless of approval of an Application for Payment by the Owner, Contractor will remain totally obligated and liable for the performance of the Work in strict compliance with the Contract Documents.

#### 10.5 DECISIONS TO WITHHOLD CERTIFICATION.

10.5.1 The Architect may decide not to certify payment and may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Program Manager's or Architect's opinion the representations to the Owner required by Subparagraph 10.4.3 cannot be made. If the Program Manager or Architect is unable to certify payment in the amount of the Application, the Program Manager or Architect will notify the Contractor and Owner as provided in Subparagraph 10.4.2. If the Contractor, Program Manager and Architect cannot agree on a revised amount, the Program Manager and Architect will promptly issue a Certificate for Payment for the amount for which the Program Manager and Architect are able to make such representations to the Owner. The Program Manager or Architect may also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Program Manager's or Architect's opinion to protect the Owner from loss because of:

10.5.1.1 defective Work not remedied;

10.5.1.2 third party claims filed or reasonable evidence indicating probable filing of such claims;

10.5.1.3 failure of the Contractor to make payments properly to Subcontractors of any tier or for labor, materials or equipment;

10.5.1.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

10.5.1.5 damage to the Owner, surrounding property or Other Contractors;

10.5.1.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

10.5.1.7 persistent failure to carry out the Work in accordance with the Contract Documents.



10.5.1.8 Unsatisfactory prosecution of the Work by Contractor;

10.5.1.9 failure of Contractor to maintain the Job Site in a clean condition;

10.5.1.10 failure of Contractor to submit an updated Schedule with each application for payment.

10.5.1.11 Failure of Contractor to remove liens from the property.

10.5.2 When the applicable reason(s) for withholding certification have been resolved, certification will be made for amounts previously withheld.

#### 10.6 PROGRESS PAYMENTS.

10.6.1 After the Architect or Program Manager have issued a Project Certificate for Payment, the Owner shall make payment in the manner and within the time provided in Article 2, and shall so notify the Program Manager and Architect.

10.6.2 Upon receipt of payment from the Owner, the Contractor shall promptly pay each Subcontractor, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-Subcontractors in similar manner.

10.6.3 The Contractor will, on request, of the Program Manager, furnish to a Subcontractor, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Owner, Program Manager and Architect on account of portions of the Work done by such Subcontractor.

10.6.4 Neither the Owner, Program Manager nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

10.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 10.6.2, 10.6.3 and 10.6.4.

10.7 FAILURE OF PAYMENT. If, through no fault of the Contractor, (i) the Architect does not within fourteen days after the receipt of the Contractor's Application for Payment either (A) issue a Certificate of Payment, or (B) notify the Contractor of a decision to withhold certification or (ii) the Owner does not pay the Contractor within seven (7) days after the date established in Article 2 the amount certified by the Architect or awarded by arbitration, then the Contractor may, upon seven (7) additional days' written notice to the Owner, Program Manager and Architect, file an arbitration demand for the payment in dispute.

#### 10.8 SUBSTANTIAL COMPLETION.

10.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the

Owner can occupy or utilize the Work for its intended use, and that the permitting governmental agency shall issue a certificate of occupancy for the building as a whole, including landscaping.

10.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor, Program Manager shall jointly prepare and submit to the Architect a comprehensive list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the list, the Architect, assisted by the Program Manager, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the list, which is not in accordance with the requirements of the Contract Documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. The Contractor shall then submit a request for another inspection by the Architect, assisted by the Program Manager, to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

10.8.3 The issuance of the Certificate of Substantial Completion will not constitute a waiver of any rights of the Owner, including without limitation the right to those retainages permitted by the contract Documents. If Contractor does not complete and/or correct the "punch-list" items listed in the Certificate of Substantial Completion within the time agreed to by the Owner and Contractor (not to exceed 30 days), the Owner will have the right to complete the punch-list and offset all costs against any amounts then or thereafter due to Contractor. If the amounts then or thereafter due to Contractor are not sufficient to cover these costs, Contractor will pay the difference to the Owner. The Owner's decision as to the Date of Substantial Completion will be final and binding.

10.8.4 Before requesting inspection for Certification of Substantial Completion, Contractor shall complete the following.

10.8.4.1 Advise the Owner of pending insurance changeover requirements.

10.8.4.2 Submit specific warranties, workmanship bonds, maintenance agreements, final certifications and similar documents.

10.8.4.3 Obtain and submit releases enabling the Owner unrestricted use of the Work, and access to services and utilities; including occupancy permits, operating certificates and similar releases.

10.8.4.4 Submit record drawings, maintenance manuals, final Project photographs, damage or settlement survey, property survey, and similar final record information.

10.8.4.5 Deliver tools, spare parts, extra stock or similar items.

10.8.4.6 Make final changeover of permanent locks and transmit keys to the Owner. Advise the Owner's personnel of changeover and security provisions.

10.8.4.7 Complete startup testing of systems, and instruction of the Owner's operating and maintenance personnel. Discontinue changeover and remove temporary facilities from the site along with construction tools, mockups and similar elements.

10.8.4.8 Complete final cleanup requirements, including touchup painting, and otherwise repair and restore marred, exposed finishes.

#### 10.9 PARTIAL OCCUPANCY OR USE.

10.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Subparagraph 12.2.10 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor and Program Manager and Architect shall jointly prepare and submit a list to the Architect as provided under Subparagraph 10.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect after consultation with the Program Manager.

10.9.2 Immediately prior to such partial occupancy or use, the Owner, Program Manager, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

10.9.3 Partial occupancy will not constitute acceptance by the Owner of the completed Work or any portion of the Work, will not relieve Contractor of its full responsibility for correcting defective Work and repairing the Work, will not be considered to be the equivalent of completion of the Work, and will not entitle Contractor to any increase in the Contract Sum.

#### 10.10 FINAL COMPLETION AND FINAL PAYMENT.

10.10.1 Upon completion of the Work, the Contractor shall forward to the Program Manager a written notice that the Work is ready for final inspection and acceptance and shall also forward to the Program Manager and Architect a final Application for Payment. Upon receipt, the Program Manager will review and make recommendations to the Architect forward the notice and Application for Payment to the Architect who will promptly make such inspection. When the Architect, based on the recommendation of the Program Manager, finds the Work acceptable under the Contract Documents and the Contract fully performed, the Program Manager and Architect will promptly issue a final Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their observations and inspections, the work has been completed in

accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in said final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 10.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

10.10.2 Neither final payment nor any remaining retainage shall become due until the Contractor submits to the Architect through the Program Manager (i) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (ii) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (iii) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (iv) consent of surety, if any, to final payment and (v), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

10.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Program Manager and Architect so confirm, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect through the Program Manager prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims. The making of final payment shall constitute a waiver of Claims by the Owner as provided in Subparagraph 5.4.5.

10.10.4 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

#### 10.10.5 Construction Liens.

10.10.5.1 Contractor will indemnify and hold the Owner harmless from all claims, demands, causes of action or suits of whatever nature arising out of any construction liens, equitable lien or other liens or claims, pursuant to Florida Lien Laws, against the real property improved as part of the Work under the Agreement whether filed or maintained by any Subcontractor of any tier, materialman or any party other than Contractor providing materials or services under the Agreement.

10.10.5.2 Within seven (7) days after demand by the Owner, Contractor will furnish a release or waiver of lien acceptable to the Owner, from itself, and of any other person furnishing services, labor or materials in connection with the Work or receipts covering all service, labor and materials for which a lien might be filed. But, if any Subcontractor, laborer, materialman, or other person refused to furnish a release, waiver or receipt in full, Contractor may furnish at its expense a bond satisfactory to the Owner to indemnify the Owner against any claim or lien, filed pursuant to the Florida Lien Laws.

10.10.6 Audit/Records Retention. The Owner will have the right to audit all of Contractor's books and records pertaining to the Work (including but not limited to payments to Subcontractors of any tier and changes in the Work) at any time and from time to time during regular business hours, upon reasonable prior notice to Contractor. Contractor will keep, retain and preserve all such books and records in reasonable order, in accordance with all applicable Federal, State and local agencies rules, regulations and guidelines, or for a minimum of five (5) years from the date of the final payment.

10.10.7 Contractor's records which shall include but not be limited to accounting records (hard copy, as well as computer readable data if it can be made available), written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other supporting evidence deemed necessary by the Owner to substantiate charges related to this Contract (all of the foregoing hereinafter referred to as "records") shall be open to inspection and subject to audit and/or reproduction by Owner or Owner's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of (a) Contractor compliance with Contract requirements, (b) compliance with Owner's business ethics change orders, payments or claims submitted by the Contractor or any of its payees. Such audits may require inspection and copying from time to time and at reasonable times and places and character including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in Owner's judgment have any bearing on or pertain to any matters, rights duties or obligations under or covered by any contract Document. Such records subject to audit shall also include but not be limited to, those records necessary to evaluate and verify direct and indirect costs, (including overhead allocations) as they may apply to costs associated with this Contract. The Owner or its designee shall be afforded access to all of the Contractor's records, and shall be allowed to interview any of the Contractor's records, and shall be allowed to interview any of the Contractor's employees, pursuant to the provisions of this paragraph throughout the term of this contract and for a period of three years after final payment or longer if required by law. Contractor shall require all subcontractors, insurance agents, and material suppliers (payees) to comply with the provisions of this paragraph by insertion of the requirements hereof in a written contract between Contractor and such payee.

ARTICLE 11  
PROTECTION OF PERSONS AND PROPERTY

11.1 SAFETY PRECAUTIONS AND PROGRAMS.

11.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Program Manager and OCIP representative for review and coordination with the safety programs of Other Contractors.

11.1.2 If the Contractor encounters on the Project site material reasonably believed to be asbestos or polychlorinated biphenyl's ("PCB's"), the Contractor shall immediately stop Work in the area affected and report the condition to the Owner, Program Manager and Architect in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or PCB's and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or PCB's, or when it has been rendered harmless, by written agreement of the Owner and Contractor, or in accordance with final determination by the Architect on which arbitration has not been demanded, or by arbitration under Article 5.

11.1.3 The Contractor shall not be required pursuant to Article 8 to perform without consent any Work relating to asbestos or PCB's.

11.1.4 To the fullest extent permitted by law the Owner shall indemnify and hold harmless the Contractor, Program Manager, Architect, their consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material is asbestos or PCB's and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Owner, anyone directly or indirectly employed by the Owner or anyone for whose acts the Owner may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity, which would otherwise exist as to a party or person described in this Subparagraph 11.1.4.

11.1.5 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered on the Project site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner, Program Manager and Architect in writing. The Owner, Contractor, Program Manager and Architect shall then proceed in the same manner described in Subparagraph 11.1.2.

11.1.6 The Owner shall be responsible for obtaining the services of a licensed laboratory to verify a presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless.

## 11.2 SAFETY OF PERSONS AND PROPERTY.

11.2.1 The Contractor shall take precautions for safety of, and shall provide protection in accordance with Federal, State and Local safety regulations to prevent damage, injury or loss to:

11.2.1.1 employees engaging in the Work and other persons who may be affected thereby;

11.2.1.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the Project site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors;

11.2.1.3 other property at the Project site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and

11.2.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

11.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

11.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

11.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Clauses 11.2.1.2, 11.2.1.3 and 11.2.1.4 to the extent caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Clauses 11.2.1.2, 11.2.1.3 and 11.2.1.4, except damage or loss attributable to acts or omissions of the Owner, Program Manager or Architect or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 4.16.

11.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the Project site whose sole duty shall be the prevention of accidents, safety inspections and safety reporting. This person shall not be the Contractor's superintendent and shall be a full time designated and trained Safety Officer. The Contractor Safety representative shall coordinate with and work closely with the Owner's OCIP on site representative to insure compliance with the safety program and OCIP requirements.

11.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

11.2.8 "Florida Trench Safety Act" Contractor intends to utilize construction methods that will involve trench excavation in excess of five (5) feet which, therefore, is subject to the "Florida

Trench Safety Act." Contractor warrants that it is familiar with the requirements of the Act and Occupational Safety and Health Administration safety standards, 29 CFR 1926.650, Subpart P, as they apply to the Work to be performed under the contract and that the methods Contractor will employ to accomplish the Work will comply with those requirements. The Contractor hereby warrants that \$\_\_\_\_\_ are included in the GMP to meet the requirements of the "Florida Trench Safety Act."

11.3 EMERGENCIES. In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 5.5 and Article 8.

## ARTICLE 12 INSURANCE AND BONDS

### OWNER CONTROLLED INSURANCE PROGRAM (ARTICLE 12)

Gaylord Entertainment Company, the parent of Opryland Hotel - Florida L.P., has elected to implement an Owner Controlled Insurance Program (OCIP) that will provide Workers' Compensation, Employer's Liability, General Liability, and Excess Liability for all enrolled contractors of every tier providing direct labor on the Project. The Owner agrees to pay all premiums associated with the OCIP including deductibles or self-insured retention unless otherwise stated in the Contract Documents.

Eligible contractors include all contractors providing direct labor on the Project site (see definition of ineligible contractors below). Temporary labor services and leasing companies are to be treated as a contractor.

#### 12.1 APPLICABILITY OF THE OCIP

The following types of contractors (hereinafter called ineligible contractors) shall not be eligible for coverage in the OCIP: Consultants, suppliers, vendors, materials dealers, guard services, janitorial services, truckers (including trucking to the Project where delivery is the only scope work performed), and other contractors as determined by the Owner. Ineligible contractors shall be required to maintain their own insurance of the types and with the limits as set forth in the Article 12, at their own expense, and shall promptly furnish the Owner, or its designated representative, certificates of insurance giving evidence that all required insurance is in force.

#### 12.2 IDENTIFICATION OF GENERAL CONTRACTOR AND SUBCONTRACTOR INSURANCE COSTS

General Contractor shall identify all costs associated with the cost of insurance for all work, including but not limited to insurance premiums, expected losses within any retention or deductible program, overhead and profit, using Form 2 (Insurance Cost Identification Worksheet). By completing and submitting this insurance cost information, including supporting documents to the Insurance Administrator, contractor warrants that all cost for insurance as described in this paragraph have been correctly identified. Coverage and limit requirements are:

(1) WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE:

STATUTORY BENEFITS as provided by state statute; and  
EMPLOYER'S LIABILITY LIMITS:



- (a) \$1,000,000 Bodily Injury each Accident
- (b) \$1,000,000 Bodily Injury by Disease - Policy Limit
- (c) \$1,000,000 Bodily Injury by Disease - Each Employee

(2) COMMERCIAL OR GENERAL LIABILITY INSURANCE:

- (a) \$2,000,000 Bodily Injury & Property Damage for Each Occurrence
- (b) \$2,000,000 Products/Completed Operations Aggregate
- (c) \$4,000,000 General Aggregate
- (d) \$1,000,000 Personal & Advertising Injury
- (e) \$50,000 Fire Damage
- (f) \$5,000 Medical Expense

Coverages should include but not limited to the following supplementary coverages:

- (i) Contractual Liability to cover liability assumed under this agreement,
- (ii) Product and Completed Operations Liability Insurance,
- (iii) Broad Form Property Damage Liability Insurance,
- (iv) Explosion, collapse and underground hazards (deletion of the X,C,U exclusions) if such exposure exist, and Independent Contractors.
- (v) Such policy shall include all of the coverages which may be included in coverages A, B and C contained in the Commercial General Liability Policy, without deletion. Such policy must be issued upon an "occurrence" basis, as distinguished from a "claims made" basis.

(3) EXCESS (UMBRELLA) INSURANCE:

- (a) Limits of Liability:
  - i. \$10,000,000 Per Occurrence
  - ii. \$10,000,000 General Aggregate
- (b) Coverages and Terms:
  - i. Occurrence Policies
  - ii. Excess of General Liability
  - iii. Excess of Employer's Liability
  - iv. Excess of Completed Operations

12.3 SUBCONTRACTOR INSURANCE LIMITS

General Contractor agrees to require its subcontractors to identify all costs associated with the cost of insurance for all subcontracted work, including but not limited to insurance premiums, expected losses within any retention or deductible program, overhead and profit, using the Owner Form 2 (Insurance Cost Identification Worksheet). By completing and submitting this insurance cost information, including supporting documents to the Owner, General Contractor and its subcontractor(s) agrees that the all cost for subcontractor insurance as described in this paragraph have been correctly identified. For the purpose of

calculating subcontractor insurance deductions, the contractor shall cause the subcontractor to base its deduction on the following limits:

- Workers' Compensation: Statutory Limits  
Employer's Liability:
- (a) \$500,000 Bodily Injury each Accident
  - (b) \$500,000 Bodily Injury by Disease - Policy Limit
  - (c) \$500,000 Bodily Injury by Disease - Each Employee
- Commercial General Liability Insurance:
- (d) \$1,000,000 Bodily Injury & Property Damage for Each Occurrence
  - (e) \$1,000,000 Products/Completed Operations Aggregate
  - (f) \$1,000,000 General Aggregate
  - (g) \$1,000,000 Personal & Advertising Injury

It is understood and agreed, insurance cost identified on Form 2, is an initial estimate only. The final insurance cost will be subject to review and audit of actual insurance policy(ies) rate information, actual payrolls and revenues for the initial award plus any additive amendments. The Owner contract award will be based on the total estimated cost of work including insurance costs. An initial deductive change order will be processed to transfer the insurance cost into the Project insurance program. During the term of contractor's contract, including extended periods thereof, the Owner shall have the right to recover all costs for insurance as described in paragraph 12.2 that are in addition to those initially identified by contractor in the initial deductive change order. The Owner shall have the right to recover these additional costs through deductive change orders.

Contractors of every tier shall complete and submit Form 2 to the Insurance Administrator, and shall also provide a copy of the declaration page(s) and premium rate page(s) for each policy to the Insurance Administrator. Contractor shall provide all necessary information for the Owner to determine the accuracy of each contractor's cost of insurance as identified on Form 2.

#### 12.4 CHANGE ORDER PRICING

Contractor shall price, and shall require that all enrolled contractors price change order pricing equal to or greater than ten thousand dollars (\$10,000) to include the cost to provide insurance as specified in Paragraph 12.3, and shall identify the amount of insurance contained in the change order proposal using Form 3. Contractor's price shall be adjusted by removing the cost of insurance as identified on Form 3. the Owner shall have the right to recover these additional costs through deductive change orders

#### 12.5 CONTRACTOR'S RESPONSIBILITY FOR ITS SUBCONTRACTORS.

The awarding contractor shall require each of its subcontractors to identify the cost for the coverage associated with the work performed for or on behalf of the awarding contractor as outlined in this agreement using the methods and documents described herein.

The awarding contractor shall include all of the provisions of this agreement in every subcontract so that such provisions will be binding upon each of its subcontractors.

#### 12.6 AUDIT AND RECOVERY OF "INSURANCE COST"

For insurance purposes, the Contractors of every tier agree, and shall require all tiers of subcontractors to agree, to keep and maintain accurate and certified record of its payroll for operation at the Project site. Contractor further agrees, and will require all tiers of subcontractors to agree, to furnish to the Insurance Administrator, full and accurate payroll data and information in accordance with the requirements of the OCIP Project Insurance Manual, incorporated herein by this reference. All contractors shall permit the Owner or its representative to examine and/or audit its books and records. Contractor shall also provide any additional information to the Owner or its appointed representatives as may be required. During the term of the contractor's contract including extended periods thereof, the Owner shall have the right to adjust the contract price to reflect the cost of the Contractor's insurance costs had the Owner not implemented an OCIP.

#### 12.7 OWNER -PROVIDED COVERAGES

The Owner, at its sole expense, has implemented an Owner Controlled Insurance Program (OCIP) to furnish certain insurance coverages with respects to on-site activities. The OCIP will be for the benefit of the Owner and enrolled contractors of all tiers (unless specifically excluded) who have on-site employees. Such coverage applies only to work performed under this contract at the Project Site. Enrolled contractors must provide their own insurance for off-site activities.

The OCIP policies are available for review by the contractor upon request to the Owner. The terms of such policies or programs, as such policies or programs may be from time to time amended, are incorporated herein by reference. The contractor hereby agrees to be bound by the terms of coverage as contained in such insurance policies and/or self-insurance programs.

Through a combination of insured and self-insured insurance programs the Owner, at its sole expense, will provide and maintain in force the types of insurance listed in subparagraphs (1) through (4) below as a part of the OCIP for all approved contractors. Contractors enrolled in the OCIP agree that the insurance company policy limits of liability, coverage terms and conditions shall determine the scope of coverage provided by the OCIP. Contractors agree that the purpose of this section is to provide a general understanding of the coverage provided by the OCIP.

- (1) WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE will be provided in accordance with applicable State laws. Limits of Liability and coverages will be as follows:
- (a) Workers' Compensation - Applicable State Statutory Benefits
  - (b) Employer's Liability
    - (i) \$1,000,000 Bodily Injury each Accident
    - (ii) \$1,000,000 Bodily Injury by Disease - Policy Limit
    - (iii) \$1,000,000 Bodily Injury by Disease - Each Employee
- (2) COMMERCIAL GENERAL LIABILITY INSURANCE will be provided on an "occurrence" form under a master liability policy with the following Limits of Liability, Coverages, and Terms:
- (a) Limit of Liability:
    - \$2,000,000 Per any occurrence
    - \$4,000,000 General Aggregate
    - \$6,000,000 Completed Operations Aggregate

- (b) Coverage and Terms:
- i. Occurrence Basis;
  - ii. Products;
  - iii. Contractual Liability specifically designating the indemnity provision of this agreement as an insured contract;
  - iv. Completed Operations (Five Year Term);
  - v. Independent Contractor's Liability;
  - vi. Personal Injury;
  - vii. Explosion, Collapse, and Underground (X, C, U) exclusion deleted; and
  - viii. Designated Premises Only.
- (3) EXCESS LIABILITY INSURANCE will be provided under a master liability policy with Limits of Liability, Coverages, and Terms as follows:
- (a) Limits of Liability:
- i. \$25,000,000 Any one occurrence and general aggregate annually; and
  - ii. \$25,000,000 Annual Aggregate Products and completed Operations.
- (b) Coverages and Terms:
- i. Excess of General Liability
  - ii. Excess of Employer's Liability
  - iii. Completed Operations (Five Year Term)

#### 12.8 OCIP CERTIFICATES AND POLICIES

The Owner provided insurance coverage outlined above shall be either written by insurance companies or shall be self-insured. The Owner, through the Insurance Administrator, shall provide all contractor(s) with appropriate certificates of insurance or self-insurance evidencing the coverage outlined above.

#### 12.9 TERMINATION/MODIFICATION OF THE OCIP

The Owner reserves the right to terminate or to modify the OCIP or any portion thereof. To exercise this right, the Owner shall provide thirty (30) days advance written notice of termination or material modification to all contractor(s) covered by the OCIP. The contractor shall promptly obtain appropriate replacement insurance coverage acceptable to the Owner. The reasonable cost of such replacement insurance will be reimbursed by the Owner. Written evidence of such insurance shall be provided to the Owner prior to the effective date of the termination or modification of the OCIP.

#### 12.10 CONTRACTOR RESPONSIBILITIES

The contractor is required to cooperate with the Owner and the Insurance Administrator, with regards to the administration and operation of the OCIP. The contractor's responsibilities shall include, but not be limited to:

- (1) Compliance with the Contractor Insurance Manual outlining the administrative procedures required of the contractors;

- (2) Provision of necessary contract, operations and insurance information;
- (3) Immediately notifying the Insurance Administrator of all contractors upon award on the Owner Form-1. Furnish all new subcontractors the Contractor Insurance Manual;
- (4) Maintenance and provision of monthly payroll records and other records as necessary for premium computation;
- (5) Cooperation with any insurance company or the Insurance Administrator with respect to requests for claims, payroll or other information required under the program;
- (6) Immediately notifying the Insurance Administrator that any contractor-Provided Coverages have been canceled, materially changed, or not been renewed; and,
- (7) Complete the following administrative forms within the time frames specified:
  - (a) Form 1 -- Upon execution of the (Subcontractor) contract;
  - (b) Form 2 -- Upon execution of a (Subcontractor) contract;
  - (c) Monthly Payroll Record -- Within 10 days after the last day of each month; and,
  - (d) Notice of Completion -- Upon completion of all work being performed under the contract.

#### 12.11 ASSIGNMENT OF RETURN PREMIUMS

The Owner will be responsible for the payment of all premiums associated solely with the OCIP and will be the sole recipient of any dividend(s) and/or return premium(s) generated by the OCIP. In consideration of the Owner provision of said coverages the contractor(s) agree to:

- (1) Identify all applicable insurance costs in their contract price, and cooperate with the Insurance Administrator in the confirmation of the contractor's insurance cost.
- (2) Irrevocably assign to and for the benefit of the Owner, all return premiums, premium refunds, premium discounts, dividends, retentions, credits, and any other monies due the Owner in connection with the insurance which herein agrees to provide.

#### 12.12 CONTRACTOR-PROVIDED COVERAGES.

For any work under this contract, and until completion and final acceptance of the work ALL INELIGIBLE CONTRACTORS/SUBCONTRACTORS AS DEFINED IN PARAGRAPH 12.1 of this document shall provide certificates of insurance giving evidence that the following coverages are in force. The Project site should be shown on the certificate and the Owner, Contractor and their directors; officers, representatives, agents and employees shall be endorsed as Additional Insureds, ATIMA (As Their Interest may appear) on the Commercial General Liability Policy and Automobile Policy.

For any work under this contract, and until completion and final acceptance of the work, ALL ELIGIBLE SUBCONTRACTORS, at their own expense, shall promptly furnish to the Insurance Administrator, certificates of insurance giving evidence that the following coverages are in force:

(1) AUTOMOBILE LIABILITY INSURANCE:

Contractor must provide the limits of liability:

Comprehensive Automobile Liability Insurance to cover all vehicles owned by, hired by or used on behalf of the contractor, with minimum combined single limit that shall not be less than \$1,000,000 each accident.

Gaylord Entertainment Company and its directors; officers, representatives, agents and employees shall be added as Additional Insureds, ATIMA (As Their Interest may appear).

(2) WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE (OFF-SITE ACTIVITIES):

Statutory Limits with All States Endorsement and minimum Employer's Liability Limits will be provided as follows:

- (a) \$500,000 Bodily Injury with Accident - Each Accident;
- (b) \$500,000 Bodily Injury by Disease - Policy Limit
- (c) \$500,000 Bodily Injury by Disease - Each Employee; and
- (d) The policy will be endorsed to exclude the Gaylord Entertainment Company Project site.

3) COMMERCIAL GENERAL LIABILITY INSURANCE (OFF-SITE ACTIVITIES):

- (a) \$1,000,000 Bodily Injury & Property Damage for Each Occurrence
- (b) \$1,000,000 Products/Completed Operations Aggregate
- (c) \$2,000,000 General Aggregate
- (d) \$1,000,000 Personal & Advertising Injury
- (e) \$50,000 Fire Damage
- (f) \$5,000 Medical Expense
- (g) Shall include the following:
  - i. Occurrence Basis;
  - ii. Premises operations;
  - iii. Contractual Liability;
  - iv. Products/Completed Operations;
  - v. Broad Form Property Damage; and
  - vi. Independent Contractors.
  - vii. Such policy shall include all of the coverages which may be included in coverages A, B and C contained in the Standard Texas Form Commercial General Liability Policy, without deletion. Such policy must be issued upon an "occurrence" basis, as distinguished from a "claims made" basis.
- (h) The policy will be endorsed to exclude Gaylord Entertainment Company Project Site.

(4) EXCESS (UMBRELLA) INSURANCE (OFF-SITE ACTIVITIES):

## (h) Limits of Liability:

CONTRACT SUM	MINIMUM LIMIT REQUIRED (PER OCCURRENCE/AGGREGATE)
Up to \$2,499,999	\$1,000,000
\$2,500,000 - \$4,99,999	\$2,000,000
\$5,000,000 - \$7,499,999	\$3,000,000
\$7,500,000 and over	\$4,000,000

## (i) Coverages and Terms: Follow form of Primary Policies

If the contractor chooses to have such a policy endorsed to recognize the NEISD Project Site during the construction period, coverage should be Excess and/or DIC of the OCIP. This shall not reduce the cost identification requirement in paragraph 12.2.

## (5) SUBCONTRACTOR INSURANCE LIMITS:

For the purpose of calculating subcontractor insurance deductions, the contractor shall cause the subcontractor to base its deduction on the following limits:

## WORKERS' COMPENSATION (OFF-SITE): Statutory Limits

## EMPLOYER'S LIABILITY (OFF-SITE):

- (a) \$100,000 Bodily Injury each Accident
- (b) \$100,000 Bodily Injury by Disease - Policy Limit
- (c) \$100,000 Bodily Injury by Disease - Each Employee

## COMMERCIAL GENERAL LIABILITY INSURANCE (OFF-SITE):

- (a) \$500,000 Bodily Injury & Property Damage for Each Occurrence
- (b) \$500,000 Products/Completed Operations Aggregate
- (c) \$500,000 General Aggregate
- (d) \$500,000 Personal & Advertising Injury

## COMPREHENSIVE AUTOMOBILE LIABILITY INSURANCE (ON-SITE AND OFF-SITE):

- (e) \$250,000 Per Person/Accident

All insurance policies shall be provided by a company or companies with a rating of not less than B+ in the last available Best's Rating Guide. All such policies shall include clauses whereby each underwriter agrees to waive its rights of subrogation against the Owner. The Commercial General Liability, Automobile Liability and Umbrella Liability policies shall be endorsed to add the Owner and Contractor as an additional insured. The limits of liability shown for each type of insurance coverage to be provided by the Contractor pursuant hereto shall not be deemed to constitute a limitation of the Contractor's liability for claims hereunder or otherwise. Notwithstanding anything herein to the contrary, the Owner may to the fullest extent permitted by applicable law, accept alternate or different coverages for the insurance specified herein upon receipt from a licensed insurance agent or company acceptable to the Owner of a written

evaluation of the proposed alternate coverage in form acceptable to the Owner confirming that such alternate coverage provides comparable or greater protection to the Owner as the coverage specified.

Should the contractor fail to purchase, or fail to continue in force until completion of the Work, insurance in the amounts indicated above, the Owner may purchase such insurance and the cost thereof shall be borne by the contractor, and may be deducted from any amounts owed by the Owner to the contractor.

12.13 CERTIFICATES OF INSURANCE.

Certificates of Insurance acceptable to the Owner shall be filed with the Owner within ten (10) days after award of the contract to contractor and prior to commencement of the work. All required insurance shall be maintained without interruption from the date of commencement of the work under the subcontract until the date of the final payment. These certificates and the insurance policies required by this paragraph 12.12 shall contain a provision that coverages afforded under the policies will not be concealed, materially modified, or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner to be sent to the Insurance Administrator as described in the OCIP Project Insurance Manual. The provisions of this subparagraph shall apply to all policies of insurance required to be maintained by the contractor pursuant to the contract documents.

12.14 OTHER INSURANCE.

Any type of insurance or any increase of limits of liability not described above which a contractor requires for its own protection or on account of any statute shall be its own responsibility and its own expense.

12.15 SUBCONTRACTOR PARTICIPATION.

Upon execution of the subcontract, the contractor will immediately report all new subcontracts to the Insurance Administrator for enrollment in the OCIP. The contractor shall incorporate all the provisions of this agreement in any subcontractor agreement and shall cause its subcontractors to cooperate fully with the Owner, the Insurance Administrator and insurance companies for the Project, in the administration of the OCIP. The contractor agrees to cooperate in the safety and accident prevention program and claim handling procedures as established for the Project by the Owner. In accordance with this paragraph contractor shall not permit any contractor of any tier to enter the Project site prior to enrollment in the Owner's Owner Controlled Insurance Program (OCIP); failure to do so shall negate the afforded coverage(s).

12.16 WAIVER OF SUBROGATION.

The contractor waives all rights of subrogation and recovery against the Owner, Insurance Administrator, and other contractor(s) of all tiers to the extent of any loss or damage, which is insured under the OCIP. Notwithstanding the foregoing and not by way of limitation of the same, contractor waives its rights of subrogation and recovery for damage to any property or equipment against the Owner, Insurance Administrator, other contractor(s) of all tiers. Each contractor shall require all contractor(s) to similarly waive their rights of subrogation and recovery in each of their respective construction contracts with respect to their work.

12.17 NO RELEASE.



The carrying of the above-described insurance shall in no way be interpreted as relieving the contractor of any other responsibility or liability under this subcontract or any applicable law, statute, regulation or order

12.18 PROPERTY INSURANCE.

12.18.1 The Owner shall purchase and maintain, property insurance in the amount of the initial Contract Sum as well as subsequent modifications thereto for the entire Work at the Project site on a replacement cost basis without voluntary deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Paragraph 10.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph 12.3 to be covered, whichever is earlier. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Work.

12.18.2 Property insurance shall be on an "all-risk" policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, falsework, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's services and expenses required as a result of such insured loss. Coverage for other perils shall not be required unless otherwise provided in the Contract Documents.

12.18.3 This insurance policy has a deductible and the Contractor will be responsible for the first [Ten Thousand Dollars (\$10,000.00)] of any loss against the policy caused by the Contractor or its Subcontractor of any tier. The Owner will cause its "All Risk" Builder's Risk and/or Property insurance carrier to waive insurer's right of subrogation in favor of Contractor.

12.18.4 Unless otherwise provided in the Contract Documents, this property insurance shall cover portions of the Work stored off the Project site after written approval of the Owner at the value established in the approval, and also portions of the Work in transit may be covered if previously approved by Owner.

12.18.5 The insurance required by this Paragraph is not intended to cover machinery, tools or equipment owned or rented by the Contractor which are utilized in the performance of the Work but not incorporated into the permanent improvements. The Contractor shall, at the Contractor's own expense, provide insurance coverage for owned or rented machinery, tools or equipment.

12.18.6 BOILER AND MACHINERY INSURANCE. The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Program Manager, Contractor, Subcontractors and Sub-Subcontractors in the Work, and the Owner and Contractor shall be named insureds.

12.18.7 LOSS OF USE INSURANCE. The Owner, shall purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of

use of the Owner's property, including consequential losses due to fire or other hazards however caused.

12.18.8 If the Contractor requests in writing that insurance for risks other than those described herein or for other special hazards be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

12.18.9 Before an exposure to loss may occur, the Owner shall file with the Contractor a Certificate of Insurance that includes insurance coverage's required by this Paragraph. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor.

12.18.10 WAIVERS OF SUBROGATION. The Owner and Contractor waive all rights against each other and against the Program Manager, Architect, Owner's Other Contractors and agents, employees and Contractors described in Article 7, if any, and the Subcontractors, Sub-subcontractors, consultants, agents and employees of any of them, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Paragraph or other property insurance applicable to the Work, except such rights as the Owner and Contractor may have to the proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Program Manager, Program Manager's consultants, Architect, Architect's consultants, Owner's separate Contractors described in Article 7, if any, and the Subcontractors, Sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

12.18.11 A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Subparagraph 12.3.9. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

12.18.12 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection be made, arbitrators shall be chosen as provided in Paragraph 5.6. The Owner as fiduciary shall, in that case make settlement with insurers in accordance with directions of such arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

12.19 BONDS.

12.19.1 The Owner has the option to request the Contractor furnish a performance and payment bond for the Project or initiate a Subguard Insurance Program. The Subguard Program is a Contractor/sub-contractor/vendor default insurance program and will lessen the requirement to furnish performance and payment bonds for the Project. It is the Owner's desire to enroll the Contractor, its Subcontractors and Vendors in this program. At the Owners sole discretion, the Owner may request that certain contractors provide a Payment & Performance Bond in lieu of enrollment in the Subguard program if any entity cannot fulfill the pre-qualification criteria. The Owner will adjust the GMP, add or deduct, if the Bond is requested.

12.19.2 The Contractor must notify the Program Manger and Owner monthly of subcontractors and suppliers which are in default, or who may be declared in default in the near future based on current performance deficiencies. The Contractor will provide the following information related to each such subcontractor or supplier: Name, Scope of Work, Contract Value, Nature of Default, Percentage of Completion, Estimated Cost to Complete if Defaulted and Amount of Unpaid Contract Value. Contractor shall also specify any potential deficiencies in the Subcontractors and suppliers work which will require correction or replacement.

12.19.3 In the event of a subcontractor or supplier default, Contractor agrees to assist the Owner in mitigating the loss to the fullest extent possible. This includes, but is not limited to: (1) adequate supervision and work review, (2) proper documentation of performance, payment and schedule issues, (3) adherence to contract remedies in order to protect rights of recovery from defaulting party and avoid counterclaim for wrongful termination, (4) manage the balance of the work in order to minimize the loss associated with the defaulting subcontract or supplier, and (5) to assist the Owner in selecting the most cost efficient alternative to complete the affected work.

12.19.4 Subcontractors and suppliers (with expected contract values in excess of \$50,000.00 ) must be pre-qualified by the Contractor based upon the criteria established by the Contractor and approved by the Program Manager and Owner (Exhibit \_\_\_ to the Contract). In the event a subcontractor or supplier the Contractor selects to use does not meet this criteria, the Contractor may submit to the Program Manager and Owner in writing a variation report which outlines why this particular entity should be accepted only if the Program Manager and Owner concur the subcontractor or supplier will be considered to be qualified. If the Contractor selects a subcontractor or supplier that does not meet the criteria and do not notify the Program Manager and Owner or get approval, the Contractor will bear the costs and the risk of loss.

12.19.5 If the Contractor incurs a loss as a result of subcontractor or supplier default, the Contractor must complete the Claim of Loss form (Exhibit \_\_\_). Once the Program Manager and Owner have reviewed and verified the loss, the Owner will reimburse the Contractor for the amount of the loss.

12.19.6 If the Contractor receives notification that second tier subcontractors or suppliers are not being paid, or that a lien has been recorded, the Contractor shall have the responsible subcontractor or supplier remedy this default immediately. If such subcontractor or supplier is unable or unwilling to do so, the Contractor must notify the Program Manager and Owner in writing. The Owner require the Contractor to provide a release of Lien bond from the Contractors surety, or the Owner, at its option, provide one under the Owner Controlled Insurance Program.

12.19.7 The Owner will share a portion of the savings from the Owner Controlled Subcontractor Default Insurance Program with the Contractor based on actual loss experienced, as

outlined in paragraph 2.3.5.2. The savings will be based on the difference between the cost of subcontractor and supplier bonds and the Subguard Program costs (risk transfer premium plus incurred and accrued losses). The savings will be shared on an agreed upon pay-out schedule between Owner and Contractor with some of the funds held through the warranty period. The Program Manager, Owner and Contractor will agree on an estimated bond cost after all subcontracts have been issued. ARTICLE 13 UNCOVERING AND CORRECTION OF WORK

### 13.1 UNCOVERING OF WORK.

13.1.1 If a portion of the Work is covered contrary to the Program Manager's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by either, be uncovered for their observation and be replaced at the Contractor's expense without change in the Contract Time.

13.1.2 If a portion of the Work has been covered which the Program Manager or Architect has not specifically requested to observe prior to its being covered, the Program Manager or Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs unless the condition was caused by the Owner or one of the Other Contractors in which event the Owner shall be responsible for payment of such costs.

### 13.2 CORRECTION OF WORK.

13.2.1 The Contractor shall promptly correct Work rejected by the Program Manager or Architect or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for the Program Manager's and Architect's services and expenses made necessary thereby.

13.2.2 If, within one year after the date of Substantial Completion of the Work or designated portion thereof, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This period of one year shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. This obligation under this Subparagraph 13.2.2 shall survive acceptance of the Work under the Contract and termination of the Contract. The Owner shall give such notice promptly after discovery of the condition. The Owner and Contractor agree to attend at the Project site, eleven months after Substantial Completion, and a one-year walkthrough to determine any warranty deficiencies to be remedied within 30 days by Contractor.

13.2.3 The Contractor shall remove from the Project site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

13.2.4 If the Contractor fails to commence correction of nonconforming Work within 10 days time, the Owner may correct it in accordance with Paragraph 3.3. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Architect issued through the Program Manager, the Owner may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten days after written notice, the Owner may upon ten additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Program Manager's and Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

13.2.5 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or Other Contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

13.2.6 Nothing contained in this Paragraph 13.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period of one year as described in Subparagraph 13.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

13.3 ACCEPTANCE OF NONCONFORMING WORK. If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 14  
TERMINATION OR SUSPENSION  
OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR. The Contractor may terminate the Contract if the Work is stopped for a period of thirty (30) consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor, for any of the following reasons:

14.1.1 issuance of an order of a court or other public authority having jurisdiction;

14.1.2 because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

14.1.3 the Owner has failed to furnish to the Contractor promptly, upon the Contractor's written request, the information required by Subparagraph #3.1.1.

If one of the above reasons exists, the Contractor may, upon fourteen (14) additional days' written notice to the Owner, Program Manager and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery.

#### 14.2 TERMINATION BY THE OWNER FOR CAUSE.

14.2.1 The Owner may terminate the Contract if the Contractor:

14.2.1.1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

14.2.1.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

14.2.1.3 repeatedly disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or

14.2.1.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

14.2.2 When any of the above reasons exist, the Owner, after consultation with the Program Manager and the Architect that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven (7) days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

14.2.2.1 take possession of the Project site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

14.2.2.2 accept assignment of subcontracts pursuant to Paragraph 6.4; and finish the Work by whatever reasonable method the Owner may deem expedient.

14.2.2.3 if the personnel, as listed in paragraph 4.2.3, are removed from the Project without prior written notification to the Owner.

14.2.3 When the Owner terminates the Contract for one of the reasons stated in Subparagraph 14.2.1, the Contractor shall not be entitled to receive further payment.

14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Program Manager's and Architect's services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall, upon application, be certified by the Architect after consultation with the Program Manager, and this obligation for payment shall survive termination of the Contract.



15.4 REPRESENTATIVES. Initially, for purposes of this Agreement, the Owner's representative shall be Pete Cesari, and the Contractor's representative shall be Sam Sabin. Either party may change the identity of its representative by notice provided as set forth in Section 16. 3.

15.5 TESTS AND INSPECTIONS.

15.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Program Manager and Architect 48 hours notice of when and where tests and inspections are to be made so the Program Manager and Architect may observe such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

15.5.2 If the Program Manager, Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 15.5.1, the Program Manager and Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give 48 hours notice to the Program Manager and Architect of when and where tests and inspections are to be made so the Program Manager and Architect may observe such procedures. The Owner shall bear such costs except as provided in Subparagraph 15.5.3.

15.5.3 If such procedures for testing, inspection or approval under Subparagraphs 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs made necessary by such failure including those of repeated procedures and compensation for the Program Manager's and Architect's services and expenses.

15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Program Manager for transmittal to the Architect.

15.5.5 If the Program Manager or Architect is to observe tests, inspections or approvals required by the Contract Documents, the Program Manager or Architect will do so promptly and, where practicable, at the normal place of testing.

15.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

15.6 NON-WAIVER. The Owner shall have the right at all times to enforce the provisions of the Contract Documents in strict accordance with the terms thereof, notwithstanding any conduct or custom on the part of the Owner in refraining from so doing at any time or times. The failure of the Owner at any time or times to enforce their rights under such provisions, strictly in accordance with the same, shall not be construed as having created a custom in any way or manner contrary to



specific provisions of the Contract Documents or as having in any way or manner modified or waived the same. All rights and remedies of the Owner are cumulative and concurrent and the exercise of one right or remedy shall not be deemed a waiver or release of any other right or remedy.

15.7 SEVERABILITY. If any provision of this Agreement shall be held invalid under any applicable laws, such invalidity shall not affect any other provision of this Agreement that can be given effect without the invalid provision, and, to this end, the provisions hereof are severable.

15.8 COUNTERPARTS. This Agreement may be executed by the parties independently in any number of counterparts, all of which together shall constitute but one and the same instrument which is valid and effective as if all parties had executed the same counterpart.

15.9 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS. The Drawings, Specifications and other documents prepared used in connection with the Work shall be the property of the Owner, and the Owner shall and will retain all common law, statutory and other reserved rights, in addition to the copyright. The Contractor may retain one contract record set. Neither the Contractor nor any Subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other such documents. All copies of them, except the Contractor's record set, shall be returned or suitably accounted for to the Owner, on request, upon completion of the Work. The Drawings, Specifications and other such documents, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor or material or equipment supplier on other Projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner. The Contractor, Subcontractors and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other such documents appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other such documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the copyright or other reserved rights.

IN WITNESS WHEREOF, the Owner and Contractor have executed this Agreement as of the date first written above.

Owner: \_\_\_\_\_ Contractor: \_\_\_\_\_  
- -----

By: /s/ David B. Jones \_\_\_\_\_ By: /s/ Sam Sabin \_\_\_\_\_

Title: President & CEO, Opryland Hospitality Group \_\_\_\_\_ Title: Project Executive \_\_\_\_\_

The undersigned hereby acknowledge the terms and conditions of the foregoing Agreement, and specifically agree to perform their respective responsibilities and duties described in such Agreement.

Program Manager: \_\_\_\_\_ Architect: \_\_\_\_\_  
- -----

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

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

## EXHIBITS

- D Schedule and Narrative
- E Organization Chart
- G OCIP Manual
- H Subguard Outline Spec
- I Waivers of Lien
- A Document Listing
- B OHG Turnover Schedule
- C OHG Project Responsibilities
- F Pre-Qualification Process

FIRST AMENDMENT TO  
GUARANTEED MAXIMUM PRICE  
CONSTRUCTION AGREEMENT

This First Amendment to the Guaranteed Maximum Price Construction Agreement (the "Amended GMP Agreement") is deemed effective September 5, 2000 (the "Effective Date") and is by and between Opryland Hotel - Florida, L.P. ("OHF, L.P."), a Florida Limited Partnership, the Opryland Hospitality Group d/b/a OLH, G.P., a Tennessee general partnership, and Perini/Suitt, a joint venture, ("Contractor").

WHEREAS, Section 2.3 of the Guaranteed Maximum Price Agreement (the "GMP Agreement") contemplates that the Parties to the GMP Agreement would negotiate and finalize the final GMP price upon issuance of 75% of the Contract Documents;

WHEREAS, 75% of the Contract Documents have been issued, the Parties to the GMP Agreement have agreed upon a final GMP price, and, in accordance with the GMP Agreement, now desire to amend the GMP Agreement to provide for the fixed GMP; and

NOW, THEREFORE, in consideration of the foregoing premises, and other good valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the GMP Agreement is hereby amended as follows:

1. Capitalized Terms. Capitalized terms used but not defined herein shall have the meanings for such terms which are set forth in the GMP Agreement.

2. Amendment of GMP.

A. Article 2, Section 2.3 of the GMP Agreement is hereby deleted in its entirety and the following inserted in its place:

"2.3 GUARANTEED MAXIMUM PRICE (GMP). For all Work performed and services rendered by Contractor with respect to the Work, the Owner agrees to pay Contractor an amount equal to the total Cost of the Work, plus the Contractor's Fee, but in no event will the amount paid by the Owner to Contractor in full satisfaction of the Contractor's services rendered exceed \$298,154,505.00 (the "Guaranteed Maximum Price" or "GMP"), subject to additions or deductions by Change Order as provided in the Contract Documents. In no event will the Owner be obligated to pay Contractor the full GMP unless the Cost of the Work is equal to or in excess of the GMP. The GMP may also be referred to in the Contract Documents as the Contract Sum. Costs which would cause the GMP to be exceeded (other than costs related to valid Change Orders) will be paid by the Contractor without reimbursement by the Owner."

B. The first sentence in Article 2, Section 2.3.5.3 of the GMP Agreement is hereby revised to read as follows: If the Contractor has achieved Substantial Completion, as defined in paragraph 10.8, of the Convention Center and related BOH (Back of House) support areas, by June 1, 2001, then the Owner shall pay a bonus of \$350,000.00 to the Contractor.

C. The first sentence in Article 2, Section 2.3.6 of the GMP Agreement is hereby revised to read as follows: Since the actual damages to the Owner as a result of the Contractor's failure to achieve Substantial Completion of the Work by the Substantial Completion Date are difficult or

impossible to determine, the Contractor shall pay the Owner \$20,000 per calendar day for the Convention Center, if not substantially complete by June 1, 2001 and \$10,000 per calendar day for the entire Project, if not substantially complete by December 1, 2001, up to February 2, 2002, after the Substantial Completion Date, as it may be extended, for every day the Work is not substantially completed, as liquidated damages, in lieu of actual damages related solely to a delay in Substantial Completion.

D. The existing Exhibit A Document Listing is hereby deleted and replaced by the revised Exhibit A, dated September 5, 2000.

3. Terms of the GMP Agreement. The terms of the GMP Agreement, except as amended by section 2 above, including but not limited to any party's representations, warranties, covenants, agreements and indemnities are hereby ratified. The Parties acknowledge and agree that the representations, warranties, covenants, agreements and indemnities contained in the GMP Agreement, as amended hereby, remain in full force and effect to the full extent provided therein.

IN WITNESS WHEREOF, the Owner and Contractor have executed this First Amendment Agreement as of the date first written above.

Owner:	Contractor:
	Perini/SUITT AJV
-----	
By: /S/ David B. Jones	By: /s/ Sam Sabin
-----	-----
Title:	Title: Project Executive
-----	-----

The undersigned hereby acknowledge the terms and conditions of the foregoing First Amendment Agreement, and specifically agree to perform their respective responsibilities and duties described in such Agreement.

Program Manager:	Architect:
-----	
By:	By:
-----	-----
Title:	Title:
-----	-----

=====

AMENDED AND RESTATED  
LOAN AND SECURITY AGREEMENT

DATED AS OF MARCH 27, 2001

BETWEEN

OPRYLAND HOTEL NASHVILLE, LLC  
AS BORROWER

AND

MERRILL LYNCH MORTGAGE LENDING, INC.  
AS LENDER

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OPRYLAND HOTEL  
NASHVILLE, TENNESSEE

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AMENDED AND RESTATED  
LOAN AND SECURITY AGREEMENT

This AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT (this "LOAN AGREEMENT") is dated as of March 27, 2001 and entered into by and between OPRYLAND HOTEL NASHVILLE, LLC, a Delaware limited liability company ("BORROWER"), and MERRILL LYNCH MORTGAGE LENDING, INC. a Delaware corporation (together with its successors and assigns, "LENDER").

RECITALS:

WHEREAS, Merrill Lynch Mortgage Capital Inc. ("ORIGINAL LENDER") made a loan in the original principal amount of \$200,000,000 which was subsequently increased to an aggregate principal amount of up to \$250,000,000 (the "ORIGINAL LOAN") to Borrower (successor-in-interest to OLH, G.P., a Tennessee general partnership ("ORIGINAL BORROWER")), pursuant to a Loan Agreement, dated as of October 6, 2000 (as heretofore amended or modified, the "ORIGINAL LOAN AGREEMENT"), between Borrower (successor-in-interest to Original Borrower) and Original Lender, as modified by a certain Assumption and Modification Agreement, dated as of December 1, 2000, among Original Borrower, Borrower and Original Lender, and further modified by a certain Second Modification to Deed of Trust, Assignment of Leases and Rents and Security Agreement, dated as of February 16, 2001, between Borrower and Original Lender;

WHEREAS, the Original Loan is evidenced by a certain Amended and Restated Deed of Trust Note, dated as of February 16, 2001 (as heretofore amended or modified, the "ORIGINAL NOTE"), from Borrower to Original Lender in the original principal amount of \$250,000,000;

WHEREAS, the outstanding principal amount of the Original Loan on the date hereof is \$235,000,000;

WHEREAS, all of Original Lender's right, title and interest in and to the Original Loan Agreement, the Original Note, the deed of trust and security documents securing the Original Note and certain other documents executed in connection with the Original Loan were assigned to Lender pursuant to various assignment documents, dated as of the date hereof, from Original Lender to Lender; and

WHEREAS, Borrower and Lender wish to (i) provide for an additional advance of \$40,000,000 (the "NEW ADVANCE") to Borrower and combine and consolidate the outstanding principal amount of the Original Loan with the New Advance into a single indebtedness in the aggregate principal amount of \$275,000,000; (ii) modify the terms and conditions of the Original Loan; and (iii) amend and restate the terms of the Original Loan Agreement upon the terms and conditions hereof.

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, Borrower Parties and Lender agree as follows:

ARTICLE I  
DEFINITIONS

SECTION 1.1 CERTAIN DEFINED TERMS. The terms defined below are used in this Loan Agreement as so defined. Terms defined in the preamble and recitals to this Loan Agreement are used in this Loan Agreement as so defined.

"ACCEPTABLE FRANCHISOR" and "ACCEPTABLE FRANCHISE NAME" means the following, provided that the Acceptable Franchise Name shall in all events include the "Opryland Hotel" as the primary operating name for the Property, with the franchised name used in association therewith, in a manner reasonably acceptable to Lender: Hyatt; Hilton; Hotel Sofitel; Inter-Continental; Loews; Marriott; Omni; Renaissance; Sheraton; Westin; Wyndham; Fairmont; Le Meridien; Crown Plaza; Four Seasons; Luxury Collection (Sheraton); and Ritz Carlton.

"ACCEPTABLE MANAGER" means (i) Hilton, Hyatt, Marriott, Sheraton, Wyndham, Luxury Collection (Sheraton) or (ii) another reputable hotel management company with at least five (5) years experience managing hotel properties similar to the Property which at the time of its engagement is managing at least 5,000 hotel rooms (exclusive of the Property) and at least 300,000 square feet of convention space and meeting rooms (exclusive of the Property).

"ACCOUNTS" means, collectively, the Lock Box, the Clearing Account, the Central Account, the Sub-Accounts thereof and any other accounts pledged to Lender pursuant to this Loan Agreement or any other Loan Document.

"ACCOUNT COLLATERAL" means all of Borrower's right, title and interest in and to the Accounts, the Reserves, all monies and amounts which may from time to time be on deposit therein, all monies, checks, notes, instruments, documents, deposits, and credits from time to time in the possession of Lender representing or evidencing such Accounts and Reserves and all earnings and investments held therein and proceeds thereof.

"AFFILIATE" means in relation to any Person, any other Person: (i) directly or indirectly controlling, controlled by, or under common control with, the first Person; (ii) directly or indirectly owning or holding ten percent (10%) or more of any equity interest in the first Person; or (iii) ten percent (10%) or more of whose voting stock or other equity interest is directly or indirectly owned or held by the first Person. In addition, the Affiliates of each Borrower Party include, without limitation, all other Borrower Parties, irrespective of whether they now or hereafter satisfy the foregoing criteria. For purposes of this definition, "CONTROL" (including with correlative meanings, the terms "CONTROLLING", "CONTROLLED BY" and "UNDER COMMON CONTROL WITH") means the possession directly or indirectly 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. Where expressions such as "[name of party] or any Affiliate" are used, the same shall refer to the named party and any Affiliate of the named party. Further, the Affiliates of any Person that is an entity shall include all natural persons who are officers, agents, directors, members, partners, or employees of the entity Person.

"APPLICABLE SPREAD" means (i) 1.50% during the Initial Term; (ii) 1.625% during the First Extension Term (if applicable) and (iii) 1.75% during the Second Extension Term (if applicable).

"APPROVED CAPITAL IMPROVEMENT EXPENDITURES" has the meaning set forth in Section 6.5.

"APPROVED EXPENDITURES" has the meaning set forth in Section 6.6.

"APPROVED FF&E EXPENDITURES" has the meaning set forth in Section 6.4.

"ASSIGNMENT OF LEASES" means the Assignment of Leases and Rents of even date herewith from Borrower to Lender, constituting an assignment of the Leases and proceeds therefrom as Collateral for the Loan, as same may be amended or modified from time to time.

"ASSIGNMENT OF MANAGEMENT AGREEMENT" means that certain Conditional Assignment of Management Agreement of even date herewith executed by Borrower and current Manager, constituting an assignment of the Management Agreement as Collateral for the Loan, as same may be amended or modified from time to time.

"ASSIGNMENT OF RATE CAP" means that certain Collateral Assignment of Interest Rate Protection Agreement of even date herewith from Borrower to Lender, constituting an assignment of the Cap and the Cap Guaranty and proceeds therefrom as Collateral for the Loan, as same may be amended or modified from time to time.

"BANKRUPTCY CODE" means Title 11 of the United States Code, as amended from time to time, and all rules and regulations promulgated thereunder.

"BIG FIVE ACCOUNTING FIRM" means Ernst and Young, Price Waterhouse Coopers, Deloitte & Touche, KPMG Peat Marwick or Arthur Andersen & Co. or any successor entity.

"BORROWER" has the meaning set forth in the preamble.

"BORROWER PARTY" and "BORROWER PARTIES" mean, individually or collectively, Borrower, Independent Manager and Guarantor.

"BORROWER PARTY SECRETARY" has the meaning set forth in Section 3.1.

"BUSINESS DAY" means any day excluding (i) Saturday, (ii) Sunday, (iii) any day which is a legal holiday under the laws of the State of New York, the state or states where the servicing offices of the Servicer, and, if the Loan becomes a "specially serviced mortgage loan" pursuant to the terms of any trust and servicing agreement entered into in connection with any Securitization backed in whole or in part by the Loan, the special servicer, are located or the state in which the corporate trust office of the trustee in connection with any such Securitization is located, and (iv) any day on which banking institutions located in such state are generally not open for the conduct of regular business.

"CAP" has the meaning set forth in Section 2.3.

"CAP GUARANTOR" has the meaning set forth in Section 2.3.

"CAP GUARANTY" has the meaning set forth in Section 2.3.

"CAP PROVIDER" has the meaning set forth in Section 2.3.

"CAP RESERVE" has the meaning set forth in Section 2.3.

"CAP THRESHOLD RATE" has the meaning set forth in Section 2.3.

"CAPITAL EXPENDITURES" means expenditures for Capital Improvements.

"CAPITAL IMPROVEMENTS" means capital improvements, repairs or alterations, furnishings, fixtures and equipment (whether paid in cash or property or accrued as liabilities) made by Borrower that, in conformity with GAAP, are required to be included in the property, plant, or equipment, or similar fixed asset account or otherwise capitalized.

"CAPITAL IMPROVEMENT PLAN" means Borrower's current plan and budget for certain ongoing multi-phased capital improvements to the Property, including the renovation and improvement of certain guest rooms, the main hotel lobby and other common areas, and elevators, escalators and other building systems, as more particularly described on EXHIBIT A.

"CAPITAL IMPROVEMENT RESERVE" has the meaning set forth in Section 6.5.

"CASH MANAGEMENT AGREEMENT" means the Cash Management Agreement of even date herewith among Borrower, Lender, Manager, and Central Account Bank.

"CASH TRAP EVENT" has the meaning set forth in Section 2.6.

"CASH TRAP RESERVE" has the meaning set forth in Section 2.6.

"CENTRAL ACCOUNT" and "CENTRAL ACCOUNT BANK" are defined in Section 7.1.

"CLAIMS" has the meaning set forth in Section 5.3.

"CLEARING ACCOUNT" has the meaning set forth in Section 7.1.

"CLEARING ACCOUNT AGREEMENT" has the meaning set forth in Section 7.1.

"CLEARING BANK" has the meaning set forth in Section 7.1.

"CLOSING" means Lender's acquisition of the Original Loan from Original Lender, the funding of the New Advance and the consummation of the other transactions contemplated by this Loan Agreement.

"CLOSING DATE" means the date on which the Closing occurs.

"COLLATERAL" means rights, interests, and property of every kind, real and personal, tangible and intangible, which is granted, pledged, liened, or encumbered as security for the

Loan or any of the other Obligations under this Loan Agreement, the Deed of Trust, the Cash Management Agreement or other Loan Documents, including without limitation the Property and the Accounts.

"COMPLIANCE CERTIFICATE" has the meaning set forth in Section 5.1.

"CONTINGENT OBLIGATION", as applied to any Person, means any direct or indirect liability, contingent or otherwise, of that Person: (A) with respect to any indebtedness, lease, dividend or other obligation of another if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto; (B) with respect to any letter of credit issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings; (C) under any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement or other similar agreement or arrangement designed to protect against fluctuations in interest rates; or (D) under any foreign exchange contract, currency swap agreement or other similar agreement or arrangement designed to protect that Person against fluctuations in currency values. Contingent Obligations shall include (i) the direct or indirect guaranty, endorsement (other than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the obligation of another, (ii) the obligation to make take-or-pay or similar payments if required regardless of nonperformance by any other party or parties to an agreement, and (iii) any liability of such Person for the obligations of another through any agreement to purchase, repurchase or otherwise acquire such obligation or any property constituting security therefor, to provide funds for the payment or discharge of such obligation or to maintain the solvency, financial condition or any balance sheet item or level of income of another. The amount of any Contingent Obligation shall be equal to the amount of the obligation so guaranteed or otherwise supported or, if not a fixed and determined amount, the maximum amount so guaranteed.

"CONTRACTUAL OBLIGATION", as applied to any Person, means any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject including, without limitation, the Loan Documents.

"CONVENTION CONTRACTS" has the meaning set forth in Section 5.14.

"CREDIT CARD COMPANIES" has the meaning set forth in Section 7.1.

"CREDIT CARD RECEIVABLES PAYMENT DIRECTION LETTER" has the meaning set forth in Section 7.1.

"DEBT SERVICE COVERAGE RATIO" shall mean, for any period, the ratio of (i) Pro Forma Net Operating Income for such period immediately preceding the date of calculation to (ii) the amount of principal and interest due under the Loan for such period.

"DEBT SERVICE SUB-ACCOUNT" has the meaning set forth in Section 7.1.

"DEED OF TRUST" means that certain Amended and Restated Deed of Trust, Assignment of Leases and Security Agreement of even date herewith from Borrower to Robert J. Pinstein, as trustee for the benefit of Lender, constituting a Lien on the Property as Collateral for the Loan as same may be modified or amended from time to time.

"DEFAULT" means any breach or default under any of the Loan Documents, whether or not the same is an Event of Default, and also any condition or event that, after notice or lapse of time or both, would constitute an Event of Default if that condition or event were not cured or removed within any applicable grace or cure period.

"DEFAULT RATE" has the meaning set forth in Section 2.2.

"DEMINIMIS LEASE" means any Lease of space in the Property with a Person that is not an Affiliate of Borrower, which provides for annual rent or other payments in an amount less than \$5,000 and which is otherwise on arms-length terms and conditions.

"DETERMINATION DATE" means the day which is two (2) Eurodollar Business Days prior to the first day of an Interest Accrual Period; provided that the First Determination Date shall be the Closing Date or, if such date is not a Eurodollar Business Day, the immediately preceding Eurodollar Business Day. The LIBO Rate set on each Determination Date shall be in effect for the Interest Accrual Period immediately following such Determination Date.

"DISCLOSURE DOCUMENTS" has the meaning set forth in Section 10.3.

"DOLLARS" and the sign "\$" mean the lawful money of the United States of America.

"ELIGIBLE ACCOUNT" shall mean a separate and identifiable account from all other funds held by the holding institution, which account is either (i) an account maintained with an Eligible Bank or (ii) a segregated trust account maintained by a corporate trust department of a federal depository institution or a state chartered depository institution subject to regulations regarding fiduciary funds on deposit similar to Title 12 of the Code of Federal Regulations ss. 9.10(B), which has corporate trust powers and is acting in its fiduciary capacity and in either case having combined capital and surplus of at least \$100,000,000 or otherwise acceptable to the Rating Agencies.

"ELIGIBLE BANK" shall mean a bank that (i) satisfies the Rating Criteria and (ii) insures the deposits hereunder and/or under the Cash Management Agreement through the Federal Deposit Insurance Corporation.

"EMPLOYEE BENEFIT PLAN" means any employee benefit plan within the meaning of Section 3(3) of ERISA (including any Multiemployer Plan) (i) which is maintained for employees of Borrower or any ERISA Affiliate, (ii) which has at any time within the preceding six (6) years been maintained for the employees of Borrower or any current or former ERISA Affiliate or (iii) for which Borrower or any ERISA Affiliate has any liability, including contingent liability.

"ENVIRONMENTAL CLAIMS" has the meaning set forth in Section 4.16.



"ENVIRONMENTAL INDEMNITY" means the Environmental and Hazardous Substance Indemnification Agreement of even date herewith from Borrower and Guarantor to Lender, as same may be amended or modified from time to time.

"ENVIRONMENTAL LAWS" means all present and future local, state, federal or other governmental authority, statutes, ordinances, codes, orders, decrees, laws, rules or regulations pertaining to or imposing liability or standards of conduct concerning environmental regulation, contamination or clean-up or the handling, generation, release or storage of Hazardous Material including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, the Resource Conservation and Recovery Act, as amended, the Emergency Planning and Community Right-to-Know Act of 1986, as amended, the Hazardous Substances Transportation Act, as amended, the Solid Waste Disposal Act, as amended, the Clean Water Act, as amended, the Clean Air Act, as amended, the Toxic Substances Control Act, as amended, the Safe Drinking Water Act, as amended, the Occupational Safety and Health Act, as amended, any state superlien and environmental clean-up statutes and all regulations adopted in respect of the foregoing laws whether now or hereafter in effect.

"ENVIRONMENTAL REPORT" means that certain environmental report and audit for the Property prepared by Law Engineering and Environmental Services, Inc., dated as of May 1, 2000, modified and supplemented by addendum, dated as of February 16, 2001.

"ERISA" means the Employee Retirement Income Security Act of 1974, and all rules and regulations promulgated thereunder.

"EURODOLLAR BUSINESS DAY" means any day on which banks in the City of London, England are generally open for interbank or foreign exchange transactions and which is also a Business Day.

"EVENT OF DEFAULT" has the meaning set forth in Section 8.1.

"EXCESS CASH FLOW" means any and all amounts available for distribution in the Central Account in any calendar month after allocations and/or distribution of all amounts required to be allocated under Sections 3.3(a)(i) through (vii) of the Cash Management Agreement.

"EXCESS INTEREST" has the meaning set forth in Section 2.2.

"EXTENSION CAP THRESHOLD RATE" has the meaning set forth in Section 2.5.

"EXTENSION TERMS" has the meaning set forth in Section 2.5.

"FF&E" means all machinery, furniture, furnishings, equipment, fixtures (including, without limitation, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures), inventory and articles of personal property and accessions, renewals and replacements thereof and substitutions therefor (including, without limitation, beds, bureaus, chiffonniers, chests, chairs, desks, lamps, mirrors, bookcases, tables, rugs, carpeting, drapes, draperies, venetian blinds, screens, paintings, hangings, pictures, divans, couches, luggage carts, luggage racks, stools, sofas, chinaware, linens, pillows, blankets, glassware, foodcarts, cookware, dry cleaning facilities, dining room wagons, tools, keys or other entry systems, bars, bar fixtures,

liquor and drink dispensers, ice makers, radios, clock radios, television sets, intercom and paging equipment, electric and electronic equipment, dictating equipment, private telephone systems, medical equipment, potted plants, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air-conditioning systems, elevators, escalators, fittings, plants, apparatus, stoves, ranges, refrigerators, laundry machines, tools, machinery, engines, dynamos, motors, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, call systems, brackets, electrical signs, bulbs, bells, fuel, conveyors, cabinets, lockers, shelving, spotlighting equipment, dishwashers, garbage disposals, washer and dryers), other customary hotel equipment and other tangible property of every kind and nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located at the Property, or appurtenant thereto, and useable in connection with the present or future operation and occupancy of the Property and all building equipment, material and supplies of any nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located at the Property, or appurtenant thereto, and useable in connection with the present or future operation, enjoyment and occupancy of the Property.

"FF&E BUDGET" means the expenditures for Replacements and other expenditures for FF&E set forth in an annual FF&E budget approved by Lender in writing (such approval not to be unreasonably withheld or delayed as long as the budget is consistent with the form of the FF&E Budget provided to Lender prior to Closing), covering the planned FF&E expenditures for the period covered thereby.

"FF&E RESERVE" means the reserve established pursuant to Section 6.4.

"FINANCIAL STATEMENTS" means statements of operations and retained earnings, statements of cash flow and balance sheets.

"FINANCING STATEMENTS" means the Uniform Commercial Code Financing Statements naming the applicable Borrower Parties as debtor, and Lender as secured party, required under applicable state law to perfect the security interests created hereunder or under the other Loan Documents.

"FIRST EXTENSION TERM" has the meaning set forth in Section 2.5.

"FITCH" means Fitch, Inc.

"FRANCHISE AGREEMENT" means any franchise agreement hereafter entered into by Borrower, as franchisee, pursuant to which Borrower has the right to operate the Property under a name and hotel system controlled by the franchisor.

"FUNDING PARTY" means any bank or other entity, if any, which is indirectly or directly funding Lender with respect to the Loan, in whole or in part, including, without limitation, any direct or indirect assignee of, or participant in, the Loan.

"GAAP" means generally accepted accounting principles as set forth in Statement on Auditing Standards No. 69 entitled "The Meaning of Presenting Fairly in Conformity with Generally Accepted Accounting Principles in the Independent Auditor's Report" issued by the

Auditing Standards Board of the Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board that are applicable to the circumstances as of the date of determination.

"GOVERNMENTAL AUTHORITY" means, with respect to any Person, any federal or state government or other political subdivision thereof and any entity, including any regulatory or administrative authority or court, exercising executive, legislative, judicial, regulatory or administrative or quasi-administrative functions of or pertaining to government, and any arbitration board or tribunal in each case having jurisdiction over such applicable Person or such Person's property, and any stock exchange on which shares of capital stock of such Person are listed or admitted for trading.

"GUARANTY" means the Guaranty of Recourse Obligations of even date herewith executed by Guarantor in favor of Lender, as same may be amended or modified from time to time.

"GUARANTOR" means Gaylord Entertainment Company, a Delaware corporation.

"HAZARDOUS MATERIAL" means all or any of the following: (A) substances, materials, compounds, wastes, products, emissions and vapors that are defined or listed in, regulated by, or otherwise classified pursuant to, any applicable Environmental Laws, including any so defined, listed, regulated or classified as "hazardous substances", "hazardous materials", "hazardous wastes", "toxic substances", "pollutants", "contaminants", or any other formulation intended to regulate, define, list or classify substances by reason of deleterious, harmful or dangerous properties; (B) waste oil, oil, petroleum or petroleum derived substances, natural gas, natural gas liquids or synthetic gas and drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources; (C) any flammable substances or explosives or any radioactive materials; (D) asbestos in any form; (E) electrical or hydraulic equipment which contains any oil or dielectric fluid containing polychlorinated biphenyls; (F) radon; or (G) urea formaldehyde.

"IMPOSITIONS" means all real estate and personal property taxes, and vault charges and all other taxes, levies, assessments and other similar charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of every kind and nature whatsoever (including any payments in lieu of taxes), which at any time prior to, at or after the execution hereof may be assessed, levied or imposed by, in each case, a governmental authority upon the Property or the rents relating thereto or upon the ownership, use, occupancy or enjoyment thereof, and any interest, cost or penalties imposed by such governmental authority with respect to any of the foregoing. Impositions shall not include any sales or use taxes payable by Borrower.

"IMPOSITIONS AND INSURANCE RESERVE" means the reserve established pursuant to Section 6.3.

"IMPROVEMENTS" means all buildings, structures, fixtures, additions, enlargements, extensions, modification, repairs, replacements and improvements of every kind and nature now or hereafter located on the Property.

"INDEBTEDNESS" or "INDEBTEDNESS", as applied to any Person, means: (A) all indebtedness for borrowed money; (B) that portion of obligations with respect to leases that is

properly classified as a liability on a balance sheet in conformity with GAAP; (C) notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money; (D) any obligation owed for all or any part of the deferred purchase price of property or services if the purchase price is due more than six months from the date the obligation is incurred or is evidenced by a note or similar written instrument; and (E) all indebtedness secured by any Lien on any property or asset owned or held by that Person regardless of whether the indebtedness secured thereby shall have been assumed by that Person or is nonrecourse to the credit of that Person.

"INDEMNIFIED LIABILITIES" has the meaning set forth in Section 14.2.

"INDEPENDENT DIRECTOR" means an individual satisfactory to Lender who shall not have been at the time of such individual's appointment or at any time while serving as a director of the Independent Manager, and may not have been at any time during the preceding five years (i) a stockholder, director, officer, employee, partner, attorney or counsel of Independent Manager, Borrower, Guarantor or any Affiliate of any of them (except that such individual may be an independent director of Independent Manager or of the independent manager of Member), (ii) a customer, supplier or other Person who derives any of its purchases or revenues from its activities with the Independent Manager, Borrower, Guarantor or any Affiliate of any of them, (iii) a Person or other entity controlling or under common control with any such stockholder, partner, customer, supplier or other Person, or (iv) a member of the immediate family of any such stockholder, director, officer, employee, partner, customer, supplier or other Person. As used in this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise.

"INDEPENDENT MANAGER" means OHN Management, Inc., a Delaware corporation, which is the "Independent Manager" under the Limited Liability Company Agreement of Borrower.

"INITIAL DISBURSEMENT DATE" means the date on which any portion of the proceeds of the Loan are first disbursed to or for the account of Borrower.

"INITIAL TERM" means the period from the Closing Date to the Scheduled Maturity Date.

"INSTITUTIONAL INVESTOR" means (i) a commercial bank organized under the laws of the United States, or any State thereof, and having (x) total assets in excess of \$1,000,000,000 and (y) a combined capital and surplus of at least \$250,000,000; (ii) a commercial bank organized under the laws of any other country which is a member of the Organization of Economic Cooperation and Development ("OECD"), or a political subdivision of any such country, and having (x) total assets in excess of \$1,000,000,000 and (y) a combined capital and surplus of at least \$250,000,000, provided that such bank is acting through a branch or agency located in the country in which it is organized or another country which is also a member of OECD; (iii) an insurance company organized under the laws of any State of the United States, or organized under the laws of any country and licensed as an insurer by any State within the United States and having admitted assets of at least \$1,000,000,000; (iv) a nationally recognized investment banking company, or an affiliate thereof (other than any Person which is directly or indirectly an Affiliate of Borrower or Guarantor, or of any member or partner of Borrower or Guarantor)

organized under the laws of any State of the United States, and licensed or qualified to conduct such business under the laws of any such State and having (1) total assets of at least \$1,000,000,000 and (2) a net worth of at least \$250,000,000; (v) a private corporate or public pension or profit-sharing plan (or similar plan) or an endowment fund for a college, university or private charitable foundation having total assets in excess of \$1,000,000,000; or (vi) any entity which is engaged in the business of or organized for the purpose of acquiring ownership and other interests in real estate or hotel assets (including, without limitation, direct and beneficial ownership interests) or any entity that is itself, or is controlled by or under common control with an entity which is a so-called "opportunity fund", "hedge fund" or other similar investment fund and having total assets in excess of \$1,000,000,000 and being reasonably acceptable to the Lender.

"INSTITUTIONAL LENDER/OWNER" has the meaning set forth in the Intercreditor Agreement.

"INSURANCE COMMITTEE" has the meaning set forth in Section 6.7.

"INSURANCE COMMITTEE CERTIFICATE" has the meaning set forth in Section 6.7.

"INSURANCE PREMIUMS" means the annual insurance premiums for the insurance policies required to be maintained by Borrower with respect to the Property under Section 5.4.

"INTERCREDITOR AGREEMENT" has the meaning set forth in Section 5.17.

"INTEREST ACCRUAL PERIOD" means a period commencing on the first Business Day of a calendar month and ending on the day immediately prior to the first Business Day of the next calendar month.

"INTEREST RATE" has the meaning set forth in Section 2.2.

"INVOLUNTARY BORROWER PARTY BANKRUPTCY" has the meaning set forth in Section 5.22.

"IRC" means the Internal Revenue Code of 1986, and any rule or regulation promulgated thereunder from time to time, in each case as amended.

"IRS" means the Internal Revenue Service or any successor thereto.

"KNOWLEDGE": whenever in this Loan Agreement or any of the Loan Documents, or in any document or certificate executed on behalf of any Borrower Party or Member pursuant to this Loan Agreement or any of the Loan Documents, reference is made to the knowledge of Borrower or any other Borrower Party or Member (whether by use of the words "knowledge" or "known", or other words of similar meaning, and whether or not the same are capitalized), such shall be deemed to refer to the knowledge of (i) the Chief Executive Officer of Guarantor, the Chief Financial Officer of Guarantor, the President of Opryland Hospitality Group, the Chief Financial Officer of Opryland Hospitality Group and the General Manager of the hotel located at the Property; (ii) the individuals employed by any Borrower Party with whom the persons mentioned in clause (i) above would reasonably be expected to consult for information on the subject matter; (iii) also to the knowledge of the person signing such document or certificate.

"LEASE" means any lease, tenancy, license, sublease, assignment and/or other rental or occupancy agreement or other agreement or arrangement (including, without limitation, any and all guaranties of any of the foregoing) heretofore or hereafter entered into affecting the use, enjoyment or occupancy of, or the conduct of any activity upon or in, the Property or any portion thereof, including any extensions, renewals, modifications or amendments thereof.

"LENDER" is defined in the preamble.

"LIBO RATE" means, for each Determination Date, the rate per annum reported on Telerate Access Service Page 3750 (British Bankers Association Settlement Rate), as of 11:00 a.m., London, England time, as the non-reserve adjusted London Interbank Offered Rate for U.S. dollar deposits having a 30-day term (or on such other page as may replace Telerate Page 3750 on that service or such other service or services as may be nominated by the British Bankers' Association for the purpose of displaying such rate as determined by Lender in its sole but good faith discretion). In the event that (i) more than one such LIBO Rate is provided, the average of such rates shall apply or (ii) no such LIBO Rate is published, then the LIBO Rate shall be the rate at which U.S. dollar deposits approximately equal to the principal amount of the Loan having a 30-day term are offered by the principal London office of a leading "money center" bank active in the London interbank market for U.S. dollar deposits, as determined by Lender in its sole discretion, in immediately available funds in the London interbank market on the Determination Date. The LIBO Rate for any Interest Accrual Period shall be adjusted from time to time, by increasing the rate thereof to compensate Lender and any Funding Party for any aggregate reserve requirements (including, without limitation, all basic, supplemental, marginal and other reserve requirements and taking into account any transitional adjustments or other scheduled changes in reserve requirements during any Interest Accrual Period) which are required to be maintained by Lender or such Funding Party with respect to "Eurocurrency liabilities" (as presently defined in Regulation D of the Board of Governors of the Federal Reserve System) of the same term under Regulation D, or any other regulations of a Governmental Authority having jurisdiction over Lender or such Funding Party of similar effect, it being acknowledged by all parties that such reserve requirement as of the date of this Loan Agreement is zero percent (0%). Notwithstanding the foregoing, if the interest rate for Lender or any Funding Party shall be increased in respect of reserve requirements as provided in the immediately preceding sentence, Lender or such Funding Party shall promptly notify Borrower in writing upon becoming aware that Borrower may be required to make the foregoing compensation to Lender or such Funding Party. Lender or any Funding Party that gives notice as provided herein shall promptly withdraw such notice (by notice to Borrower) whenever Lender or such Funding Party is no longer required to maintain such reserves or the circumstances giving rise to such notice shall otherwise cease. Notwithstanding the foregoing, Borrower shall not be required to pay any increased amounts required by the third sentence of this definition to the extent that Lender or the relevant Funding Party shall be compensated or reimbursed under Section 2.10 hereof for such amounts. The establishment of the LIBO Rate on each Determination Date by Lender and Lender's calculation of the rate of interest applicable to the Note shall (in the absence of manifest error) be final and binding.

"LIEN" means any lien, mortgage, pledge, security interest, charge or encumbrance of any kind, whether voluntary or involuntary, (including any conditional sale or other title retention agreement, any lease in the nature thereof, and any agreement to give any security interest).

"LOAN" has the meaning set forth in Section 2.1.

"LOAN AGREEMENT" means this Amended and Restated Loan and Security Agreement, as same may be amended, modified or restated from time to time (including all schedules, exhibits, annexes and appendices hereto).

"LOAN DOCUMENTS" means this Loan Agreement, the Note, the Deed of Trust, the Assignment of Leases, the Assignment of Management Agreement, the Guaranty, the Environmental Indemnity, the Assignment of Rate Cap, the Financing Statements, the Cash Management Agreement and any and all other documents and agreements accepted by Lender for the purposes of evidencing and/or securing the Loan.

"LOCK BOX" has the meaning set forth in Section 7.1.

"MANAGEMENT AGREEMENT" means that certain Amended and Restated Hotel Management Agreement, dated as of March 27, 2001, between Borrower and Manager, and any management agreement which may hereafter be entered into in accordance with the terms and conditions hereof, pursuant to which any subsequent Manager may hereafter manage the Property.

"MANAGEMENT FEE" means the fee earned by Manager pursuant to the terms of the Management Agreement.

"MANAGER" means Opryland Hospitality, LLC, a Tennessee limited liability company, or such other Person as may hereafter be charged with management of the Property approved by Lender in accordance with the terms and conditions hereof.

"MATERIAL ADVERSE EFFECT" means (A) a material adverse effect upon the business, operations, properties, assets or condition (financial or otherwise) of Borrower or any other Borrower Party, or (B) the impairment of the ability of Borrower or any other Borrower Party to perform its obligations under any Loan Documents, or (C) the impairment of the ability of Lender to enforce or collect any of the Obligations. In determining whether any individual event would result in a Material Adverse Effect, notwithstanding that such event does not of itself have such effect, a Material Adverse Effect shall be deemed to have occurred if the cumulative effect of such event and all other then occurring events and existing conditions would result in a Material Adverse Effect.

"MATERIAL AGREEMENT" means any contract or agreement relating to the ownership, management, development, use, operation, leasing, maintenance, repair or improvement of the Property under which there is an obligation of Borrower to pay, or under which Borrower receives in compensation, more than \$500,000 per annum, other than the Management Agreement or Material Leases.

"MATERIAL ALTERATION" means any improvement or alteration to the Property, the cost of which exceeds \$1,000,000 and is not otherwise already approved by Lender as part of the FF&E Budget then in effect.

"MATERIAL LEASE" means any Lease of space in the Property which (a) either provides for annual rent or other payments in an amount equal to or greater than \$500,000 or has a term (including all extensions and renewals which are unilaterally exercisable by the tenant thereunder) of more than five (5) years, and (b) may not be cancelled by either party thereto on thirty (30) days' notice without payment of a termination fee, penalty or other cancellation fee.

"MATURITY DATE" shall mean the Scheduled Maturity Date, as same may be extended for the First Extension Term or both Extension Terms (subject to the terms and conditions of Section 2.5(B)), or such other date on which the final payment of principal of the Note becomes due and payable as therein or herein provided, whether at such stated maturity date, by acceleration, or otherwise.

"MAXIMUM RATE" has the meaning set forth in Section 2.2.

"MEMBER" means OHN Holdings, LLC, a Delaware limited liability company which is the sole member of Borrower.

"MEZZANINE LENDER" has the meaning set forth in Section 5.17.

"MEZZANINE LOAN" has the meaning set forth in Section 5.17.

"MEZZANINE LOAN DOCUMENTS" has the meaning set forth in Section 5.17.

"MONTHLY DEBT SERVICE PAYMENT" has the meaning set forth in Section 2.4.

"MONTHLY DEBT SERVICE PAYMENT AMOUNT" means the amount of any Monthly Debt Service Payment under Section 2.4.

"MONTHLY FF&E PAYMENT" has the meaning set forth in Section 6.4.

"MOODY'S" means Moody's Investors Service.

"MULTIEMPLOYER PLAN" means a "multiemployer plan" as defined in Section 3(37) or Section 4001(a)(3) of ERISA to which Borrower or any Affiliate is making, or is accruing an obligation to make, contributions or has made, or been obligated to make, contributions within the preceding six (6) years, or for which Borrower or any Affiliate has any liability, including contingent liability.

"NET OPERATING INCOME" means, for any period, the amount by which Operating Revenues exceed Operating Expenses, provided that Operating Revenues and Operating Expenses shall, for purposes of calculating Net Operating Income, be calculated on an accrual basis in accordance with GAAP.

"NOTE" has the meaning set forth in Section 2.1.

"OBLIGATIONS" means the Loan and all obligations, liabilities and indebtedness of every nature to be paid or performed by Borrower under the Loan Documents, including the principal amount of the Loan, interest accrued thereon and all fees, costs and expenses, and other sums



now or hereafter owing, due or payable and whether before or after the filing of a proceeding under the Bankruptcy Code by or against Borrower, and the performance of all other terms, conditions and covenants under the Loan Documents.

"OPERATING BUDGET" means Borrower's budget setting forth Borrower's best estimate, after due consideration, of all Operating Revenues and Operating Expenses and any other revenues, costs and expenses for the Property which budget has been approved by Lender in accordance herewith.

"OPERATING EXPENSES" means, without duplication, all costs and expenses of operating, maintaining and managing the Property determined in accordance with GAAP, including, without limitation, Impositions, Insurance Premiums, repair and maintenance costs, actual management fees and costs, utilities, accounting, legal and other professional fees, fees relating to environmental and financial audits, wages, salaries, payroll taxes and benefits, business franchise taxes, tips and gratuities paid to employees and staff and other personnel expenses, costs and expenses related to operating and maintaining all guest rooms, restaurants (including inventory and supplies), retail stores and shops, bars, meeting rooms, banquet rooms, apartments, parking and recreational facilities, and all other "costs and expenses" as defined in the Uniform System; but excluding principal and interest payments on the Loan, fees and expenses of a non-operating nature and fees and expenses due and payable to or for the benefit of Lender under this Agreement or any of the other Loan Documents (including, without limitation, all loan servicing fees and expenses), capital expenditures, asset management fees, any payment or expense for which Borrower was or is to be reimbursed from proceeds of the Loan or insurance or by any third party, any fees or expenses paid to any partner or member of Borrower for services provided to Borrower and any non-cash charges such as depreciation and amortization. Operating Expenses shall not include federal, state or local income taxes or legal and other professional fees unrelated to the operation of the Property.

"OPERATING REVENUES" means, without duplication, all revenues and receipts of Borrower from operation of the Property or otherwise arising in respect of the Property after the date hereof which are properly allocable to the Property for the applicable period in accordance with GAAP, including, without limitation, all hotel receipts, revenues and credit card receipts collected from guest rooms, restaurants and bars (including without limitation, service charges for employees and staff), mini-bars, meeting rooms, banquet rooms, apartments, parking and recreational facilities, health club membership fees, food and beverage wholesale and retail sales, service charges, convention services, special events, audio-visual services, boat cruises, travel agency fees, telephone charges, laundry services, vending machines and otherwise, all rents, revenues and receipts now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the possession, use or occupancy of all or any portion of the Property or personalty located thereon, or rendering of service by Borrower or any operator or manager of the hotel or commercial space (including, without limitation, from the rental of any office space, retail space, guest rooms or other space, halls, stores and deposits securing reservations of such space (only to the extent such deposits are not required to be returned or refunded to the depositor)), proceeds from rental or business interruption insurance relating to business interruption or loss of income for the period in question and any other items of revenue which would be included in operating revenues under the Uniform System; but excluding proceeds from the sale of FF&E, abatements, reductions or refunds of real estate or

personal property taxes relating to the Property, dividends on insurance policies relating to the Property, condemnation proceeds arising from a temporary taking of all or a part of the Property, security and other deposits until they are forfeited by the depositor, advance rentals until they are earned, proceeds from a sale, financing or other disposition of the Property or any part thereof or interest therein and other non-recurring revenues as determined by Lender, insurance proceeds (other than proceeds from rental or business interruption insurance), other condemnation proceeds, capital contributions or loans to Borrower and disbursements to Borrower from the Reserves.

"PAYMENT DATE" means the last day of each calendar month occurring during the term of the Loan (or if such last day is not a Business Day, the last day of such calendar month that is a Business Day).

"PBGC" means the Pension Benefit Guaranty Corporation or any successor thereto.

"PENSION PLAN" means any Employee Benefit Plan, other than a Multiemployer Plan, which is subject to the provisions of Part 3 of Title I of ERISA, Title IV of ERISA or Section 412 of the IRC and (i) which is maintained for employees of Borrower, or any of its ERISA Affiliates, (ii) which has at any time within the preceding six (6) years been maintained for the employees of Borrower or any of its current or former ERISA Affiliates, or (iii) for which Borrower or any ERISA Affiliate has any liability, including contingent liability.

"PERMITTED ENCUMBRANCES" means (i) the Deed of Trust and the other Liens of the Loan Documents in favor of Lender, (ii) the items shown in Schedule B to the Title Policies as of Closing, (iii) future liens for property taxes and assessments not then delinquent, (iv) Liens for Impositions not yet due and payable or Liens arising after the date hereof which are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted in accordance with Section 5.3(B) hereof; (v) in the case of Liens arising after the date hereof, statutory Liens of carriers, warehousemen, mechanics, materialmen and other similar Liens arising by operation of law, which are incurred in the ordinary course of business and discharged by Borrower by payment, bonding or otherwise within thirty (30) days after the filing thereof or which are being contested in good faith in accordance with Section 5.3(B) hereof; (vi) Liens arising from reasonable and customary purchase money financing of personal property and equipment leasing to the extent the same are created in the ordinary course of business in accordance with Section 5.17(B) hereof; (vii) all easements, rights-of-way, restrictions and other similar charges or non-monetary encumbrances against real property which do not adversely affect (A) the ability of Borrower to pay any of its obligations to any Person as and when due, (B) the marketability of title to the Property, (C) the fair market value of the Property, or (D) the use or operation of the Property as of the Closing Date and thereafter; (viii) rights of existing and future tenants, as tenants only, pursuant to the Leases; and (ix) any other Lien to which Lender may expressly consent in writing.

"PERMITTED INDEBTEDNESS" has the meaning set forth in Section 5.17.

"PERMITTED INVESTMENTS" has the meaning set forth in the Cash Management Agreement.

"PERMITTED TRANSFEREE" shall mean (i) any Person which owns or controls (together with its Affiliates), exclusive of the Property, real estate assets having a total value of at least \$600,000,000 and having a net worth (calculated in accordance with GAAP) of at least \$150,000,000; (ii) a pension plan or fund or separate account or investment vehicle established by a pension plan or fund; or (iii) any publicly traded real estate investment trust or corporation which owns or controls (together with its Affiliates) exclusive of the Property, real estate assets having a total value of at least \$600,000,000 and having a net worth (calculated in accordance with GAAP) of at least \$150,000,000.

"PERSON" means and includes natural persons, corporations, limited liability companies, limited partnerships, general partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and governments and agencies and political subdivisions thereof and their respective permitted successors and assigns (or in the case of a governmental Person, the successor functional equivalent of such Person).

"PRE-EXISTING CONDITION" has the meaning set forth in Section 5.5.

"PRIMARY BORROWER PARTIES" means Borrower and Independent Manager.

"PRO FORMA NET OPERATING INCOME" means Net Operating Income for any period adjusted to reflect (i) a base management fee equal to the greater of (A) the actual base management for such period and (B) 3.0% of Operating Revenues (excluding service charges) for such period and (ii) a reserve for FF&E equal to the greater of (A) the actual reserves for FF&E for such period and (B) 4.0% of Operating Revenues (excluding service charges) for such period; and provided that Pro Forma Net Operating Income may further be adjusted by Lender based upon Lender's sole good faith determination of Rating Agency underwriting criteria (which shall be disclosed by Lender to Borrower) and shall be final absent manifest error.

"PROPERTY" means the real property commonly known as the Opryland Hotel, located in Nashville, Tennessee, as more particularly described in the Deed of Trust, together with all Improvements now or hereafter located thereon and all related facilities, amenities and FF&E owned by Borrower.

"RATING AGENCY" shall mean any of S&P, Moody's and Fitch or any other nationally-recognized statistical rating organization designated by Lender in its sole discretion.

"RATING CONFIRMATION" with respect to the transaction or matter in question, shall mean: (i) if all or any portion of the Loan, by itself or together with other loans, has been the subject of a Securitization, then each applicable Rating Agency shall have confirmed in writing that such transaction or matter shall not result in a downgrade, qualification, or withdrawal of any rating then in effect for any certificate or other securities issued in connection with such Securitization; and (ii) if all of the Loan has not been the subject of a Securitization, then Lender shall have determined in its reasonable discretion (taking into consideration such factors as Lender may determine, including the attributes of the loan pool in which the Loan might reasonably be expected to be securitized) that no rating for any certificate or other securities that would be

issued in connection with Securitization of such portion of the Loan will be downgraded, qualified, or withheld by reason of such transaction or matter.

"RATING CRITERIA" with respect to any Person, shall mean that (i) the short-term unsecured debt obligations of such Person are rated at least "A-1" by S&P, "P-1" by Moody's and "F-1" by Fitch, if deposits are held by such Person for a period of less than one month, or (ii) the long-term unsecured debt obligations of such Person are rated at least "AA-" by S&P (or "A" if the short-term unsecured debt obligations of such Person are rated at least "A-1"), "Aa3" by Moody's and "A" by Fitch, if deposits are held by such Person for a period of one month or more.

"RECEIPTS" shall mean all revenues, receipts and other payments of every kind arising from ownership or operation of the Property, including without limitation, all warrants, stock options, or equity interests in any tenant, licensee or other Person occupying space at, or providing services related to or for the benefit of, the Property received by Borrower or any Related Person of Borrower in lieu of rent or other payment.

"RELATED PERSON" means in relation to any Person, any other Person that is (i) an Affiliate of the first Person; (ii) the sibling of the first Person or of the Affiliate; (iii) the then-current and former spouses of the first Person or of the Affiliate; (iv) a Person that shares or has shared a residence with the first Person or with the Affiliate; (v) the ancestor or descendant of the first Person or of any other Person described in this items (i) through (iv) above; or (vi) any other Person that, by reason of familial, economic, social or other relationship, would reasonably be expected to favor the first Person or to act as requested by the first Person. Where expressions such as "[name of party] or any Related Person" are used, the same shall refer to the named party and any Related Person of the named party.

"RENT ROLL" has the meaning set forth in Section 3.1.

"RENTS" has the meaning set forth in the Granting Clauses of the Deed of Trust.

"REPLACEMENTS" has the meaning set forth in Section 6.4.

"REQUIRED REPAIRS" has the meaning set forth in Section 6.4.

"REQUIRED CAPITAL IMPROVEMENTS" has the meaning set forth in Section 6.5.

"RESERVES" means the reserves held by or on behalf of Lender pursuant to this Loan Agreement or other Loan Document, including without limitation, the reserves established pursuant to Article VI.

"RESERVE SUB-ACCOUNTS" has the meaning set forth in Section 7.1.

"RESTORATION" has the meaning set forth in Section 5.5.

"RESTORATION THRESHOLD" shall mean \$1,000,000.

"REVPAR" means average room revenues per available room per day.

"SCHEDULED MATURITY DATE" shall mean March 31, 2004.

"SECOND EXTENSION TERM" has the meaning set forth in Section 2.5(B).

"SECONDARY MARKET TRANSACTION" has the meaning set forth in Section 10.1.

"SECURITIES" (whether or not capitalized) means any stock, shares, voting trust certificates, bonds, debentures, options, warrants, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

"SECURITIZATION" shall mean a rated offering of securities representing direct or indirect interests in one or more mortgage loans or the right to receive income therefrom.

"SECURITIZATION SIDE LETTER" means that certain letter agreement, dated of even date herewith, between Borrower and Lender providing for certain modifications of this Loan Agreement and the other Loan Documents in connection with the consummation of a Secondary Market Transaction involving the Loan.

"SELF-INSURANCE DEFICIENCY" has the meaning set forth in Section 6.7.

"SELF-INSURANCE RESERVE" has the meaning set forth in Section 6.7.

"SELF-INSURANCE RESERVE ACCOUNT" has the meaning set forth in Section 6.7.

"SELF-INSURANCE RESERVE MINIMUM BALANCE" has the meaning set forth in Section 6.7.

"SERVICER" means a servicer selected by Lender from time to time in its sole discretion to service the Loan.

"SERVICES AGREEMENTS" has the meaning set forth in Section 3.1.

"STAND ALONE INSURANCE POLICIES" has the meaning set forth in Section 6.3.

"S&P" shall mean Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

"SUB-ACCOUNTS" has the meaning set forth in Section 7.1.

"SUPPLEMENTAL FINANCIAL INFORMATION" means (i) a comparison of the budgeted income and expenses and the actual income and expenses for the prior calendar year or corresponding calendar quarter for such prior year, (ii) a calculation of the average daily rate, RevPAR and average occupancy statistics for the Property for the applicable period, (iii) an updated summary of advance bookings information (excluding customer names) and (iv) such other financial reports as the subject entity shall routinely and regularly prepare.

"SURVEY" has the meaning set forth in Section 3.1.

"TAX LIABILITIES" has the meaning set forth in Section 2.9.

"TITLE COMPANIES" means Chicago Title Insurance Company, Lawyer's Title Insurance Corporation and First American Title Insurance Company and/or such other national title insurance company as may be acceptable to Lender.

"TITLE POLICIES" means the ALTA mortgagee policies of title insurance pertaining to the Deed of Trust issued by the Title Companies to Lender in connection with the Closing.

"TRANSFER AND ASSUMPTION" and "TRANSFEREE BORROWER" have the meaning set forth in Section 11.3.

"UNIFORM SYSTEM" means the Uniform System of Accounts for the Lodging Industry promulgated by the American Hotel and Motel Association, as in effect from time to time.

"WAIVING PARTY" has the meaning set forth in Section 13.1.

"WORK" has the meaning set forth in Section 6.6.

"WORK RESERVES" has the meaning set forth in Section 6.6.

#### SECTION 1.2 ACCOUNTING TERMS.

For purposes of this Loan Agreement, all accounting terms not otherwise defined herein shall have the meanings assigned to such terms in conformity with GAAP or the Uniform System, as the case may be.

#### SECTION 1.3 OTHER DEFINITIONAL PROVISIONS.

References to "ARTICLES", "SECTIONS", "SUBSECTIONS", "EXHIBITS" and "SCHEDULES" shall be to Articles, Sections, Subsections, Exhibits and Schedules, respectively, of this Loan Agreement unless otherwise specifically provided. Any of the terms defined in Section 1.1 may, unless the context otherwise requires, be used in the singular or the plural depending on the reference. In this Loan Agreement, "HEREOF", "HEREIN", "HERETO", "HEREUNDER" and the like mean and refer to this Loan Agreement as a whole and not merely to the specific article, section, subsection, paragraph or clause in which the respective word appears; words importing any gender include the other genders; references to "WRITING" include printing, typing, lithography and other means of reproducing words in a tangible visible form; the words "INCLUDING", "INCLUDES" and "INCLUDE" shall be deemed to be followed by the words "without limitation"; and any reference to any statute or regulation may include any amendments of same and any successor statutes and regulations. Further, (i) any reference to any agreement or other document may include subsequent amendments, assignments, and other modifications thereto, and (ii) any reference to any Person may include such Person's respective permitted successors and assigns or, in the case of governmental Persons, Persons succeeding to the relevant functions of such Persons.

ARTICLE II  
TERMS OF THE LOAN

## SECTION 2.1 LOAN.

(A) LOAN. Subject to the terms and conditions of this Loan Agreement and in reliance upon the representations and warranties of Borrower contained herein, Lender agrees to purchase the Original Loan from Original Lender, make the New Advance to Borrower, combine and consolidate the New Advance and the Original Loan into a single indebtedness in the original principal amount of \$275,000,000 and amend and restate such loan in the original principal amount of \$275,000,000 upon the terms and conditions hereof (the Original Loan, as amended and restated hereby, and the obligation of Borrower to repay the same together with all interest and other amounts from time to time owing hereunder may be referred to as the "LOAN").

(B) NOTE. On the Closing Date, Borrower shall execute and deliver to Lender an Amended and Restated Promissory Note, dated of even date herewith (as amended, modified or restated, and any replacement or substitute notes therefor, by means of multiple notes or otherwise, collectively, the "NOTE"), made by Borrower to the order of Lender, in the original principal amount of \$275,000,000.

(C) USE OF PROCEEDS. The proceeds of the Loan funded at Closing shall be used to (i) acquire the Original Loan from Original Lender; (ii) pay all recording fees and taxes, title insurance premiums, the reasonable costs and expenses incurred by Lender, including the legal fees and expenses of counsel to Lender, and other costs and expenses approved by Lender (which approval will not be unreasonably withheld) related to the Loan; and (iii) establish the Reserves required hereunder. The remaining proceeds of the Loan, if any, shall be disbursed to Borrower.

## SECTION 2.2 INTEREST.

(A) RATE OF INTEREST. The outstanding principal balance of the Loan shall bear interest at a rate per annum equal to the Interest Rate in effect for each Interest Accrual Period during the term hereof. The "INTEREST Rate" for any Interest Accrual Period shall be the rate of interest per annum equal to the sum of (i) the Applicable Spread plus (ii) the LIBO Rate in effect for such Interest Accrual Period.

(B) DEFAULT RATE. Notwithstanding the foregoing, upon the occurrence and during the continuance of an Event of Default and in any event from and after the Maturity Date of the Loan, the outstanding principal balance of the Loan and all other Obligations shall bear interest until paid in full at a rate per annum that is four percent (4.0%) in excess of the Interest Rate otherwise applicable under this Loan Agreement and the Note (the "DEFAULT RATE").

(C) COMPUTATION OF INTEREST. Interest on the Loan and all other Obligations owing to Lender shall be computed on the basis of a 360-day year, and shall be charged for the actual number of days elapsed during any month or other accrual period. Interest shall be payable in arrears (except with respect to the number of days from the Payment Date in any Interest Accrual Period to the last day of such Interest Accrual Period as to which interest shall be payable in advance).

(D) INTEREST LAWS. Notwithstanding any provision to the contrary contained in this Loan Agreement or the other Loan Documents, Borrower shall not be required to pay, and Lender shall not be permitted to collect, any amount of interest in excess of the maximum amount of interest permitted by law ("EXCESS INTEREST"). If any Excess Interest is provided for or determined by a court of competent jurisdiction to have been provided for in this Loan Agreement or in any of the other Loan Documents, then in such event: (1) the provisions of this subsection shall govern and control; (2) Borrower shall not be obligated to pay any Excess Interest; (3) any Excess Interest that Lender may have received hereunder shall be, at Lender's option, (a) applied as a credit against either or both of the outstanding principal balance of the Loan or accrued and unpaid interest thereunder (not to exceed the maximum amount permitted by law), (b) refunded to the payor thereof, or (c) any combination of the foregoing; (4) the interest rate(s) provided for herein shall be automatically reduced to the maximum lawful rate allowed from time to time under applicable law (the "MAXIMUM RATE"), and this Loan Agreement and the other Loan Documents shall be deemed to have been and shall be, reformed and modified to reflect such reduction; and (5) Borrower shall not have any action against Lender for any damages arising out of the payment or collection of any Excess Interest. Notwithstanding the foregoing, if for any period of time interest on any Obligation is calculated at the Maximum Rate rather than the applicable rate under this Loan Agreement, and thereafter such applicable rate becomes less than the Maximum Rate, the rate of interest payable on such Obligations shall, to the extent permitted by law, remain at the Maximum Rate until Lender shall have received or accrued the amount of interest which Lender would have received or accrued during such period on Obligations had the rate of interest not been limited to the Maximum Rate during such period. If the Default Rate shall be finally determined to be unlawful, then the Interest Rate shall be applicable during any time when the Default Rate would have been applicable hereunder, provided however that if the Maximum Rate is greater or lesser than the Interest Rate, then the foregoing provisions of this paragraph shall apply.

(E) LATE CHARGES. If an Event of Default regarding non-payment of principal, interest or other sums due hereunder or under any of the other Loan Documents shall occur, then Borrower shall pay to Lender, in addition to all sums otherwise due and payable, a late fee in an amount equal to five percent (5.0%) of such principal, interest or other sums due hereunder or under any other Loan Document, such late charge to be immediately due and payable without demand by Lender.

(F) ADDITIONAL ADMINISTRATIVE FEE. In addition to the Default Rate provided for above, upon failure of any Borrower Party to deliver any of the financial statements or reports required to be delivered to Lender as provided in Sections 5.1(A)(i), (ii), (iii) or (v) hereof upon their due dates, if any such failure shall continue for ten (10) Business Days following written notice thereof from Lender, Borrower shall pay to Lender together with the scheduled monthly payments of principal and interest on the Note, for each month or portion thereof that any such financial statement or report required under Sections 5.1(A)(i), (ii), (iii) or (v) remains undelivered, an administrative fee in the amount of Five Thousand Dollars (\$5,000). Borrower agrees that such administrative fee (i) is a fair and reasonable fee necessary to compensate Lender for its additional administrative costs under the circumstances, (ii) is not a penalty and (iii) is necessary to compensate Lender for increased costs and obligations to third parties in connection with the planned Securitization of the Loan.



## SECTION 2.3 INTEREST RATE CAP AGREEMENT.

(A) As a condition to Closing, Borrower shall purchase and pledge and deliver to Lender an interest rate cap agreement satisfying the criteria set forth below (the "CAP"), and Borrower shall maintain such Cap in the possession of Lender, in full force and effect, until all Obligations are fully and finally repaid. The Cap (i) shall have a notional amount equal to the outstanding principal balance of the Loan calculated based upon the declining principal balance of the Loan scheduled to be outstanding over the term of such Cap taking into account scheduled principal amortization hereunder, (ii) shall provide that to the extent that LIBO Rate exceeds seven and one-half percent (7.50%) per annum (the "CAP THRESHOLD RATE"), then the Cap Provider shall pay to Lender not less than the amount of interest that would accrue on the Loan at a per annum rate equal to difference between LIBO Rate and the Cap Threshold Rate, (iii) shall be in form and substance reasonably satisfactory to Lender, (iv) shall have a term equal to the Initial Term of the Loan (or the applicable Extension Term), and (v) shall be issued by a financial institution (the "CAP PROVIDER") having a financial rating by S&P of at least "AA" (and at least an equivalent rating from each of the other Rating Agencies) and otherwise be acceptable to Lender in Lender's reasonable discretion at the time that the Cap is issued.

(B) If at any time the financial rating assigned to any Cap Provider by S&P shall fall below AA- (or the equivalent rating for any other Rating Agency) and, if the Cap Provider's obligations under the Cap shall then be guaranteed under a guaranty (the "CAP GUARANTY") issued by a financial institution (the "CAP GUARANTOR"), then the financial rating assigned to such Cap Guarantor by S&P shall have also fallen below AA- (or the equivalent rating for any other Rating Agency), Borrower shall be required to deliver a replacement Cap in substantially the form of the Cap delivered at Closing issued by a Cap Provider meeting the rating requirements for a Cap Provider under Section 2.3(A)(v), providing for a cap "strike price" not greater than eight and one-quarter percent (8.25%) per annum and otherwise reasonably acceptable to Lender (a replacement Cap meeting all of the foregoing conditions, an "ACCEPTABLE REPLACEMENT CAP") within ten (10) Business Days after such downgrade of the Cap Provider (and, if applicable, the Cap Guarantor), together with an assignment of such Cap substantially in the form of the Assignment of Rate Cap and such Financing Statements and opinions of counsel to the Cap Provider as Lender may require each in form and substance acceptable to Lender. If, for any reason, Borrower is unable to deliver a replacement Cap when required hereunder, then at or prior to the time when the replacement Cap is due hereunder, Borrower shall deliver to Lender cash security (such cash security together with any interest thereon, the "CAP RESERVE") in an amount sufficient to cover the amount of additional interest which Lender reasonably estimates may be incurred during the remaining term of the Loan (or remaining Extension Term then in effect) as a result of the LIBO Rate exceeding the Cap Threshold Rate, which Cap Reserve shall be held by Lender and applied to the Obligations in accordance with Section 6.1. Upon delivery of a replacement Cap acceptable to Lender, the remaining balance of the Cap Reserve shall be returned to Borrower. In addition, Borrower shall have the one time right at any time prior to the Scheduled Maturity Date to deliver an Acceptable Replacement Cap to Lender provided that no Event of Default has occurred and is continuing and provided that, in the opinion of counsel to Lender, delivery of such Acceptable Replacement Cap would not have an adverse effect on the qualification of any trust in connection with a Securitization backed in whole or in part by the Loan as a REMIC (as defined in the IRC) or any other adverse tax consequences to any investor in such Securitization. Borrower shall be

required to pay any and all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by Lender (and by any Servicer and trustee in connection with any Securitization backed in whole or in part by the Loan) in connection with delivery of such Acceptable Replacement Cap and all related documentation and opinions required above.

(C) All payments made by the Cap Provider (and/or, if applicable, the Cap Guarantor) under the Cap (or Cap Guaranty) shall be deposited directly by the Cap Provider (and/or the Cap Guarantor) into the Central Account and applied in accordance with the Cash Management Agreement.

#### SECTION 2.4 PAYMENTS.

(A) PAYMENTS OF INTEREST AND PRINCIPAL. Borrower shall make a payment to Lender of interest only on the Closing Date for the period from the Closing Date through and including the day immediately prior to the first Business Day of the calendar month following the month in which the Closing Date occurs. Commencing on April 30, 2001 and continuing on each Payment Date thereafter through but excluding the Maturity Date, Borrower shall make monthly payments (each, a "MONTHLY DEBT SERVICE PAYMENT") of (i) principal in the amount of \$667,000 per month and (ii) interest in an amount equal to interest accrued on the outstanding principal balance of the Loan at the Interest Rate in effect for the related Interest Accrual Period. Each payment shall be applied first to accrued and unpaid interest and the balance to principal.

(B) DATE AND TIME OF PAYMENT. Borrower shall receive credit for payments on the Loan which are transferred to the account of Lender as provided below (i) on the day that such funds are received by Lender if such receipt occurs by 1:00 p.m. (New York time) on such day, or (ii) on the next succeeding Business Day after such funds are received by Lender if such receipt occurs after 1:00 p.m. (New York time). Whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, the payment may be made on the next succeeding Business Day.

(C) MANNER OF PAYMENT. Borrower promises to pay all of the Obligations relating to the Loan as such amounts become due or are declared due pursuant to the terms of this Loan Agreement. All payments by Borrower on the Loan shall be made without deduction, defense, set off or counterclaim and in immediately available funds delivered to Lender by wire transfer to such accounts at such banks as Lender may from time to time designate.

#### SECTION 2.5 MATURITY.

(A) SCHEDULED MATURITY DATE. To the extent not sooner due and payable in accordance with the Loan Documents (and unless Borrower shall extend the term of the Loan for the First Extension Term or both of the Extension Terms upon the terms and subject to the conditions of Section 2.5(B) below), the then outstanding principal balance of the Loan, all accrued and unpaid interest thereon (and including interest through the end of the Interest Accrual Period then in effect), and all other sums then owing to Lender hereunder and under the Note, the Deed of Trust and the other Loan Documents, shall be due and payable on the Scheduled Maturity Date.

(B) EXTENSION TERMS. Borrower may extend the term of the Loan for two extension terms of one year each (each, an "EXTENSION TERM", and, collectively the "EXTENSION TERMS"); (i) the first Extension Term (the "FIRST EXTENSION TERM") commencing on the day immediately following the Scheduled Maturity Date and ending (unless sooner terminated in accordance with the Loan Documents) the first (1st) anniversary of the Scheduled Maturity Date and (ii) the second Extension Term (the "SECOND EXTENSION TERM") commencing on the day immediately following the last day of the First Extension Term and ending (unless sooner terminated in accordance with the Loan Documents) on the second (2nd) anniversary of the Scheduled Maturity Date; subject to the following terms and conditions:

- (i) Borrower shall give Lender notice (an "EXTENSION NOTICE") of its request to extend the term of the Loan for either Extension Period at least thirty (30) but not more than one hundred twenty (120) days prior to the Scheduled Maturity Date or expiration of the First Extension Term, as the case may be;
- (ii) no Default or Event of Default shall have occurred and be continuing as of the date Borrower delivers an Extension Notice or as of the Scheduled Maturity Date or expiration of the First Extension Term, as the case may be;
- (iii) the Debt Service Coverage Ratio (with debt service on the Loan recalculated assuming that interest would have been payable at an interest rate equal to the sum of the Extension Cap Threshold Rate plus the Applicable Spread, in each case, in effect for the first month of the Extension Term in question and including required principal amortization payments under Section 2.4(A)) for the twelve (12) month period ended ninety (90) days prior to the Scheduled Maturity Date or expiration of the First Extension Term, as the case may be, is at least 1.49:1.0; and
- (iv) Borrower shall deliver to Lender an extension of the Cap or a replacement Cap (and an extension or replacement of the Cap Guaranty, if applicable) in form substantially the same as the Cap (and Cap Guaranty) delivered at Closing covering the term of the applicable Extension Term, providing for a cap "strike price" (such "strike price", the "EXTENSION CAP THRESHOLD RATE") not greater than eight and one-quarter percent (8.25%) per annum (it being acknowledged that Borrower may purchase an extension or replacement Cap for the applicable Extension Term with an Extension Cap Threshold Rate lower than such rate in order to satisfy the Debt Service Coverage Ratio requirement under Section 2.5(B)(iii) above) and otherwise satisfying the requirements of Section 2.3 together with an assignment of such replacement Cap substantially in the form of the Assignment of Rate Cap and such Financing Statements and opinions of counsel to the Cap Provider (and Cap Guarantor, if applicable) as Lender may require each in form and substance acceptable to Lender. Borrower shall be required to pay any and all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and

disbursements) incurred by Lender (and by any Servicer and trustee in connection with any Securitization backed in whole or in part by the Loan) in connection with delivery of such extension or replacement Cap (and extension or replacement of the Cap Guaranty, if applicable) and all related documentation and opinions required above.

#### SECTION 2.6 PREPAYMENT.

(A) LIMITATION ON PREPAYMENT; PREPAYMENT CONSIDERATION DUE ON ACCELERATION. Borrower shall have no right to prepay the Loan in whole or part prior to April 30, 2002, except as expressly set forth in this provision. On and after April 30, 2002, Borrower may prepay the Loan in whole, but not in part, without payment of Prepayment Consideration, provided that (i) Borrower shall provide to Lender not less than thirty (30) days prior written notice of such prepayment, (ii) together with such prepayment Borrower also shall pay all accrued and unpaid interest and all other Obligations and (iii) if such prepayment occurs on any day other than a Payment Date, then together therewith Borrower also shall pay to Lender the amount of interest that would have accrued on the amount being prepaid from and including the date of such prepayment to the end of such Interest Accrual Period.

(B) PREPAYMENT CONSIDERATION DUE. If any prepayment of all or any portion of the Loan shall occur prior to April 30, 2002, on account of acceleration of the Loan due to an Event of Default, or otherwise, then except only as expressly provided herein to the contrary, Borrower shall pay the Prepayment Consideration to Lender together with such prepayment, as liquidated damages and compensation for costs incurred, and in addition to all other amounts due and owing to Lender. Notwithstanding the foregoing, no Prepayment Consideration will be due as to a prepayment of insurance or condemnation proceeds required by Lender pursuant to this Loan Agreement or the Deed of Trust in the absence of an Event of Default or in connection with any partial prepayment resulting from (i) the application of Excess Cash Flow from the Cash Trap Reserve under Section 2.6(D) below or (ii) the application of any amounts to principal under Section 3.3(a)(iii) of the Cash Management Agreement. The foregoing designation of any amount of Prepayment Consideration in this Agreement shall not create a right to prepay at any time or in any circumstances where this Agreement does not expressly state that such a right exists.

(C) DEFINITIONS. The following terms shall have the meanings indicated:

"PREPAYMENT CONSIDERATION" shall mean an amount equal to two percent (2%) of the Loan balance at the time of prepayment.

(D) MANDATORY PREPAYMENTS; CASH TRAP EVENTS. (i) If, at any time prior to the repayment of the Obligations in full, a Cash Trap Event shall occur, then, from and after the occurrence of such Cash Trap Event and for so long as such Cash Trap Event continues to exist, pursuant to the Cash Management Agreement all Excess Cash Flow (except as otherwise expressly provided below) shall be deposited with Lender (or its Servicer or agent) (said funds, together with any interest thereon, the "CASH TRAP RESERVE"). A "CASH TRAP EVENT" shall occur as of any Calculation Date when the Debt Service Coverage Ratio for a trailing twelve (12) month period (determined upon delivery of the financial statements for such Calculation Date

and with debt service on the Loan calculated at an amount equal to the lesser of (a) the actual debt service paid during such period and (b) the debt service amount which would have been payable during such period if interest were recalculated at an interest rate equal to the sum of the Cap Threshold Rate (or applicable Extension Cap Threshold Rate, as the case may be) plus the then Applicable Spread, and, in either case, including required principal amortization payments under Section 2.4(A)) is less than the Minimum DSCR and shall continue to exist until such Minimum DSCR test has been satisfied for three (3) consecutive calendar months (on a trailing twelve (12) month basis and determined upon delivery of the financial statements for each such month); provided that for purposes of determining the Debt Service Coverage Ratio for the Calculation Dates occurring on June 30, 2001, September 30, 2001 and December 31, 2001 (and for any Monthly Test Date occurring prior to March 31, 2002), debt service under clause (a) above shall be equal to the product of (1) the actual debt service for the three (3) month period ended as of such Calculation Date (or as of such Monthly Test Date) multiplied by (2) four. Notwithstanding that the Debt Service Coverage Ratio shall be less than the Minimum DSCR as of any Calculation Date, no Cash Trap Event shall be deemed to exist hereunder provided that Borrower makes a principal prepayment on the Loan (which prepayment amount shall be held in the Debt Service Sub-Account and applied to payment of principal on the next Payment Date without any Prepayment Consideration), within two (2) Business Days after the date of delivery of the financial statements disclosing the existence of such Cash Trap Event (or the date on which such financial statements are required to be delivered pursuant to Section 5.1), in an amount which as determined by Lender, in its sole good faith discretion, would be sufficient to cause the Debt Service Coverage Ratio to exceed the Minimum DSCR if interest payable on the Loan included in determining such Debt Service Coverage Ratio were recalculated as provided above assuming that such amount were applied to reduce the principal amount of the Loan as of the first day of the relevant measuring period. "MINIMUM DSCR" means 1.25:1.0. "CALCULATION DATE" means the last day of each calendar quarter commencing with the calendar quarter ended June 30, 2001. Following the Calculation Date on which a Cash Trap Event occurs, if the Debt Service Coverage Ratio (with debt service calculated as provided above) shall exceed the Minimum DSCR as of the end of any calendar month (each, a "MONTHLY TEST DATE") (calculated on a trailing twelve (12) month basis and determined upon delivery of the financial statements for such Monthly Test Date), the Excess Cash Flow available for the month following delivery of the financial statements for such Monthly Test Date shall be released to Borrower in accordance with the provisions of the Cash Management Agreement. During the continuance of a Cash Trap Event, any funds on deposit in the Cash Trap Reserve may be applied to payment of principal (without payment of any Prepayment Consideration) or other Obligations in such order as Lender may elect upon the third (3rd) Payment Date following deposit of such funds. Any funds on deposit in the Cash Trap Reserve shall continue to be held as additional Collateral in accordance with this Section 2.6(D)(i) until the earlier of (a) the date that such funds are applied to payment of the Obligations pursuant to the foregoing sentence and (b) the date that Lender has determined that the Minimum DSCR test has been satisfied for three (3) consecutive Monthly Test Dates, at which time such funds shall be released to Borrower. Notwithstanding the foregoing, if a Cash Trap Event shall occur three (3) times during the term hereof, from and after the third (3rd) such occurrence of a Cash Trap Event, Borrower shall have no further right to cure a Cash Trap Event (by satisfying the Minimum DSCR test or by making principal prepayments as provided above), and until such time as the Loan is paid in full all Excess Cash Flow shall be deposited in the Cash Trap Reserve and all funds in the Cash Trap Reserve shall be applied by

Lender on the next Payment Date to reduce the principal amount of the Loan (without payment of any Prepayment Consideration) or to payment of the other Obligations in such order as Lender may elect. The existence of a Cash Trap Event shall be determined by Lender in its sole good faith determination. If Lender determines that a Cash Trap Event has occurred, Lender shall send Borrower written notice thereof. Notwithstanding any provision herein to the contrary, if an Event of Default has occurred and is continuing, all funds on deposit in the Cash Trap Reserve and any subsequent Excess Cash Flow, while such Event of Default is continuing, may be applied by Lender to payment of principal (including payment of any Prepayment Consideration) or other Obligations in such order as Lender may elect.

(ii) In addition to principal prepayments required under Section 2.6(D)(i), Borrower shall be required to make prepayments of principal equal to any amount required to be remitted to Lender by the Mezzanine Lender from cash trap reserves maintained under the Mezzanine Loan Documents pursuant to Section 6 of the Intercreditor Agreement as in effect on the date hereof.

SECTION 2.7 OUTSTANDING BALANCE. The balance on Lender's books and records shall be presumptive evidence (absent manifest error) of the amounts owing to Lender by Borrower; provided that any failure to record any transaction affecting such balance or any error in so recording shall not limit or otherwise affect Borrower's obligation to pay the Obligations.

SECTION 2.8 TAXES. Any and all payments or reimbursements made hereunder or under the Note shall be made free and clear of and without deduction for any and all taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto arising out of or in connection with the transactions contemplated by the Loan Documents (all such taxes, levies, imposts, deductions, charges or withholdings and all liabilities with respect thereto [excluding taxes imposed on net income in accordance with the following sentence] herein "TAX LIABILITIES"). Notwithstanding the foregoing, Borrower shall not be liable for taxes imposed on the net income of Lender by the jurisdiction under the laws of which Lender is organized or doing business or any political subdivision thereof and taxes imposed on its net income by the jurisdiction of Lender's applicable lending office or any political subdivision thereof. If Borrower shall be required by law to deduct any such Tax Liabilities (or amounts in estimation or reimbursement for the same) from or in respect of any sum payable hereunder to Lender, then the sum payable hereunder shall be increased as may be necessary so that, after making all required deductions, Lender receives an amount equal to the sum it would have received had no such deductions been made.

SECTION 2.9 REASONABLENESS OF CHARGES. Borrower Parties agree that (i) the actual costs and damages that Lender would suffer by reason of a Default (exclusive of the attorneys' fees and other costs incurred in connection with enforcement of Lender's rights under the Loan Documents) or a prepayment would be difficult and needlessly expensive to calculate and establish, and (ii) the amounts of the Default Rate, the late charges, and the Prepayment Consideration are reasonable, taking into consideration the circumstances known to the parties at this time, and (iii) such Default Rate and late charges and Lender's attorneys' fees and other costs and expenses incurred in connection with enforcement of Lender's rights under the Loan Documents shall be due and payable as provided herein, and (iv) such Default Interest, late

charges, Prepayment Consideration, and the obligation to pay Lender's attorneys' fees and other enforcement costs do not, individually or collectively, constitute a penalty.

SECTION 2.10 FUNDING LOSSES/CHANGE IN LAW ETC.

(A) Borrower hereby agrees to pay to Lender any amount necessary to compensate Lender and any Funding Party for any losses or costs (including, without limitation, the costs of breaking any "LIBOR" contract, if applicable, or funding losses determined on the basis of Lender's or such Funding Party's reinvestment rate and the interest rate on the Loan) (collectively, "FUNDING LOSSES") sustained by Lender or any Funding Party: (i) if the Note, or any portion thereof, is repaid for any reason whatsoever on any date other than a Payment Date (including, without limitation, from condemnation or insurance proceeds); or (ii) as a consequence of (x) any increased cost of funds that Lender or any Funding Party may sustain in maintaining the borrowing evidenced hereby or (y) the reduction of any amounts received or receivable from Borrower, in either case, due to the introduction of, or any change in, law or applicable regulation or treaty adopted after the date hereof (including the administration or interpretation thereof), whether or not having the force of law, or due to the compliance by Lender or the Funding Party, as the case may be, with any directive, whether or not having the force of law, or request from any central bank or domestic or foreign governmental authority, agency or instrumentality having jurisdiction made as of the date hereof.

(B) If Lender or any Funding Party shall have determined that the applicability of any law, rule, regulation or guideline adopted pursuant to or arising out of the July 1988 report of the Basle Committee on Banking Regulations and Supervisory Practices entitled "International Convergence of Capital Measurement and Capital Standards", or the adoption of any other law, rule, regulation or guideline (including but not limited to any United States law, rule, regulation or guideline) regarding capital adequacy, or any change becoming effective in any of the foregoing or in the enforcement or interpretation or administration of any of the foregoing by any court or any domestic or foreign governmental authority, central bank or comparable agency charged with the enforcement or interpretation or administration thereof, or compliance by Lender or its holding company or a Funding Party or its holding company, as the case may be, with any request or directive regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency made after the date hereof, has or would have the effect of reducing the rate of return on the capital of Lender or its holding company, or of the Funding Party's or its holding company, as the case may be, then, upon demand by Lender, Borrower shall pay to Lender, from time to time, such additional amount or amounts as will compensate Lender or such Funding Party for any such reduction suffered.

(C) Any amount payable by Borrower under Section 2.10(A) or 2.10(B) shall be paid to Lender within ten (10) Business Days after receipt by Borrower of a certificate signed by an officer of Lender setting forth the amount due and the basis for the determination of such amount in reasonable detail and the computations made by Lender to determine the amount due, which statement shall be conclusive and binding upon Borrower, absent manifest error. Failure on the part of Lender to demand payment from Borrower for any such amount attributable to any particular period shall not constitute a waiver of Lender's right to demand payment of such amount for any subsequent or prior period. Lender shall use reasonable efforts to deliver to Borrower prompt notice (and adequate information to permit Borrower to verify the basis for and

calculation of amounts due) of any event described in Sections 2.10(A) or 2.10(B) above and of the amount to be paid as a result thereof, provided, however, any failure by Lender to so notify Borrower shall not affect Borrower's obligation to make the payments to be made under this Section as a result thereof. All amounts which may become due and payable by Borrower in accordance with the provisions of this Section shall constitute additional interest under the Loan and shall be secured by the Deed of Trust and the other Loan Documents.

(D) If Lender or any Funding Party requests compensation for any losses or costs to be reimbursed pursuant to any one or more of the provisions of clause (ii) of Sections 2.10(A) or 2.10(B), then, upon request of Borrower, Lender or such Funding Party shall use reasonable efforts in a manner consistent with such institution's practice in connection with loans like the Loan to eliminate, mitigate or reduce amounts that would otherwise be payable by Borrower under the foregoing provisions, provided that such action would not be otherwise prejudicial to Lender or such Funding Party, including, without limitation, by designating another of Lender's or such Funding Party's offices, branches or affiliates; Borrower hereby agreeing to pay all reasonably incurred costs and expenses incurred by Lender or any Funding Party in connection with any such action.

### ARTICLE III CONDITIONS TO LOAN

SECTION 3.1 CONDITIONS TO FUNDING OF THE LOAN ON THE CLOSING DATE. The obligations of Lender to fund the Loan are subject to the prior or concurrent satisfaction or waiver of the conditions set forth below, and to satisfaction of any other conditions specified herein or elsewhere in the Loan Documents. Where in this Section any documents, instruments or information are to be delivered to Lender, then the condition shall not be satisfied unless (i) the same shall be in form and substance satisfactory to Lender, and (ii) if so required by Lender, Borrower shall deliver to Lender a certificate duly executed by Borrower stating that the applicable document, instrument or information is true and complete and does not omit to state any information without which the same might reasonably be deemed materially misleading.

(A) LOAN DOCUMENTS. On or before the Closing Date, Borrower shall execute and deliver and cause to be executed and delivered to Lender all of the Loan Documents specified in SCHEDULE 3.1(A), together with such other Loan Documents as may be reasonably required by Lender, each, unless otherwise noted, of even date herewith, duly executed, in form and substance satisfactory to Lender and in quantities designated by Lender (except for the Note, of which only one shall be signed), which Loan Documents shall become effective upon the Closing.

(B) ORIGINATION FEE. At the Closing and retained from the proceeds of the Loan, Lender shall have received its origination fee of \$2,750,000 (1.0% of the Loan amount). The amount, if any, by which any application fee and/or expense deposit previously paid to Lender on Borrower's behalf exceeds Lender's reasonable costs and expenses incurred in connection with the Loan, shall be credited against the origination fee.

(C) STRUCTURING FEE. At the Closing and retained from the proceeds of the Loan, Lender shall have received its structuring fee of \$3,437,500 (1.25% of the Loan amount).



(D) DEPOSITS. The deposits required herein, including without limitation, the initial deposits into the Reserves and Accounts, shall have been made (and at Borrower's option, the same may be made from the proceeds of the Loan).

(E) PERFORMANCE OF AGREEMENTS, TRUTH OF REPRESENTATIONS AND WARRANTIES. Each Borrower Party and all other Persons executing any agreement on behalf of any Borrower Party shall have performed in all material respects all agreements which this Loan Agreement provides shall be performed on or before the Closing Date. The representations and warranties contained herein and in the other Loan Documents shall be true, correct and complete in all material respects on and as of the Closing Date.

(F) CLOSING CERTIFICATE. On or before the Closing Date, Lender shall have received certificates of even date herewith executed on behalf of Borrower by the chief financial officer (or similar officer of Borrower) truly and correctly stating that: (i) on such date, no Default or Event of Default has occurred and is continuing; (ii) no material adverse change in the financial condition or operations of the business of Borrower or the projected cash flow of Borrower or the Property has occurred since the delivery to Lender of any financial statements, budgets, proformas, or similar materials (or if there has been any change, specifying such change in detail), and that, to Borrower's knowledge after due inquiry, such materials delivered to Lender are true and materially complete and fairly represent the financial condition of Borrower and the cash flow of the Property; and (iii) the representations and warranties set forth in this Loan Agreement are true and correct in all material respects on and as of such date with the same effect as though made on and as of such date (or if any such representations or warranties require qualification, specifying such qualification in detail) and (iv) to Borrower's knowledge after due inquiry, there are no material facts or conditions concerning the Property or any Borrower Party that have not been disclosed to Lender.

(G) OPINIONS OF COUNSEL. On or before the Closing Date, Lender shall have received from Sherrard & Roe, PLC or other legal counsel for Borrower satisfactory to Lender, written legal opinions, each in form and substance acceptable to Lender, as to such matters as Lender shall request, including opinions to the effect that (i) each of the Borrower Parties and Member is duly formed, validly existing, and in good standing in its state of organization and, in the case of the Borrower, in the state where the Property is located, (ii) this Loan Agreement and the Loan Documents have been duly authorized, executed and delivered and are enforceable in accordance with their terms subject to customary qualifications for bankruptcy and general equitable principles; (iii) the Clearing Account Agreement and Cash Management Agreement have been duly authorized, executed and delivered and are enforceable in accordance with their terms and the security interests in favor of Lender in the Accounts have been validly created and perfected; and (iv) Borrower would not be consolidated in bankruptcies of the Independent Manager, Member, Guarantor, Manager or certain other Affiliates of Borrower Parties specified by Lender. Also on or before the Closing Date, Lender shall have received the following legal opinions, each in form and substance acceptable to Lender: (a) an opinion of Borrower's local counsel in the state where the Property is located as to the enforceability of, and the creation and perfection of Liens under, the Deed of Trust and the Assignment of Leases and such other matters as Lender may reasonably request; (b) an opinion of counsel to the Cap Provider that the Cap has been duly authorized, executed and delivered by the Cap Provider and is enforceable in accordance with its terms and such other matters as Lender may reasonably request; and (c)

opinions of Richards, Layton & Finger or other legal counsel for Borrower in the State of Delaware reasonably satisfactory to Lender that, among other matters, (1) under Delaware law (x) the prior unanimous written consent of Member and Manager (and the unanimous written consent of the board of directors of Manager including the Independent Directors) would be required for a voluntary bankruptcy filing by Borrower, (y) the prior unanimous written consent of Guarantor and the independent manager of Member (and the unanimous written consent of the board of directors of the independent manager of Member including the independent directors) would be required for a voluntary bankruptcy filing by Member and (z) such unanimous consent requirements are enforceable against Member and Guarantor, as the sole member of Member, as the case may be, in accordance with their terms; (2) under Delaware law the bankruptcy or dissolution of Member would not cause the dissolution of Borrower and the bankruptcy or dissolution of Guarantor would not cause the dissolution of Member; (3) under Delaware law, creditors of Member shall have no legal or equitable remedies with respect to the assets of Borrower and creditors of Guarantor shall have no legal or equitable remedies with respect to the assets of Member; and (4) a federal bankruptcy court would hold that Delaware law governs the determination of what Persons have authority to file a voluntary bankruptcy petition on behalf of Borrower and Member.

(H) TITLE POLICIES. On or before the Closing Date, Lender shall have received and approved pro forma Title Policies for the Deed of Trust, and as of the Closing, each Title Company shall be irrevocably committed and prepared immediately to issue the Title Policies. The Title Policies shall be in form and substance satisfactory to Lender. Without limitation, each Title Policy shall be issued on an ALTA form acceptable to Lender by each Title Company, together with such reinsurance and direct access agreements as Lender may require, insuring that the Deed of Trust is a valid first and prior enforceable lien on the Borrower's fee simple interest in the Property (including any easements appurtenant thereto) subject only to such exceptions to coverage as are acceptable to Lender. Each Title Policy shall contain such endorsements as Lender may require (to the extent available in the state where the Property is located) in form acceptable to Lender, including deletion of the creditors' rights exception and affirmative endorsement coverage for creditors' rights risks.

(I) SURVEY. Lender shall have received a survey of the Property, certified to Lender and its successors, assigns and designees and to each Title Company by a surveyor reasonably satisfactory to Lender (the "SURVEY"). The Survey shall contain the minimum detail for land surveys as most recently adopted by ALTA/ASCM, shall comply with Lender's survey requirements and shall contain Lender's standard form certification, and shall show no state of facts or conditions reasonably objectionable to Lender.

(J) ZONING. On or before the Closing Date, Lender shall have received evidence reasonably satisfactory to Lender as to the zoning and subdivision compliance of the Property.

(K) CERTIFICATES OF FORMATION AND GOOD STANDING. On or before the Closing Date, Lender shall have received copies of the organizational documents and filings of each Borrower Party and Member, together with good standing certificates (or similar documentation) (including verification of tax status) from the state of its formation, from the state in which its principal place of business is located, and from all states in which the laws thereof require such Person to be qualified and/or licensed to do business (including without limitation, the state in

which the Property is located for Borrower). Each such certificate shall be dated not more than 30 days prior to the Closing Date, as applicable, and certified by the applicable Secretary of State or other authorized governmental entity. In addition, on or before the Closing Date the secretary or corresponding officer of each Borrower Party and Member, or the secretary or corresponding officer of the partner, trustee, or other Person as required by such Borrower Party's or Member's organizational documents (as the case may be, the "BORROWER PARTY SECRETARY") shall have delivered to Lender a certificate stating that the copies of the organizational documents as delivered to Lender are true and complete and are in full force and effect, and that the same have not been amended except by such amendments as have been so delivered to Lender.

(L) CERTIFICATES OF INCUMBENCY AND RESOLUTIONS. On or before the Closing Date, Lender shall have received certificates of incumbency and resolutions of each Borrower Party and its constituents as requested by Lender, approving and authorizing the Loan and the execution, delivery and performance of the Loan Documents, certified as of the Closing Date by the Borrower Party Secretary as being in full force and effect without modification or amendment.

(M) FINANCIAL STATEMENTS. On or before the Closing Date, Lender shall have received such financial statements and other financial information as shall be satisfactory to Lender for each Borrower Party (including for Guarantor) and for the Property. If any such statements are not available for the Property, then Borrower shall provide such financial reports as are available. All such financial statements shall be certified to Lender by the applicable Borrower Party (through its chief financial officer), which certification shall be in form and substance reasonably satisfactory to Lender.

(N) OPERATING AND FF&E BUDGETS; CAPITAL IMPROVEMENT PLAN. On or before the Closing Date, Lender shall have received and reasonably approved the Operating Budget and FF&E Budget for the Property for the remainder of the current calendar year and the Capital Improvement Plan for the Property.

(O) AGREEMENTS. On or before the Closing Date, Lender shall have received copies of all Material Agreements other than Convention Contracts.

(P) MANAGEMENT AGREEMENT; SERVICES AGREEMENTS. On or before the Closing Date, Lender shall have received copies of the existing Management Agreement and any leasing brokerage agreements pertaining to the Property and the Assignment of Management Agreement, duly executed by current Manager and Borrower. On or before the Closing Date, Lender shall have also received a copy of that certain Opryland Hotel Nashville Services Agreement and that certain GEC Services Agreement, each dated as of January 4, 2001 (collectively the "SERVICES AGREEMENTS"), between Borrower and Guarantor and a collateral assignment and subordination agreement with respect to same, duly executed by Guarantor and Borrower and in form and substance reasonably acceptable to Lender.

(Q) RENT ROLL AND LEASES. Prior to the Closing, Lender shall have received from Borrower a rent roll (the "RENT ROLL") for the Property, certified by Borrower, and in form and substance satisfactory to Lender. The Rent Roll shall constitute a true, correct, and complete list of each and every Lease (other than Deminimis Leases), together with all extensions and

amendments thereof, and shall accurately and completely disclose all annual and monthly rents payable by all tenants, including all percentage rents, if any, and expiration dates of such Leases, and the amount of security deposit being held by Borrower under each Lease, if any. Also prior to the Closing, Lender shall have received true, correct and complete copies of the Leases, as amended.

(R) LICENSES, PERMITS AND APPROVALS. On or before Closing Date, Lender shall have received copies of the final, unconditional certificates of occupancy issued with respect to the Property, together with all other applicable licenses, permits and approvals required for the Borrower to own, use, occupy, operate and maintain the Property as a hotel.

(S) INSURANCE POLICIES AND ENDORSEMENTS. On or before the Closing Date, Lender shall have received copies of certificates of insurance (dated not more than 20 days prior to the Closing Date) regarding insurance required to be maintained under this Loan Agreement and the other Loan Documents, together with endorsements satisfactory to Lender naming Lender as an additional insured and loss payee, as required by Lender, under such policies. In addition, as to any insurance matters arising under Environmental Laws or pertaining to any environmental insurance that Borrower has as to the Property, the same shall be endorsed to Lender as required by Lender.

(T) ENVIRONMENTAL ASSESSMENT. Lender shall have received and approved an Environmental Report prepared or updated not later than sixty (60) days prior to the Closing, relating to the Property, together with a letter from the preparer thereof entitling Lender and its successors and assigns to rely upon said Environmental Report.

(U) PROPERTY CONDITION REPORT. On or before the Closing Date, Lender shall have received a property condition report for the Property, which shall be prepared by an engineer or other consultant satisfactory to Lender and otherwise shall be in form and substance satisfactory to Lender in its sole discretion. Such report shall set forth any items of deferred maintenance at the Property (if same is not addressed to Lender).

(V) APPRAISAL. On or before the Closing Date, Lender shall have received an independent appraisal, dated October 1, 2000, of the Property from a state certified appraiser engaged by Lender, which indicates a fair market value of the Property which would reflect a loan-to-value ratio for the Loan of not more than 50%, and is otherwise satisfactory to Lender in its sole discretion in all respects. Each such appraisal shall conform in all respects to the criteria for appraisals set forth in the Financial Institutions Reform and Recovery Act of 1989 and the regulations promulgated thereunder (as if Lender were an institution under the jurisdiction thereof) and the Uniform Standards of Professional Appraisal Practices of the Appraisal Foundation.

(W) SEARCHES. Prior to the Closing Date Lender shall have received certified copies of Uniform Commercial Code, judgment, tax lien, bankruptcy and litigation search reports with respect to all Borrower Parties and Member, all dated not more than thirty (30) days prior to the Closing Date.

(X) DOCUMENTATION REGARDING APPLICATION OF PROCEEDS. At least five (5) days prior to the Closing Date, Lender shall have received payoff demand letters and wiring instructions from each lender or other obligee of any existing indebtedness which is required to be repaid pursuant to this Loan Agreement and by Borrower regarding the application of any remaining available proceeds of the Loan.

(Y) MEZZANINE LOAN INTERCREDITOR AGREEMENT. On or before the Closing Date, Mezzanine Lender shall have executed and delivered the Intercreditor Agreement to Lender.

(Z) LEGAL FEES; CLOSING EXPENSES. Borrower shall have paid any and all reasonable legal fees and expenses of counsel to Lender, together with all recording fees and taxes, title insurance premiums, and other reasonable costs and expenses related to the Closing.

(AA) COMMITMENT CONDITIONS. If a commitment letter or similar agreement shall have been issued by Lender for the Loan, such additional conditions as shall be specified in such commitment shall have been satisfied.

(BB) OTHER REVIEW. Lender shall have completed all other review of the Borrower Parties, the Property, and such other items as it reasonably determines relevant, and shall have determined based upon such review to fund the Loan. Borrower Parties shall have satisfied such other reasonable criteria as Lender may reasonably specify.

#### ARTICLE IV REPRESENTATIONS AND WARRANTIES

In order to induce Lender to enter into this Loan Agreement and to make the Loan, Borrower represents and warrants to Lender that the statements set forth in this Article IV, after giving effect to the Closing, will be, true, correct and complete as of the Closing Date. Further, each of the other Borrower Parties and Member represents and warrants to Lender that the statements set forth in this Article IV pertaining to such party, after giving effect to the Closing, will be, true, correct and complete as of the Closing Date.

##### SECTION 4.1 ORGANIZATION, POWERS, CAPITALIZATION, GOOD STANDING, BUSINESS.

(A) ORGANIZATION AND POWERS. Each Borrower Party and Member is duly organized, validly existing and in good standing under the laws of the state of its formation. Each Borrower Party and Member has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and proposed to be conducted, and to enter into each Loan Document to which it is a party and to perform the terms thereof.

(B) QUALIFICATION. Each Borrower Party and Member is duly qualified and in good standing in the State of Tennessee. In addition, each Borrower Party is duly qualified and in good standing in each state where necessary to carry on its present business and operations, except in jurisdictions in which the failure to be qualified and in good standing could not reasonably be expected to have a Material Adverse Effect.

(C) ORGANIZATION. The organizational chart set forth as SCHEDULE 4.1(C) accurately sets forth the direct and indirect ownership structure of the Borrower.

## SECTION 4.2 AUTHORIZATION OF BORROWING, ETC.

(A) AUTHORIZATION OF BORROWING. Borrower has the power and authority to incur the Indebtedness evidenced by the Note. The execution, delivery and performance by each Borrower Party of each of the Loan Documents to which it is a party and the consummation of the transactions contemplated thereby have been duly authorized by all necessary limited liability company, partnership, trustee, corporate or other action, as the case may be.

(B) NO CONFLICT. The execution, delivery and performance by each Borrower Party of the Loan Documents to which it is a party and the consummation of the transactions contemplated thereby do not and will not: (1) violate (x) any provision of law applicable to any Borrower Party; (y) the partnership agreement, certificate of limited partnership, certificate of incorporation, bylaws, declaration of trust, operating agreement or other organizational documents, as the case may be, of each Borrower Party; or (z) any order, judgment or decree of any Governmental Authority binding on any Borrower Party or any of its Affiliates; (2) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any Contractual Obligation of any Borrower Party or any of its Affiliates; (3) result in or require the creation or imposition of any material Lien (other than the Lien of the Loan Documents) upon the Property or assets of any Borrower Party or any of its Affiliates; or (4) except as set forth on SCHEDULE 4.2, require any approval or consent of any Person under any Contractual Obligation of any Borrower Party, which approvals or consents have been obtained on or before the dates required under such Contractual Obligation, but in no event later than the Closing Date.

(C) GOVERNMENTAL CONSENTS. The execution, delivery and performance by each Borrower Party of the Loan Documents to which it is a party, and the consummation of the transactions contemplated thereby do not and will not require any registration with, consent or approval of, or notice to, or other action to, with or by, any Governmental Authority.

(D) BINDING OBLIGATIONS. This Loan Agreement is, and the Loan Documents, including the Note, when executed and delivered will be, the legally valid and binding obligations of each Borrower Party, as applicable, enforceable against each of the Borrower Parties, as applicable, in accordance with their respective terms, subject to bankruptcy, insolvency, moratorium, reorganization and other similar laws affecting creditor's rights. No Borrower Party has any defense or offset to any of its obligations under the Loan Documents. No Borrower Party has any claim against Lender or any Affiliate of Lender.

SECTION 4.3 FINANCIAL STATEMENTS. All financial statements concerning any of Borrower, its Affiliates and the Property which have been or will hereafter be furnished by or on behalf of Borrower to Lender pursuant to this Loan Agreement have been or will be prepared in accordance with GAAP consistently applied (except as disclosed therein) and do (or will, as to those statements that are not yet due) present fairly the financial condition of the Persons covered thereby as at the dates thereof and the results of their operations for the periods then ended. Since the December 31, 2000 financial statements delivered to Lender, there has been no material adverse change in the financial condition, operations or business of the Borrower Parties or the Property from that set forth in said financial statements.

SECTION 4.4 INDEBTEDNESS AND CONTINGENT OBLIGATIONS. As of the Closing, Borrower shall have no Indebtedness or Contingent Obligations other than the Obligations or any other Permitted Indebtedness.

SECTION 4.5 TITLE TO PROPERTY. Borrower has good, marketable and insurable fee simple title to the Property, free and clear of all Liens except for the Permitted Encumbrances. Borrower owns and will own at all times all FF&E relating to the Property (other than personal property which is both owned by tenants of the Property and not used or necessary for the operation of the Property), subject only to Permitted Encumbrances. The Deed of Trust, when properly recorded in the appropriate records, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create (i) a valid, perfected first lien on the Property, subject only to the Permitted Encumbrances, and (ii) perfected first priority security interests in and to, and perfected collateral assignments of, all personalty (including the Rents and the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances. There are no proceedings in condemnation or eminent domain affecting the Property, and to the knowledge of Borrower Parties, none is threatened. No Person has any option or other right to purchase all or any portion of the Property or any interest therein. There are no mechanic's, materialman's or other similar liens or claims which have been filed for work, labor or materials affecting the Property which are or may be liens prior to, or equal or coordinate with, the lien of the Deed of Trust. None of the Permitted Encumbrances, individually or in the aggregate, materially interfere with the benefits of the security intended to be provided by the Deed of Trust and this Loan Agreement, materially and adversely affect the value of the Property, impair the use or operations of the Property or impair Borrower's ability to pay its obligations in a timely manner.

SECTION 4.6 ZONING; COMPLIANCE WITH LAWS. The Property is zoned for commercial use, which zoning designation is unconditional, in full force and effect, and is beyond all applicable appeal periods. Borrower, the Property and the use thereof comply in all material respects with all applicable zoning, subdivision and land use laws, regulations and ordinances, all applicable health, fire, building codes, parking laws and all other laws, statutes, codes, ordinances, rules and regulations applicable to the Property, including without limitation the Americans with Disabilities Act. To Borrower's knowledge, there are no illegal activities relating to controlled substances on the Property. All material permits, licenses and certificates for the lawful use, occupancy and operation of each component of the Property in the manner in which it is currently being used, occupied and operated, including, but not limited to liquor licenses and certificates of occupancy, or the equivalent, have been obtained and are current and in full force and effect. Without limiting the foregoing, Borrower represents that it is in the process of applying with the appropriate Governmental Authorities for the transfer of liquor licenses and beer permits for the Property from Guarantor's name to Borrower's name. Borrower covenants and agrees that it shall file any applications and information required under applicable law with the appropriate Governmental Authorities promptly after the date hereof, diligently prosecute the processing of such applications and complete the transfers of all such licenses and permits as soon as reasonably practicable but in no event later than one hundred twenty (120) days after the date hereof. In the event that all or any part of the Improvements located on the Property are destroyed or damaged, said Improvements can be legally reconstructed to their condition prior to such damage or destruction, and thereafter exist for the same use without violating any zoning or other ordinances applicable thereto and without the necessity of obtaining any variances or

special permits, other than customary demolition, building and other construction related permits. No legal proceedings are pending or, to the knowledge of Borrower, threatened with respect to the zoning of the Property. Neither the zoning nor any other right to construct, use or operate the Property is in any way dependent upon or related to any real estate other than the Property. No tract map, parcel map, condominium plan, condominium declaration, or plat of subdivision will be recorded by Borrower with respect to the Property without Lender's prior written consent.

#### SECTION 4.7 LEASES; AGREEMENTS.

(A) LEASES; AGREEMENTS. Borrower has delivered to Lender true and complete copies of all (i) Leases (other than Deminimis Leases) and (ii) Material Agreements affecting the operation and management of the Property (other than Convention Contracts), and such Leases and Material Agreements have not been modified or amended except pursuant to amendments or modifications delivered to Lender. Each of the Convention Contracts in effect on the date hereof is substantially in the form of the standard form of Convention Contract previously delivered to and approved by Lender (with reasonable changes thereto as necessary to reflect the terms of such contract) and is otherwise on Borrower's customary terms. Except for the rights of current Manager pursuant to the existing Management Agreement, no Person has any right or obligation to manage the Property or to receive compensation in connection with such management. Except for the parties to any leasing brokerage agreement that has been delivered to Lender, no Person has any right or obligation to lease or solicit tenants for the Property, or (except for cooperating outside brokers) to receive compensation in connection with such leasing.

(B) RENT ROLL, DISCLOSURE. A true and correct copy of the Rent Roll is attached hereto as SCHEDULE 4.7 and, except for the Leases described in the Rent Roll (and Deminimis Leases), the Property is not subject to any Leases. Except only as specified in the Rent Roll (and except for any Deminimis Leases), (i) the Leases are in full force and effect; (ii) Borrower has not given any notice of default to any tenant under any Lease which remains uncured; (iii) to Borrower's knowledge, no tenant has any set off, claim or defense to the enforcement of any Lease; (iv) no tenant is in arrears in the payment of rent, additional rent or any other charges whatsoever due under any Lease, or, to the knowledge of Borrower, is materially in default in the performance of any other obligations under the applicable Lease; (v) Borrower has completed all work or alterations required of the landlord or lessor under each Lease, and all of the other obligations of landlord or lessor under the Leases have been performed; and (vi) there are no rent concessions (whether in form of cash contributions, work agreements, assumption of an existing tenant's other obligations, or otherwise) or extensions of time whatsoever not reflected in such Rent Roll. There are no legal proceedings commenced (or, to the knowledge of the Borrower, threatened) against Borrower by any tenant or former tenant. No rental in excess of one month's rent has been prepaid under any of the Leases. Each of the Leases is valid and binding on the parties thereto in accordance with its terms.

(C) NO RESIDENTIAL UNITS. There are no residential units in the Property. To Borrower's knowledge, no person occupies any part of the Property for dwelling purposes.

(D) MANAGEMENT AGREEMENT. Borrower has delivered to Lender a true and complete copy of the Management Agreement, and such Management Agreement has not been modified



or amended except pursuant to amendments or modifications delivered to Lender. The Management Agreement is in full force and effect and no default by Borrower or Manager exists thereunder. Except for the parties to any leasing brokerage agreement that has been delivered to Lender, no Person has any right or obligation to lease or solicit tenants for the Property, or (except for cooperating outside brokers) to receive compensation in connection with such leasing.

(E) FRANCHISE AGREEMENT. As of the date hereof, the Property is operated as an independent hotel and is not the subject of a Franchise Agreement with any franchisor. Borrower has the right to operate the Property under the name and/or hotel system known as "Opryland Hotel".

SECTION 4.8 CONDITION OF PROPERTY. To Borrower's knowledge, except as set forth in the property condition report for the Property delivered to Lender, all Improvements including, without limitation, the roof and all structural components, plumbing systems, HVAC systems, fire protection systems, electrical systems, equipment, elevators, exterior doors, parking facilities, sidewalks and landscaping are in good condition and repair. Borrower is not aware of any latent or patent structural or other material defect or deficiency in the Property. City water supply, storm and sanitary sewers, and electrical, gas and telephone facilities are available to the Property within the boundary lines of the Property, are fully connected to the Improvements and are fully operational, are sufficient to meet the reasonable needs of the Property as now used or presently contemplated to be used, and no other utility facilities are necessary to meet the reasonable needs of the Property as now used or presently contemplated. The design and as-built conditions of the Property are such that surface and storm water does not accumulate on the Property (except in facilities specifically designed for the same) and does not drain from the Property across land of adjacent property owners in any manner which would have a Material Adverse Effect on the Property or violate any applicable law. Except as may be shown on the Survey, no part of the Property is within a flood plain and none of the Improvements create encroachment over, across or upon the Property's boundary lines, rights of way or easements, and no building or other improvements on adjoining land create such an encroachment which could reasonably be expected to have a Material Adverse Effect. All public roads and streets necessary for service of and access to the Property for the current and contemplated uses thereof have been completed and are serviceable and are physically and legally open for use by the public. Any liquid or solid waste disposal, septic or sewer system located at the Property is in good and safe condition and repair and in compliance with all applicable law.

SECTION 4.9 LITIGATION; ADVERSE FACTS. Except as set forth on SCHEDULE 4.9, there are no judgments outstanding against any Borrower Party, Member or affecting the Property or any property of any Borrower Party or Member, nor is there any action, charge, claim, demand, suit, proceeding, petition, governmental investigation or arbitration now pending or, to the knowledge of Borrower after due inquiry, threatened against any Borrower Party or Member (and which in the case of Guarantor, could reasonably be expected to result in a Material Adverse Effect) affecting the Property. The actions, charges, claims, demand, suits, proceedings, petitions, investigations and arbitrations set forth on SCHEDULE 4.9 will not result, if adversely determined, and could not reasonably be expected to result, either individually or in the aggregate, in any Material Adverse Effect and do not relate to and will not affect the consummation of the transactions contemplated hereby.

SECTION 4.10 PAYMENT OF TAXES. All federal, state and local tax returns and reports of each Borrower Party required to be filed have been timely filed, and all taxes, assessments, fees and other governmental charges (including any payments in lieu of taxes) upon such Person and upon its properties, assets, income and franchises which are due and payable have been paid when due and payable. There is not presently pending (and to Borrower's knowledge, there is not contemplated) any special assessment against the Property or any part thereof. No tax liens are in existence and to the knowledge of Borrower Parties, no claims are being asserted with respect to any such taxes. The charges, accruals and reserves on the books of Borrower Parties in respect of any taxes or other governmental charges are in accordance with GAAP.

SECTION 4.11 ADVERSE CONTRACTS. Except for the Loan Documents, none of the Borrower Parties is a party to or bound by, nor is any property of such Person subject to or bound by, any contract or other agreement which restricts such Person's ability to conduct its business in the ordinary course or, either individually or in the aggregate, has a Material Adverse Effect or could reasonably be expected to have a Material Adverse Effect.

SECTION 4.12 PERFORMANCE OF AGREEMENTS. No Borrower Party is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any Contractual Obligation of any such Person which could reasonably be expected to have a Material Adverse Effect, and no condition exists that, with the giving of notice or the lapse of time or both, would constitute such a default.

SECTION 4.13 GOVERNMENTAL REGULATION. No Borrower Party is subject to regulation under the Public Utility Holding Company Act of 1935, the Federal Power Act or the Investment Company Act of 1940 or to any federal or state statute or regulation limiting its ability to incur indebtedness for borrowed money.

SECTION 4.14 EMPLOYEE BENEFIT PLANS. No Primary Borrower Party maintains or contributes to, or has any obligation (including a contingent obligation) under, any Employee Benefit Plans except for the obligations to contribute to the Employee Benefit Plans described on Schedule 4.14.

SECTION 4.15 BROKER'S FEES. No broker's or finder's fee, commission or similar compensation will be payable by or pursuant to any contract or other obligation of any Borrower Party with respect to the making of the Loan or any of the other transactions contemplated hereby or by any of the Loan Documents.

SECTION 4.16 ENVIRONMENTAL COMPLIANCE.

(A) NO ENVIRONMENTAL CLAIMS. There are no claims, liabilities, investigations, litigation, administrative proceedings, whether pending or to the knowledge of Borrower, threatened, or judgments or orders relating to any Hazardous Materials (collectively, "ENVIRONMENTAL CLAIMS") asserted or threatened against Borrower or relating to the Property. Except as disclosed in the Environmental Report delivered to Lender prior to Closing, neither Borrower nor, to the knowledge of Borrower, any other Person has caused or permitted any Hazardous Material to be used, generated, reclaimed, transported, released, treated, stored or

disposed of in a manner which could form the basis for an Environmental Claim against Borrower or relating to the Property.

(B) STORAGE OF HAZARDOUS MATERIALS. Except as disclosed in the Environmental Report delivered to Lender prior to Closing, except for materials customarily used or stored in connection with operation and management of properties similar to the Property, which materials at the Property exist only in reasonable quantities and are stored, contained, transported, used, released, and disposed of reasonably and without violation of any Environmental Laws, to the knowledge of Borrower after due inquiry, no Hazardous Materials are or were stored or otherwise located, and no underground storage tanks or surface impoundments are or were located, on the Property, or to the knowledge of Borrower, on adjacent parcels of real property, and no part of such real property, or to the knowledge of Borrower after due inquiry, no part of such adjacent parcels of real property, including the groundwater located therein or thereunder, is presently contaminated by Hazardous Materials. Except as disclosed in the Environmental Report, to Borrower's knowledge, the Property is not listed by any Governmental Authority as containing any Hazardous Materials.

(C) COMPLIANCE WITH ENVIRONMENTAL LAWS. Borrower has been and is currently in compliance with all applicable Environmental Laws, including obtaining and maintaining in effect all permits, licenses or other authorizations required by applicable Environmental Laws.

SECTION 4.17 SOLVENCY. Borrower (a) has not entered into the transaction or any Loan Document with the actual intent to hinder, delay, or defraud any creditor and (b) received reasonably equivalent value in exchange for its obligations under the Loan Documents. Giving effect to the Loan, the fair saleable value of Borrower's assets exceeds and will, immediately following the making of the Loan, exceed Borrower's total liabilities, including, without limitation, subordinated, unliquidated, disputed and Contingent Obligations. The fair saleable value of Borrower's assets is and will, immediately following the making of the Loan, be greater than Borrower's probable liabilities, including the maximum amount of its Contingent Obligations on its debts as such debts become absolute and matured. Borrower's assets do not and, immediately following the making of the Loan will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur Indebtedness and liabilities (including Contingent Obligations and other commitments) beyond its ability to pay such Indebtedness and liabilities as they mature (taking into account the timing and amounts of cash to be received by Borrower and the amounts to be payable on or in respect of obligations of Borrower).

SECTION 4.18 DISCLOSURE. No financial statements, Loan Document or any other document, certificate or written statement furnished to Lender by or on behalf of any Borrower Party or Member for use in connection with the Loan contains any untrue representation, warranty or statement of a material fact, and none omits or will omit to state a material fact necessary in order to make the statements contained herein or therein not misleading. The foregoing representation is qualified to the extent of the Borrower's knowledge, except for materials prepared or executed by or pertaining directly to any Borrower Party. There is no material fact known to Borrower that has had or will have a Material Adverse Effect and that has not been disclosed in writing to Lender by Borrower.

SECTION 4.19 USE OF PROCEEDS AND MARGIN SECURITY. Borrower shall use the proceeds of the Loan only for the purposes set forth herein and consistent with all applicable laws, statutes, rules and regulations. No portion of the proceeds of the Loan shall be used by Borrower or any Person in any manner that might cause the borrowing or the application of such proceeds to violate Regulation T, Regulation U or Regulation X or any other regulation of the Board of Governors of the Federal Reserve System.

SECTION 4.20 INSURANCE. Set forth on SCHEDULE 4.20 is a complete and accurate description of all policies of insurance for Borrower that are in effect as of the Closing Date. Borrower's insurance under such policies satisfies the requirements contained in Section 5.4 hereof, no notice of cancellation has been received with respect to such policies, and Borrower is in compliance with all conditions contained in such policies.

SECTION 4.21 SEPARATE TAX LOTS. The Property is comprised of one (1) or more parcels which constitute separate tax lots. No part of the Property is included or assessed under or as part of another tax lot or parcel, and no part of any other property is included or assessed under or as part of the tax lots or parcels comprising the Property.

SECTION 4.22 INVESTMENTS. Borrower has no (i) direct or indirect interest in, including without limitation stock, partnership interest or other securities of, any other Person, or (ii) direct or indirect loan, advance or capital contribution to any other Person, including all indebtedness and accounts receivable from that other Person.

SECTION 4.23 BANKRUPTCY. Neither any Borrower Party nor Member is or has been a debtor, and no property of any of them (including the Property) is property of the estate, in any voluntary or involuntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or other similar law now or hereafter in effect. Neither any Borrower Party nor Member and no property of any of them is under the possession or control of a receiver, trustee or other custodian. Neither any Borrower Party nor Member has made any assignment for the benefit of creditors. No such assignment or bankruptcy or similar case or proceeding is now contemplated.

SECTION 4.24 DEFAULTS. No Default or Event of Default exists.

SECTION 4.25 NO PLAN ASSETS. Borrower is not and will not be (i) an employee benefit plan as defined in Section 3(3) of ERISA which is subject to ERISA, (ii) a plan as defined in Section 4975(e)(1) of the IRC which is subject to Section 4975 of the IRC, or (iii) an entity whose underlying assets constitute "plan assets" of any such employee benefit plan or plan for purposes of Title I of ERISA of Section 4975 of the IRC.

SECTION 4.26 GOVERNMENTAL PLAN. Borrower is not and will not be a "governmental plan" within the meaning of Section 3(32) of ERISA and transactions by or with Borrower are not and will not be subject to state statutes applicable to Borrower's regulating investments of and fiduciary obligations with obligations with respect to governmental plans.

SECTION 4.27 NOT FOREIGN PERSON. Neither any Borrower Party nor Member is a "foreign person" within the meaning of Section 1445(f)(3) of the IRC.

SECTION 4.28 NO COLLECTIVE BARGAINING AGREEMENTS. Neither Borrower nor Member is a party to any collective bargaining agreement.

ARTICLE V  
COVENANTS OF BORROWER PARTIES

Each Borrower Party covenants and agrees that until payment in full of the Loan, all accrued and unpaid interest and all other Obligations, such Person shall perform and comply with all covenants in this Article V applicable to such Person.

SECTION 5.1 FINANCIAL STATEMENTS AND OTHER REPORTS.

(A) FINANCIAL STATEMENTS.

(i) ANNUAL REPORTING. Within ninety (90) days after the end of each calendar year, Borrower and Guarantor shall each provide true and complete copies of its Financial Statements for such year to Lender. All such Financial Statements shall be audited by a Big Five Accounting Firm or by other independent certified public accountants reasonably acceptable to Lender, and shall bear the unqualified certification of such accountants that such Financial Statements present fairly in all material respects the financial position of the subject company. The annual Financial Statements shall be accompanied by Supplemental Financial Information for such calendar year. The annual Financial Statements for each Borrower Party shall also be accompanied by a certification executed by the entity's chief executive officer or chief financial officer, satisfying the criteria set forth in Section 5.1(A)(viii) below, and a Compliance Certificate (as defined below).

(ii) QUARTERLY REPORTING - BORROWER. Within forty-five (45) days after the end of the first, second and third calendar quarters of each year, Borrower shall provide true and complete copies of its balance sheet as of the end of such quarter to Lender, together with a certification executed on behalf of Borrower by its chief executive officer or chief financial officer in accordance with the criteria set forth in Section 5.1(A)(viii) below.

(iii) QUARTERLY REPORTING - GUARANTOR. Within forty-five (45) days after the end of the first, second and third calendar quarters of each year, Guarantor shall provide true and complete copies of its Financial Statements for such quarter to Lender, together with a certification executed on behalf of Guarantor by its chief executive officer or chief financial officer in accordance with the criteria set forth in Section 5.1(A)(viii) below.

(iv) LEASING REPORTS. Within forty-five (45) days after each calendar quarter, Borrower shall provide to Lender a certified Rent Roll and a schedule of security deposits held under Leases (other than Deminimis Leases), each in form and substance reasonably acceptable to Lender. Within forty-five (45) days after each calendar quarter, Borrower shall also provide to Lender (a) a schedule of any retail Leases (other than Deminimis Leases) that expired during such calendar quarter and a schedule of retail Leases (other than Deminimis Leases) scheduled to expire within the next twelve (12) months and (b) to the extent Borrower received notice thereof, a list of any retail tenants (other than Deminimis Leases) that filed bankruptcy, insolvency or reorganization proceedings during such calendar quarter. Within ninety (90) days after the end of each calendar year, Borrower shall provide to Lender a statement of income and expenses for

all retail space in the Property owned and operated by Borrower and sales reports for retail tenants for such year.

(v) MONTHLY REPORTING. Within thirty (30) days after the end of each calendar month other than the month of December in any year, and within forty-five (45) days after the end of the month of December in each year, Borrower shall provide to Lender the following items determined on an accrual basis: (i) a calculation of the average daily rate, RevPAR and occupancy calculations and statistics for the Property for the subject month; (ii) Smith Travel Research "STAR" reports then available; (iii) monthly and year to date operating statements prepared for such calendar month, noting Net Operating Income and including budgeted and last year results for the same year-to-date period and other information necessary and sufficient under GAAP to fairly represent the financial position and results of operation of the Property during such calendar month, all in form satisfactory to Lender; (iv) a calculation reflecting the annual Net Operating Income and Debt Service Coverage Ratio for the immediately preceding twelve (12) month period as of the last day of such month; (v) an updated summary of advance bookings information (excluding customer names); and (vi) capital expenditure/FF&E reports with respect to such calendar month. Along with such operating statements, Borrower shall deliver to Lender a certification of Borrower's chief executive officer or chief financial officer satisfying the criteria set forth in Section 5.1(A)(viii) below.

(vi) ADDITIONAL REPORTING. In addition to the foregoing, Borrower, Guarantor and Manager shall each promptly provide to Lender such further documents and information concerning its operations, properties, ownership, and finances as Lender shall from time to time reasonably request.

(vii) GAAP; UNIFORM SYSTEM. Borrower Parties will maintain systems of accounting established and administered in accordance with sound business practices and sufficient in all respects to permit preparation of Financial Statements in conformity with GAAP and the Uniform System. All Financial Statements shall be prepared in accordance with GAAP and the Uniform System, consistently applied; provided, however, in the event of a conflict between the Uniform System and GAAP, GAAP will be followed.

(viii) CERTIFICATIONS OF FINANCIAL STATEMENTS AND OTHER DOCUMENTS, COMPLIANCE CERTIFICATE. Together with the Financial Statements and other documents and information provided to Lender by or on behalf of any Borrower Party under this Section, such Borrower Party also shall deliver to Lender a certification in form and substance satisfactory to Lender, executed on behalf of such Borrower Party by its chief executive officer or chief financial officer, stating that such Financial Statements, documents and information are true, correct, accurate and complete and fairly present the financial condition and results of operations of the applicable Borrower Party and/or the Property for the period(s) covered thereby, and do not omit to state any material information without which the same might reasonably be misleading. In addition, where this Loan Agreement requires a "COMPLIANCE CERTIFICATE", the Borrower Party required to submit the same shall deliver a certificate duly executed on behalf of such Borrower Party by its chief executive officer or chief financial officer, in form and substance satisfactory to Lender, stating that there does not exist any Default or Event of Default under the Loan Documents (or if any exists, specifying the same in detail) and stating the Debt Service Coverage Ratio for the twelve (12) month period ended as of the end of such quarter.

(ix) FISCAL YEAR. Each Borrower Party represents that its fiscal year ends on December 31, and agrees that it shall not change its fiscal year.

(B) ACCOUNTANTS' REPORTS. Promptly upon receipt thereof, Borrower will deliver copies of all material reports submitted by independent public accountants in connection with each annual, interim or special audit of the Financial Statements or other business operations of Borrower made by such accountants, including the comment letter submitted by such accountants to management in connection with the annual audit.

(C) TAX RETURNS. Within thirty (30) days after filing the same, Borrower shall deliver to Lender a copy of its Federal income tax returns (or the return of the applicable Person into which Borrower's Federal income tax return is consolidated) certified on its behalf by its chief financial officer (or similar position) to be true and correct.

(D) ANNUAL OPERATING, FF&E BUDGETS AND CAPITAL IMPROVEMENTS PLAN. At least thirty (30) days prior to the expiration of each calendar year (commencing with the calendar year ended December 31, 2001), Borrower shall deliver to Lender for its review a proposed Operating Budget, a proposed FF&E Budget and a proposed Capital Improvements Plan (in each case presented on a monthly and annual basis) for the Property for the next calendar year. Each Operating Budget, FF&E Budget and, so long as any funds remain in the Capital Improvement Reserve or Required Capital Improvements remain to be performed, each Capital Improvements Plan shall be subject to Lender's approval which shall not be unreasonably withheld, conditioned or delayed. Lender acknowledges that it has approved the annual Operating Budget, FF&E Budget and Capital Improvements Plan for the calendar year 2001. Upon completion of the Required Capital Improvements and disbursement of all funds in the Capital Improvement Reserve, Borrower shall be required to thereafter deliver Capital Improvements Plans to Lender for informational purposes only, but same shall not be subject to Lender's approval; provided, however, that the foregoing shall not affect Borrower's obligation to obtain Lender's consent to any Material Alteration to the extent required under Section 5.5(A). The proposed Operating Budget shall identify and set forth Borrower's best estimate, after due consideration, of all revenue, costs, and expenses, and shall specify Operating Revenues and Operating Expenses on a line-item basis consistent with the form of Operating Budget delivered to Lender prior to Closing. If any of said budgets or plans requiring Lender's approval is not in form and substance reasonably satisfactory to Lender, Lender may disapprove the same and specify the reasons therefor in writing, and Borrower shall promptly amend and resubmit for approval revised budgets or plans, as applicable, making such changes as are necessary to comply with the reasonable requirements of Lender. If any such budget or plan requiring Lender's approval is not approved by the beginning of the calendar year covered thereby, the applicable budget or plan for the previous year shall remain in effect until the new budget or plan is approved. Lender shall approve or disapprove any proposed budget or plan requiring Lender's approval within fifteen (15) Business Days after submission thereof by Borrower to Lender together with any information reasonably requested by Lender in writing in order to review same. Lender's consent to any proposed budget or plan shall be deemed given if the correspondence from Borrower to Lender requesting such approval contains a bold-faced conspicuous legend at the top of the first page thereof stating that "IF YOU FAIL TO RESPOND TO OR TO EXPRESSLY DENY THIS REQUEST FOR APPROVAL IN WRITING WITHIN FIFTEEN (15) BUSINESS DAYS, YOUR APPROVAL SHALL BE DEEMED GIVEN,"

and if Lender shall fail to respond to or expressly deny such request for approval in writing within fifteen (15) Business Days after receipt of Borrower's written request therefor together with any information reasonably requested by Lender in writing prior to the expiration of such fifteen (15) Business Day period in order to adequately review same, then Lender shall be deemed to have approved such budget or plan.

(E) MATERIAL NOTICES.

(i) Borrower shall promptly deliver, or caused to be delivered, copies of all notices given or received with respect to noncompliance with any term or condition related to any Permitted Indebtedness of any Borrower Party or Member, including Permitted Indebtedness under the Mezzanine Loan Documents (but excluding unsecured trade payables and equipment and personal property financings referred to in Sections 5.17(B)(i) and (ii), respectively, unless such non-compliance could reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect), and shall notify Lender within two (2) Business Days of any potential or actual event of default with respect to any such Permitted Indebtedness.

(ii) Borrower shall promptly deliver to Lender copies of any and all material notices (including without limitation any notice alleging any default or breach) received with respect to any Material Agreement or any Material Lease.

(F) EVENTS OF DEFAULT, ETC. Promptly upon Borrower obtaining knowledge of any of the following events or conditions, Borrower shall deliver a certificate executed on its behalf by its chief financial officer or similar officer specifying the nature and period of existence of such condition or event and what action Borrower or any Affiliate thereof has taken, is taking and proposes to take with respect thereto: (i) any condition or event that constitutes an Event of Default or Default; (ii) any Material Adverse Effect; or (iii) any actual or alleged breach or default or assertion of (or written threat to assert) remedies under any Management Agreement.

(G) LITIGATION. Promptly upon Borrower's obtaining knowledge of (1) the institution of any action, suit, proceeding, governmental investigation or arbitration against Borrower or the Property not previously disclosed in writing by Borrower to Lender which would be reasonably likely to have a Material Adverse Effect or (2) any material development in any action, suit, proceeding, governmental investigation or arbitration at any time pending against or affecting Borrower or the Property which, in each case, if adversely determined would reasonably be expected to have a Material Adverse Effect, Borrower will give notice thereof to Lender and provide such other information as may be reasonably available to them to enable Lender and its counsel to evaluate such matter.

(H) INSURANCE. At least ten (10) Business Days prior to the end of each insurance policy period of Borrower, Borrower will deliver certificates, reports, and/or other information (all in form and substance satisfactory to Lender), (i) outlining all material insurance coverage maintained as of the date thereof by Borrower and all material insurance coverage planned to be maintained by Borrower in the subsequent insurance policy period and (ii) evidencing payment in full of the premiums for such insurance policies.



(I) OTHER INFORMATION. With reasonable promptness, Borrower will deliver such other information and data with respect to such Person and its Affiliates or the Property as from time to time may be reasonably requested by Lender.

SECTION 5.2 EXISTENCE; QUALIFICATION. Borrower will at all times preserve and keep in full force and effect its existence as a limited partnership, limited liability company, or corporation, as the case may be, and all rights and franchises material to its business, including its qualification to do business in each state where it is required by law to so qualify. Without limitation of the foregoing, Borrower and, to the extent required by applicable law, Member shall at all times be qualified to business in the state where the Property is located.

SECTION 5.3 PAYMENT OF IMPOSITIONS AND CLAIMS.

(A) Borrower will pay (i) all Impositions; (ii) all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by law have or may become a Lien upon any of its properties or assets (hereinafter referred to as the "CLAIMS"); and (iii) all federal, state and local income taxes, sales taxes, excise taxes and all other taxes and assessments of Borrower on its business, income or assets; in each instance before any penalty or fine is incurred with respect thereto.

(B) Borrower shall not be required to pay, discharge or remove any Imposition or Claim so long as Borrower contests in good faith such Imposition or Claim or the validity, applicability or amount thereof by an appropriate legal proceeding which operates to prevent the collection of such amounts and the sale of the Property or any portion thereof, so long as: (i) no Event of Default shall have occurred and be continuing, (ii) prior to the date on which such Imposition or Claim would otherwise have become delinquent, Borrower shall have given Lender prior written notice of its intent to contest said Imposition or Claim; (iii) prior to the date on which such Imposition or Claim would otherwise have become delinquent, Borrower shall have deposited with Lender (or with a court of competent jurisdiction or other appropriate body approved by Lender) such additional amounts (or other security or assurances reasonably acceptable to Lender) as are necessary to keep on deposit at all times, an amount equal to at least one hundred twenty-five percent (125%) (or such higher amount as may be required by applicable law) of the total of (x) the balance of such Imposition or Claim then remaining unpaid, and (y) all interest, penalties, costs and charges accrued or accumulated thereon less (z) amounts on deposit in the Impositions and Insurance Reserve and available for payment of such Claims; (iv) no risk of sale, forfeiture or loss of any interest in the Property or any part thereof arises, in Lender's reasonable judgment, during the pendency of such contest; (v) such contest does not, in Lender's reasonable determination, have a Material Adverse Effect; and (vi) such contest is based on bona fide, material, and reasonable claims or defenses. Any such contest shall be prosecuted with due diligence, and Borrower shall promptly pay the amount of such Imposition or Claim as finally determined, together with all interest and penalties payable in connection therewith. Lender shall have full power and authority, but no obligation, to apply any amount deposited with Lender under this subsection to the payment of any unpaid Imposition or Claim to prevent the sale or forfeiture of the Property for non-payment thereof, if Lender reasonably believes that such sale or forfeiture is threatened. Any surplus retained by Lender after payment of the Imposition or Claim for which a deposit was made shall be promptly repaid to Borrower unless an Event of Default shall have occurred, in which case said surplus may be

retained by Lender to be applied to the Obligations. Notwithstanding any provision of this Section to the contrary, Borrower shall pay any Imposition or Claim which it might otherwise be entitled to contest if an Event of Default shall occur and be continuing, or if, in the reasonable determination of Lender, the Property is in danger of being forfeited or foreclosed. If Borrower refuses to pay any such Imposition or Claim, Lender may (but shall not be obligated to) make such payment and Borrower shall reimburse Lender on demand for all such advances.

SECTION 5.4 MAINTENANCE OF INSURANCE. Borrower will maintain or cause to be maintained, with financially sound and reputable insurers, public liability, property damage, business interruption and other types of insurance with respect to its business and the Property (including all Improvements now existing or hereafter erected thereon) in such amounts and for such periods and against all losses, hazards, casualties, liabilities and contingencies as customarily carried or maintained by Persons of established reputation engaged in similar businesses. Without limitation of the foregoing, Borrower shall maintain or cause to be maintained policies of insurance with respect to the Property in the following amounts and covering the following risks:

(i) Property damage insurance covering loss or damage to the Property caused by fire, lightning, hail, windstorm, explosion, hurricane (to the extent available), vandalism, malicious mischief, and such other losses, hazards, casualties, liabilities and contingencies as are normally and usually covered by fire policies in effect where the Property is located endorsed to include all of the extended coverage perils and other broad form perils, including the standard "all risks" clauses, with such endorsements as Lender may from time to time reasonably require including, without limitation, building ordinance and law (including demolition costs and increased cost of construction coverage), lightning, windstorm, civil commotion, hail, riot, strike, water damage, sprinkler leakage, collapse and malicious mischief. Such policy shall be in an amount not less than that necessary to comply with any coinsurance percentage stipulated in the policy, but not less than 100% of the full replacement cost of all Improvements (without any deduction for depreciation), and shall contain replacement cost and agreed amount endorsements each in an amount not less than the outstanding principal amount of the Loan. The deductible under such policy shall not exceed \$100,000.

(ii) Broad form boiler and machinery insurance in an amount equal to the full replacement cost of the Improvements (without any deduction for depreciation) in which the boiler or similar vessel is located, and including coverage against loss or damage from (1) leakage or sprinkler systems and (2) damage, breakdown or explosion of steam boilers, electrical machinery and equipment, air conditioning, refrigeration, pressure vessels or similar apparatus and mechanical objects now or hereafter installed at the Property.

(iii) If the Property is in an area prone to geological phenomena, including, but not limited to, sinkholes, mine subsidence or earthquakes, insurance covering such risks in an amount not less than \$100,000,000, and with a maximum permissible deductible of \$100,000.

(iv) Flood insurance if the Property is in an area now or hereafter designated by the Federal Emergency Management Agency as a Zone "A" & "V" Special Hazard Area, or such other Special Hazard Area if Lender so requires in its sole discretion. Such policy shall be

in an amount not less than \$50,000,000, and shall have a maximum permissible deductible of \$100,000.

(v) Business interruption or rent loss insurance in an amount equal to the anticipated gross income or rentals from the Property (assuming an occupancy rate of 100%) for an indemnity period commencing on the date of the casualty and ending at least ninety (90) days after completion of the Restoration (but with no maximum limit on the overall length of such indemnity period), such amount being adjusted annually. Lender shall be named as loss payee under such insurance.

(vi) During any period of reconstruction, renovation or alteration of the Property in excess of 10% of the outstanding principal balance of the Loan, a completed value, "All Risks" Builders Risk form or "Course of Construction" insurance policy in non-reporting form and in an amount not less than the lesser of 100% of the full replacement cost of all Improvements and the then outstanding principal balance of the Loan.

(vii) Commercial general liability insurance against claims for personal and bodily injury (including death resulting therefrom) to one or more persons or property damage, occurring on, in or about the Property (including the adjoining streets, sidewalks and passageways) in such amounts as Lender may from time to time reasonably require, but not less than \$25,000,000 for each occurrence and \$50,000,000 in the aggregate, and with deductibles reasonably acceptable to Lender. This policy or policies must include coverage for premises and operations liability, products and completed operations liability, contractual liability, hired, owned and non-owned automobile liability, innkeepers legal liability and "Dram shop" or other liquor liability if alcoholic beverages are sold from or may be consumed at the Property.

(viii) If required by applicable state laws, worker's compensation or employer's liability insurance in accordance with such laws.

(ix) Borrower and Manager shall maintain fidelity insurance and professional liability insurance in amounts reasonably satisfactory to Lender in its sole discretion in event against losses resulting from dishonest or fraudulent acts committed by Borrower's and Manager's personnel, employees and agents.

(x) Such other insurance and endorsements, if any, as Lender may reasonably require from time to time, and which is then customarily required by institutional lenders for similar properties similarly situated, against other insurable hazards, including, but not limited to, malicious mischief, vandalism or windstorm, which at the time are commonly insured against and generally available in the case of properties similarly situated, due regard to be given to the size and type of the Property.

Each carrier providing any insurance, or portion thereof, required by this Section shall be licensed to do business in the jurisdiction or jurisdictions in which the Property is located, and shall have a claims paying ability rating and/or financial strength rating, as applicable, by S&P of not less than "AA", by Moody's of not less than "Aa2" and by Fitch of not less than "AA" and an A.M. Best Company, Inc. ("A.M. Best") rating of not less than A and financial size category of not less than XIII. Notwithstanding the foregoing, Lender hereby

approves: (a) Industrial Risk Insurers (ERC Group) as the carrier providing the insurance required under clauses (i), (ii), (iii), (iv) (first \$20,000,000 of coverage) and (v) of this Section 5.4 so long as such carrier meets the S&P, Moody's and A.M. Best ratings requirements above, (b) Gulf Insurance Co. as the insurer providing flood insurance under clause (iv) (excess coverage of \$30,000,000) of this Section 5.4 so long as such carrier meets the S&P ratings requirement and maintains an A.M. Best rating of not less than A+/IX, (c) Royal Specialty as the insurer providing a portion of the liability under clause (vii) of this Section 5.4 (first \$4,000,000 over \$1,000,000 Borrower's self-insured deductible) so long as such carrier maintains a claims paying ability rating by S&P of not less than "A" and by Fitch of not less than "AA-" and an A.M. Best rating of not less than A/XIV, and (d) American Alternative Insurance Co. as the carrier providing a portion of the liability insurance under clause (vii) (next \$25,000,000 over the liability coverage provided by the insurer referenced in clause (c) above) so long as such insurer meets the S&P and A.M. Best requirements above. In the event that any of the insurance provided by the insurers referenced above shall hereafter be provided by another insurance carrier, any such carrier shall thereafter be required to fully comply with the ratings requirements of the first sentence of this paragraph. Borrower shall cause all insurance (except general public liability and worker's compensation insurance) carried in accordance with this Section to be payable to Lender as a mortgagee "as its interests may appear" and not as a coinsured, and, in the case of all policies of insurance carried by each lessee for the benefit of Borrower, if any, to cause all such policies to be payable to Lender as Lender's interest may appear.

All insurance policies and renewals thereof (i) shall be in a form reasonably acceptable to Lender, (ii) shall provide for a term of not less than one year, (iii) shall provide by way of endorsement, rider or otherwise that such insurance policy shall not be canceled, endorsed, altered, or reissued to effect a change in coverage unless such insurer shall have first given Lender thirty (30) days prior written notice thereof, (iv) shall include a standard non-contributory mortgagee endorsement or its equivalent in favor of and in form acceptable to Lender, (v) shall provide for claims to be made on an occurrence basis, except that boiler and machinery coverage may be made on an accident basis, (vi) shall contain an agreed value clause updated annually (if the amount of coverage under such policy is based upon the replacement cost of the Property) and (vii) to the extent not specified above, shall have deductibles in amounts reasonably acceptable to Lender. All property damage insurance policies (except for flood and earthquake policies) must automatically reinstate after each loss.

The insurance coverage required under this Section 5.4 may be effected under a blanket policy or policies covering the Property and other properties and assets owned by Affiliates of Borrower; provided that any such blanket policy shall specify any sublimits in such blanket policy applicable to the Property, which amounts shall not be less than the amounts required pursuant to this Section 5.4 and which shall in any case comply in all other respects with the requirements of this Section 5.4. Upon Lender's request which shall not be more frequently than once for any twelve (12) month period, Borrower shall deliver to Lender a certificate setting forth (i) the number of properties covered by such blanket policy or policies, (ii) the location by city (if available, otherwise, county) and state of the properties, (iii) the average square footage of the properties (or the aggregate square footage), (iv) a brief description of the typical construction type included in the blanket policy and (v) such other information as Lender may reasonably request. Borrower covenants and agrees that, at all times, the aggregate coverage under such policy or policies shall be not less than the amount of insurance which

would be required for all properties covered by such blanket policy or policies (including the Property) under Sections 5.4(i), (ii) and (v) if such properties were covered by this Agreement.

Borrower may maintain a portion of the commercial general liability insurance required under Section 5.4(vii) above in an amount not to exceed \$1,000,000 per occurrence and a portion of the worker's compensation insurance required under Section 5.4(viii) in an amount not to exceed \$300,000 per occurrence by means of a self-insurance program, the terms and conditions of which shall be reasonably acceptable to Lender. Borrower shall at all times maintain cash reserves in the Self-Insurance Reserve Account in accordance with the provisions of Section 6.7 and the Cash Management Agreement. Promptly after Lender's written request therefor, Borrower shall provide Lender with any and all information reasonably requested by Lender with respect to such self-insurance program including, without limitation, information regarding the balance of and activity in the Self-Insurance Reserve Account, claims paid during any period and pending and threatened claims.

#### SECTION 5.5 OPERATION AND MAINTENANCE OF THE PROPERTY; CASUALTY.

(A) Borrower will operate and maintain the Property as a first class hotel and maintain or cause to be maintained in good repair, working order and condition all material property used in the business of Borrower, including the Property, and will make or cause to be made all appropriate repairs, renewals and replacements thereof consistent with Borrower's normal and customary operations at the Property (provided that such operations are consistent with standards for a first class hotel). Without limitation of the foregoing, Borrower will operate and maintain the Property substantially in accordance with the applicable Operating Budget and the FF&E Budget. All work required or permitted under this Loan Agreement shall be performed in a workmanlike manner and in compliance with all applicable laws.

So long as no Event of Default has occurred and is continuing, Borrower may, without Lender's consent, perform alterations to the Property which (i) do not constitute a Material Alteration, (ii) do not materially and adversely affect Borrower's financial condition or the value or Net Operating Income of the Property and (iii) are in the ordinary course of Borrower's business. Borrower shall not perform any Material Alteration without Lender's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that Lender may, in its sole and absolute discretion, withhold consent to any Material Alteration which is likely to result in a decrease of Net Operating Income from the Property by 5% or more for a period of 30 days or longer. Lender may, as a condition to giving its consent to a Material Alteration, require that Borrower deliver to Lender evidence reasonably satisfactory to Lender that Borrower has cash available for payment of the cost of such Material Alteration or, if Borrower fails to deliver such evidence, cash in an amount equal to 125% of the cost of such Material Alteration as reasonably estimated by Lender. Cash deposited by Borrower with Lender in connection with any Material Alteration pursuant to the foregoing sentence shall be held by Lender in an interest-bearing account and disbursed to Borrower to pay for the cost of such Material Alteration as such work progresses subject to satisfaction of the conditions for disbursement of amounts from the FF&E Reserve under Section 6.4(B). Upon substantial completion of the Material Alteration, Borrower shall provide evidence reasonably satisfactory to Lender that (i) the Material Alteration was constructed in accordance with all applicable laws and substantially in accordance with plans and specifications approved by Lender (which

approval shall not be unreasonably withheld or delayed), (ii) all contractors, subcontractors, materialmen and professionals who provided work, materials or services in connection with the Material Alteration have been paid in full and have delivered unconditional releases of lien and (iii) all material licenses necessary for the use, operation and occupancy of the Material Alteration (other than those which depend on the performance of tenant improvement work) have been issued. Borrower shall reimburse Lender upon demand for all reasonable out-of-pocket costs and expenses (including the reasonable fees of any architect, engineer or other professional engaged by Lender) incurred by Lender in reviewing plans and specifications or in making any determinations necessary to implement the provisions of this Section 5.5(A). Notwithstanding Lender's approval of any Capital Improvement Plan under Section 5.1, Borrower shall be required to satisfy all of the above conditions with respect to any Material Alteration included in such Capital Improvement Plan except to the extent such Material Alteration is to be paid for from the Capital Improvement Reserve under Section 6.5.

(B) In the event of casualty or loss at the Property, Borrower shall give immediate written notice of the same to the insurance carrier and to Lender and shall promptly commence and diligently prosecute to completion, in accordance with the terms hereof, the repair and restoration of the Property as nearly as possible to the Pre-Existing Condition (hereinafter defined) (a "RESTORATION"). Borrower shall pay all costs of such Restoration whether or not such costs are covered by insurance. Borrower hereby authorizes and empowers Lender as attorney-in-fact for Borrower to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Lender's expenses incurred in the collection of such proceeds; provided however, that nothing contained in this Section shall require Lender to incur any expense or take any action hereunder. Borrower further authorizes Lender, at Lender's option, (i) to hold the balance of such proceeds to be used to reimburse Borrower for the cost of Restoration of the Property or (ii) subject to Subsection 5.5(C), to apply such proceeds to payment of the Obligations whether or not then due, in any order, and provided that no Event of Default has occurred and is continuing, no Prepayment Consideration shall be payable in connection with such application of proceeds to the Obligations. Notwithstanding the foregoing, in the event of a casualty where the loss does not exceed the Restoration Threshold, Borrower may settle and adjust such claim; provided that (a) no Event of Default has occurred and is continuing and (b) such adjustment is carried out in a commercially reasonable and timely manner.

(C) Lender shall not exercise Lender's option to apply insurance proceeds to payment of the Obligations if all of the following conditions are met: (i) no Event of Default then exists; (ii) Lender reasonably determines that there will be sufficient funds to complete the Restoration of the Property to at least the Pre-Existing Condition and to timely make all payments due under the Loan Documents during the Restoration of the Property; (iii) Lender reasonably determines that the Net Operating Income of the Property (including rental income or business interruption insurance) will be sufficient to pay principal and interest on the Loan and the Mezzanine Loan and Operating Revenues of the Property, after the Restoration thereof to the Pre-Existing Condition, will be sufficient to meet all Operating Expenses, payments for Reserves and payments of principal and interest under the Note and the Mezzanine Loan and maintain a Debt Service Coverage Ratio at least equal to the lesser of (a) the Debt Service Coverage Ratio as of the Closing Date and (b) the Debt Service Coverage Ratio immediately prior to the casualty; (iv)

Lender determines that the Restoration of the Property to the Pre-Existing Condition will be completed within one (1) year of the date of the loss or casualty to the Property, but in no event later than six (6) months prior to the Maturity Date (giving effect to the next unexercised Extension Option, provided that Borrower exercises such Extension Option at the time in question, subject to the satisfaction of the conditions set forth in Section 2.5(B) (other than delivery of notice under Section 2.5(B)(i)); (v) less than fifty percent (50%) of the total floor area of the Improvements has been damaged, destroyed or rendered unusable as a result of such fire or other casualty; (vi) the total amount of insurance proceeds available in connection with such fire or casualty does not exceed ninety percent (90%) of the then outstanding principal balance of the Loan; and (vii) Lender is reasonably satisfied that the Property can be restored and repaired as nearly as possible to the condition it was in immediately prior to such casualty and in compliance with all applicable zoning, building and other laws and codes (the "PRE-EXISTING CONDITION").

(D) If Lender elects or is obligated to make the insurance proceeds available for the Restoration of the Property, Borrower agrees that, if at any time during the Restoration, the cost of completing such Restoration, as reasonably determined by Lender, exceeds the undisbursed insurance proceeds, Borrower shall, immediately upon demand by Lender, deposit the amount of such excess with Lender, and Lender shall first disburse such deposit to pay for the costs of such Restoration on the same terms and conditions as the insurance proceeds are disbursed. If Borrower deposits such excess with Lender and if, after completion of the Restoration, any funds remain from the combination of insurance proceeds and the funds so deposited with Lender by Borrower, and if no Event of Default shall have occurred and be continuing, then Lender shall disburse to Borrower such remaining funds.

(E) Lender may, at Lender's option, condition disbursement of any insurance proceeds on Lender's approval of plans and specifications of an independent architect licensed in the state where the Property is located and reasonably satisfactory to Lender (the "ARCHITECT"), any and all contractors, subcontractors and materialmen engaged in the Restoration and the contracts under which they have been engaged, contractor's cost estimates, architect's certificates, waivers of liens, sworn statements of mechanics and materialmen and such other evidence of costs, percentage completion of construction, application of payments, and satisfaction of liens as Lender may reasonably require. Lender shall not be obligated to disburse insurance proceeds more frequently than once every calendar month. If insurance proceeds are applied to the payment of the Obligations, any such application of proceeds to principal shall not extend or postpone the due dates of the monthly payments due under the Note or otherwise under the Loan Documents, or change the amounts of such payments. Any amount of insurance proceeds remaining in Lender's possession after full and final payment and discharge of all Obligations shall be refunded to Borrower or otherwise paid in accordance with applicable law. If the Property is sold at foreclosure or if Lender acquires title to the Property, Lender shall have all of the right, title and interest of Borrower in and to any insurance policies and unearned premiums thereon and in and to the proceeds resulting from any damage to the Property prior to such sale or acquisition.

(F) In no event shall Lender be obligated to make disbursements of insurance proceeds in excess of an amount equal to the costs actually incurred from time to time for work in place as part of the Restoration, as certified by the Architect, less a retainage equal to ten

percent (10%) of such costs incurred until the Restoration has been completed. The retainage shall in no event be less than the amount actually held back by Borrower from contractors, subcontractors and materialmen engaged in the Restoration. The retainage shall not be released until the Architect certifies to Lender that the Restoration has been completed in accordance with the provisions of this Section 5.5 and that all approvals necessary for the re-occupancy and use of the Property have been obtained from all appropriate governmental authorities, and Lender receives evidence satisfactory to Lender that the costs of the Restoration have been paid in full or will be paid in full out of the retainage.

SECTION 5.6 INSPECTION. Borrower shall permit any authorized representatives designated by Lender to visit and inspect during normal business hours the Property and its business, including its financial and accounting records, and to make copies and take extracts therefrom (not to exceed four times per year unless an Event of Default has occurred and is continuing), and to discuss its affairs, finances and business with its officers and independent public accountants (with such Borrower's representative(s) present), at such reasonable times during normal business hours and as often as may be reasonably requested. Unless an Event of Default has occurred and is continuing, Lender shall provide advance written notice of at least three (3) Business Days prior to visiting or inspecting the Property or Borrower's offices.

SECTION 5.7 ENVIRONMENTAL COMPLIANCE.

(A) ENVIRONMENTAL LAWS. Borrower shall at all times comply in all material respects with all applicable Environmental Laws. Borrower shall not: (i) violate in any material respect any applicable Environmental Law; or (ii) generate, use, transport, handle, store, release or dispose of any Hazardous Materials in or into, on or onto, or from the Property (except in accordance with applicable law); or (iii) permit any Lien imposed pursuant to any Environmental Law to be imposed or to remain on the Property.

(B) REMEDIAL ACTION. Borrower shall promptly take and diligently prosecute any and all necessary remedial actions upon obtaining knowledge of the presence, storage, use, disposal, transportation, active or passive migration, release or discharge of any Hazardous Materials on, under or about the Property in violation of any Environmental Laws. In the event Borrower undertakes any remedial action with respect to any Hazardous Material on, under or about the Property, Borrower shall conduct and complete such remedial action in compliance with all applicable Environmental Laws, and in accordance with the applicable policies, orders and directives of all federal, state and local governmental authorities.

(C) FURTHER ASSURANCE. If Lender at any time has a reasonable basis to believe that there may be a violation of any Environmental Law by, or any basis for a material claim or liability arising thereunder of, Borrower or related to the Property, then Borrower agrees, upon request from Lender, to provide Lender with such reports, certificates, engineering studies or other written material or data as Lender may reasonably require so as to satisfy Lender that Borrower and the Property are in compliance with all applicable Environmental Laws.

(D) O&M PLAN. Borrower has caused to be prepared and delivered to Lender an operations and maintenance program with respect to suspected asbestos and asbestos-containing materials (the "O&M PLAN") located in the Property as set forth in the Environmental Report.



Borrower shall at all times implement and carry out the O&M Plan in accordance with its terms. Lender's requirement that Borrower develop and comply with the O&M Plan shall not be deemed to constitute a waiver or modification of any covenants or agreements of Borrower or Guarantor with respect to Hazardous Material or Environmental Laws as set forth herein or in the Environmental Indemnity.

#### SECTION 5.8 ENVIRONMENTAL DISCLOSURE.

(A) Borrower shall promptly upon becoming aware thereof advise Lender in writing and in reasonable detail of: (1) any release, disposal or discharge of any Hazardous Material on, under, or about the Property required to be reported to any federal, state or local governmental or regulatory agency under any applicable Environmental Laws except such releases, disposals or discharges pursuant to and in compliance with valid permits, authorizations or registrations under said Environmental Laws; (2) any and all written communications sent or received by Borrower with respect to any Environmental Claims or any release, disposal or discharge of Hazardous Material required to be reported to any federal, state or local governmental or regulatory agency; (3) any remedial action taken by Borrower or any other Person in response to any Hazardous Material on, under or about the Property, the existence of which could result in an Environmental Claim that could reasonably be expected to have a Material Adverse Effect; (4) the discovery by Borrower of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could reasonably be expected to cause the Property or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use thereof under any Environmental Laws; and (5) any request for information from any governmental agency that indicates such agency is investigating whether Borrower may be potentially responsible for a release, disposal or discharge of Hazardous Materials.

(B) Borrower shall promptly notify Lender of any proposed action to be taken pertaining in any way to the Property to commence any operations that could reasonably be expected to subject Borrower or the Property to additional laws, rules or regulations, including laws, rules and regulations requiring additional or amended environmental permits or licenses which could reasonably be expected to subject Borrower to any material obligations or requirements under any Environmental Laws. Borrower shall, at its own expense, provide copies of such documents or information as Lender may reasonably request in relation to any matters disclosed pursuant to this Section.

SECTION 5.9 COMPLIANCE WITH LAWS AND CONTRACTUAL OBLIGATIONS. Borrower will (A) comply with the requirements of all present and future applicable laws, rules, regulations and orders of any governmental authority in all jurisdictions in which it is now doing business or may hereafter be doing business, other than those laws, rules, regulations and orders the noncompliance with which would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect, (B) maintain all licenses and permits now held or hereafter acquired by Borrower, the loss, suspension, or revocation of which, or failure to renew, could reasonably be expected to have a Material Adverse Effect and (C) perform, observe, comply and fulfill all of its obligations, covenants and conditions contained in any Contractual Obligation except where the failure to so perform, observe or comply would not reasonably be expected to have a Material Adverse Effect, including the Loan Documents.

SECTION 5.10 FURTHER ASSURANCES. Borrower Parties and their Affiliates shall, from time to time, execute and/or deliver such documents, instruments, agreements, financing statements, and perform such acts as Lender at any time may reasonably request to evidence, preserve and/or protect the Collateral at any time securing or intended to secure the Obligations and/or to better and more effectively carry out the purposes of this Loan Agreement and the other Loan Documents.

SECTION 5.11 PERFORMANCE OF AGREEMENTS AND LEASES. Each Borrower Party shall duly and punctually perform, observe and comply in all material respects with all of the terms, provisions, conditions, covenants and agreements on its part to be performed, observed and complied with (i) hereunder and under the other Loan Documents to which it is a party, (ii) under all Material Agreements and Material Leases and (iii) all other agreements entered into or assumed by such Person in connection with the Property, and will not suffer or permit any material default or event of default (giving effect to any applicable notice requirements and cure periods) to exist under any of the foregoing except where the failure to perform, observe or comply with any agreement referred to in this clause (iii) would not reasonably be expected to have a Material Adverse Effect. Borrower shall comply with, observe and perform all of Borrower's obligations as landlord under all Leases and shall enforce the terms, covenants and conditions contained in the Leases upon the part of the tenants thereunder to be observed or performed.

SECTION 5.12 LEASES. (A) Without the prior written consent of Lender, which shall not be unreasonably withheld or delayed, Borrower shall not, nor allow Manager or any other Person to, (i) enter into any Material Lease; (ii) cancel or terminate any Material Lease (except to enforce any such Material Lease after a default thereunder); (iii) amend or modify any Material Lease (except for minor modifications and amendments entered into in the ordinary course of business, consistent with prudent property management practices, not materially and adversely affecting the economic terms of the Material Lease); (iv) approve any assignment, sublease or underlease of any Material Lease (except as required pursuant to the express terms of any existing Material Lease or Material Lease hereafter approved by Lender); or (v) cancel or modify any guaranty, or release any security deposit, letter of credit, or other item constituting security pertaining to any Material Lease.

(B) Notwithstanding the provisions of Section 5.12(A) above, Lender's consent shall not be required for the creation, assignment, termination, amendment or modification of any Lease which is not a Material Lease provided that no Event of Default shall have occurred and be continuing and that the applicable Lease (other than any Deminimis Lease):

(i) provides for payment of a net effective rent (after taking into account any free rent, construction allowances or other concessions granted by landlord) no less than ninety percent (90%) of the then effective fair market rent then prevailing for similar properties and leases in the market area;

(ii) is otherwise on commercially reasonable terms; and

(iii) is delivered to Lender within twenty (20) days after execution with Borrower's certification that such Lease satisfies the conditions of this Section 5.12.

(C) Any request for approval of a Material Lease or assignment, termination, amendment or modification of any Material Lease shall be made to Lender in writing and together with such request Borrower shall furnish to Lender: (i) such biographical and financial information about the proposed tenant as Lender may reasonably require in conjunction with its review, (ii) a copy of the proposed form of Lease (or amendment or modification), and (iii) a summary of the material terms of such proposed Lease (or amendment or modification) including, without limitation, rental terms and the term of the proposed Lease and any options.

Except for security deposits, no Lease (other than Deminimis Leases) shall provide for payment of rent more than one month in advance, and Borrower shall not under any circumstances collect any such rent more than one month in advance. Borrower, at Lender's request, shall furnish Lender with executed copies of all Leases (other than Deminimis Leases) hereafter made. Each Lease (other than Deminimis Leases) or a separate agreement with the tenant of such Lease, in recordable form and substance satisfactory to Lender, shall specifically provide that such Lease is subordinate to the Deed of Trust; that the tenant attorns to Lender, such attornment to be effective upon Lender's acquisition of title to the Property; that the tenant agrees to execute such further evidences of attornment as Lender may from time to time request; that the attornment of the tenant shall not be terminated by foreclosure; that in no event shall Lender, as holder of the Deed of Trust or as successor landlord, be liable to the tenant for any act or omission of any prior landlord or for any liability or obligation of any prior landlord occurring prior to the date that Lender or any subsequent owner acquire title to the Property; and that Lender may, at Lender's option, accept or reject such attornment. Lender shall enter into, and, if required by applicable law to provide constructive notice, record in the county where the subject Property is located, and permit the applicable tenant to record a subordination, non-disturbance and attornment agreement, in the form attached hereto as EXHIBIT B, with any tenant (other than an Affiliate of Borrower) entering into any Material Lease within ten (10) Business Days after written request therefor by Borrower delivered together with an executed copy of the applicable Material Lease, and provided that Lender shall have confirmed that such Material Lease satisfies the conditions of this Section 5.12.

#### SECTION 5.13 MANAGEMENT; FRANCHISE AGREEMENT.

(A) Borrower shall cause Manager to manage the Property in accordance with the Management Agreement including, without limitation, maintaining inventory in amounts and types customary for hotels comparable to the Property. Borrower shall (i) diligently perform and observe all of the material terms, covenants and conditions of the Management Agreement on the part of Borrower to be performed and observed, (ii) promptly notify Lender of any notice to Borrower of any default under the Management Agreement of which it is aware and (iii) promptly deliver to Lender a copy of each financial statement, business plan, capital expenditures plan, notice, report and estimate received by it under the Management Agreement. If Borrower shall default in the performance or observance of any material term, covenant or condition of the Management Agreement on the part of Borrower to be performed or observed, then, without limiting Lender's other rights or remedies under this Agreement or the other Loan Documents, and without waiving or releasing Borrower from any of its obligations hereunder or under the Management Agreement, Lender shall have the right, but shall be under no obligation, to pay any sums and to perform any act as may be appropriate to cause all the material terms, covenants and conditions of the Management Agreement on the part of Borrower to be

performed or observed. Borrower shall cause any new Manager to execute and deliver a subordination agreement reasonably satisfactory to Lender at the time of execution and delivery of any Management Agreement.

(B) Borrower shall not surrender, terminate, cancel, modify, renew or extend the Management Agreement, or enter into any other Management Agreement with Manager or any new Manager, or consent to the assignment by the Manager of its interest under the Management Agreement, in each case without the express consent of Lender, which consent shall not be unreasonably withheld, and delivery of Rating Confirmations from each of the Rating Agencies. If at any time Lender consents to the appointment of a new Manager, such new Manager and Borrower shall, as a condition of Lender's consent, execute a subordination of management agreement in the form delivered in connection with the closing of the Loan. Notwithstanding the foregoing, Lender's consent shall not be required for appointment of an Acceptable Manager and delivery of Rating Confirmations shall not be required for appointment of an Acceptable Manager described in clause (i) of the above definition thereof; provided, however that delivery of Rating Confirmations shall be required for appointment of an Acceptable Manager described in clause (ii) of the definition thereof and, in any event, the Management Agreement with any new Manager including any Acceptable Manager shall be in form and substance reasonably acceptable to Lender.

(C) Lender shall have the right to require Borrower to replace the Manager with a Person chosen by Borrower and reasonably acceptable to Lender, upon the earliest to occur of any one or more of the following events: (i) upon the occurrence and during the continuance of an Event of Default; (ii) thirty (30) days after notice from Lender to Borrower that Manager has engaged in fraud, gross negligence or willful misconduct arising from or in connection with its performance under the Management Agreement; or (iii) upon a change of control of the current Manager or if at any time the Manager is not an Affiliate of the Person which is the Manager of the Property on the date hereof.

(D) Borrower shall not enter into any Franchise Agreement without Lender's prior written consent as to the franchisor and the terms of the Franchise Agreement and without delivery of a Rating Confirmation from each of the Rating Agencies. Provided that no Event of Default shall have occurred and be continuing, Lender's consent shall not be unreasonably withheld, conditioned or delayed to any proposed Franchise Agreement with an Acceptable Franchisor for operation of the Property under an Acceptable Franchise Name as a first class destination convention center hotel in a manner substantially similar to the current use and operation of the Property. Borrower shall also be required to deliver to Lender a comfort letter from the franchisor in form and substance reasonably acceptable to Lender. If Borrower enters into any such Franchise Agreement, Borrower shall (a) cause the hotel located on the Property to be operated pursuant to the Franchise Agreement; (b) promptly perform and observe in all material respects all of the covenants required to be performed and observed by it under the Franchise Agreement and do all things reasonably necessary to preserve and to keep unimpaired its material rights thereunder; (c) promptly notify Lender of any material default under the Franchise Agreement of which it is aware; (d) promptly deliver to Lender a copy of each material financial statement, business plan, capital expenditures plan, notice, report and estimate received by it under the Franchise Agreement; and (e) promptly enforce in a commercially reasonable manner the performance and observance of all of the material covenants required to

be performed and observed by the franchisor under the Franchise Agreement. In addition, Borrower shall not, without Lender's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed: (x) increase or consent to the increase of the aggregate amount of any fees under any Franchise Agreement; (y) otherwise modify, change, supplement, alter or amend, or waive or release any of its material rights and remedies under, any Franchise Agreement or (z) suffer or permit the occurrence or continuance of a default beyond any applicable cure period under any Franchise Agreement.

SECTION 5.14 MATERIAL AGREEMENTS. Except for Leases complying with the Loan Documents, the Management Agreement, the existing Material Agreements described on Schedule 5.14 attached hereto, the Services Agreements or any Franchise Agreement complying with the provisions of Section 5.13(D), without Lender's prior written approval (which approval shall not be unreasonably withheld, conditioned or delayed), Borrower shall not enter into or become obligated under any Material Agreement pertaining to the Property, including without limitation brokerage agreements, unless the same may be terminated without cause and without payment of a penalty or premium, on not more than thirty (30) days' prior written notice. Notwithstanding the foregoing, Borrower may enter into customer contracts for conventions and similar uses of Property facilities constituting Material Agreements (such contracts, "CONVENTION CONTRACTS") without Lender's approval provided that (i) any such Convention Contract shall be substantially in the form of the standard form of Convention Contract previously delivered to and approved by Lender (with reasonable changes thereto as necessary to reflect the terms of such contract), and (ii) is otherwise on Borrower's customary terms.

SECTION 5.15 DEPOSITS; APPLICATION OF RECEIPTS. Borrower will deposit all Receipts from the Property into, and otherwise comply with, the Accounts established from time to time hereunder. Subject to Article VII hereof and the Cash Management Agreement, Borrower shall promptly apply all Receipts to the payment of all current and past due Operating Expenses, and to the repayment of all sums currently due or past due under the Loan Documents, including all payments into the Reserves.

SECTION 5.16 ESTOPPEL CERTIFICATES.

(A) Within ten (10) Business Days following a request by Lender, Borrower shall provide to Lender a duly acknowledged written statement confirming (i) the amount of the outstanding principal balance of the Loan, (ii) the terms of payment and maturity date of the Note, (iii) the date to which interest has been paid, (iv) whether any offsets or defenses exist against the Obligations, and if any such offsets or defenses are alleged to exist, the nature thereof shall be set forth in detail and (v) that this Loan Agreement, the Note, the Deed of Trust and the other Loan Documents are legal, valid and binding obligations of Borrower and have not been modified or amended, or if modified or amended, describing such modification or amendments.

(B) Within ten (10) Business Days following a written request by Borrower, Lender shall provide to Borrower for informational purposes only, a duly acknowledged written statement setting forth the amount of the outstanding principal balance of the Loan, the date to which interest has been paid, and whether Lender has provided Borrower with written notice of any Event of Default. Compliance by Lender with the requirements of this Section shall be for

informational purposes only and shall not be deemed to be a waiver of any rights or remedies of Lender hereunder or under any other Loan Document.

SECTION 5.17 INDEBTEDNESS. No Primary Borrower Party will directly or indirectly create, incur, assume, guaranty, or otherwise become or remain directly or indirectly liable with respect to any Indebtedness except for the following (collectively, "PERMITTED INDEBTEDNESS"):

(A) the Obligations;

(B) (i) unsecured trade payables not evidenced by a note and arising out of purchases of goods or services in the ordinary course of business and (ii) Indebtedness incurred in the financing of equipment or other personal property used at any Property in the ordinary course of business, provided that (a) each such trade payable is payable not later than sixty (60) days after the original invoice date and is not overdue by more than thirty (30) days and (b) the aggregate amount of such trade payables and Indebtedness relating to financing of equipment and personal property referred to in clauses (i) and (ii) above outstanding does not, at any time, exceed five percent (5%) of the original principal amount of the Loan. In no event shall any Indebtedness other than the Loan be secured, in whole or in part, by the Property or any portion thereof or interest therein; and

(C) that certain loan in the amount of \$100,000,000 (the "MEZZANINE LOAN") from Merrill Lynch Mortgage Capital Inc. (together with its successors or permitted assigns, the "MEZZANINE LENDER") to Member (in such capacity, the "MEZZANINE BORROWER") to be made on the Closing Date, subject to the following conditions:

(i) The Mezzanine Loan will be evidenced by a loan agreement and promissory note in favor of the Mezzanine Lender and secured by a pledge agreement encumbering the Mezzanine Borrower's membership interest in Borrower (but in no event shall the Mezzanine Loan be secured by a Lien on the Property or any other Collateral for the Loan), and each of such documents evidencing and securing the Mezzanine Loan shall be in form and substance acceptable to Lender (such documents together with any and all other documents and agreements evidencing and securing the Mezzanine Loan, as amended, the "MEZZANINE LOAN DOCUMENTS").

(ii) The Mezzanine Lender will deliver to Lender a subordination and intercreditor agreement substantially in the form attached hereto as Exhibit C (such agreement, as same may be amended, modified or restated and any successor or replacement agreements therefor, the "INTERCREDITOR AGREEMENT").

(iii) The Mezzanine Loan may not be refinanced (although it may be extended pursuant to the terms and conditions of the Mezzanine Loan Agreement and the Intercreditor Agreement) except with an Institutional Lender/Owner and subject to the following terms and conditions: (a) the principal amount of the new Mezzanine Loan (the "NEW MEZZANINE LOAN") shall not exceed the lesser of (i) \$100,000,000 and (ii) an amount which will produce an aggregate Debt Service Coverage Ratio (calculated based upon Pro Forma Net Operating Income for the Property for the 12 month period ended immediately prior to such refinancing and projected debt service on the Loan and the New Mezzanine Loan for the 12 months following

such refinancing with debt service on the Loan calculated at an interest rate equal to the sum of the Cap Threshold Rate (or applicable Extension Cap Threshold Rate, as the case may be) plus the then Applicable Spread and including required principal amortization payments under Section 2.4(A) and debt service under the New Mezzanine Loan calculated in the same manner (giving effect to any interest rate cap maintained with respect to the New Mezzanine Loan) of at least 1.05:1.0; (b) the monthly debt service on the New Mezzanine Loan shall not exceed the monthly debt service on the existing Mezzanine Loan; (c) the maturity date of the New Mezzanine Loan shall be on or after the Maturity Date of the Loan; (d) the New Mezzanine Loan documents shall be in form and substance reasonably acceptable to Lender; (e) the Mezzanine Lender shall have delivered a Rating Confirmation from each of the Rating Agencies; (f) the holder of the New Mezzanine Loan shall have executed and delivered a subordination and intercreditor agreement substantially in the form of that delivered by the Mezzanine Lender at Closing and otherwise in form and substance reasonably acceptable to Lender; and (g) Borrower shall have paid all of Lender's reasonable costs and expenses incurred in connection with the review and approval of the New Mezzanine Loan and execution and delivery of all documents provided above including, without limitation, reasonable attorney's fees and disbursements.

(iv) The Mezzanine Loan shall be subject to the approval of each Rating Agency.

SECTION 5.18 NO LIENS. The obligations of Borrower under this Section are in addition to and not in limitation of its obligations under Article XI herein. Borrower shall not create, incur, assume or permit to exist any Lien on or with respect to the Property, any other Collateral or any such direct or indirect ownership interest in Borrower, except Permitted Encumbrances (and except for Liens on ownership interests in Borrower in connection with any Mezzanine Loan in accordance with Section 5.17(C)).

SECTION 5.19 CONTINGENT OBLIGATIONS. Borrower shall not directly or indirectly create or become or be liable with respect to any Contingent Obligation except Contingent Obligations existing on the Closing Date and described in SCHEDULE 4.4.

SECTION 5.20 RESTRICTION ON FUNDAMENTAL CHANGES. Except as otherwise expressly permitted under this Loan Agreement:

(A) Neither Borrower nor Member shall, or shall permit any other Person to, (i) amend, modify or waive any term or provision of its partnership agreement, certificate of limited partnership, articles of incorporation, by-laws, articles of organization, operating agreement or other organizational documents, unless required by law; or (ii) liquidate, wind-up or dissolve Borrower or Member.

(B) Neither Borrower nor Member shall acquire by purchase or otherwise all or any part of the business or assets of, or stock or other evidence of beneficial ownership of, any Person.

SECTION 5.21 TRANSACTIONS WITH RELATED PERSONS. Except for fees payable to Manager under the Management Agreement or payments or other charges to Guarantor or its Affiliates for services rendered under the Services Agreements, Borrower shall not pay any management,

consulting, director or similar fees to any Related Person of Borrower or to any director, officer or employee of Borrower. Borrower shall not directly or indirectly enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Related Person of Borrower or with any director, officer or employee of any Borrower Party, except transactions in the ordinary course of and pursuant to the reasonable requirements of the business of Borrower and upon fair and reasonable terms as set forth in the Services Agreement or as otherwise fully disclosed to Lender prior to consummation and are no less favorable to Borrower than would be obtained in a comparable arm's length transaction with a Person that is not a Related Person of Borrower. Borrower shall not make any payment or permit any payment to be made to any Related Person of Borrower when or as to any time when any Event of Default shall exist.

SECTION 5.22 BANKRUPTCY, RECEIVERS, SIMILAR MATTERS.

(A) VOLUNTARY CASES. Neither any Borrower Party nor Member shall commence a voluntary case under the Bankruptcy Code or under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect.

(B) INVOLUNTARY CASES, RECEIVERS, ETC. Neither any Borrower Party, nor Member or Related Person of any Borrower Party shall apply for, consent to, or aid, solicit, support, or otherwise act, cooperate or collude to cause the appointment of or taking possession by, a receiver, trustee or other custodian for all or a substantial part of the assets of any Borrower Party or Member. As used in this Loan Agreement, an "INVOLUNTARY BORROWER PARTY BANKRUPTCY" shall mean any involuntary case under the Bankruptcy Code or any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, in which any Borrower Party or Member is a debtor or any portion of the Property is property of the estate therein. No Borrower Party or Member and no Related Person of any Borrower Party shall file a petition for, consent to the filing of a petition for, or aid, solicit, support, or otherwise act, cooperate or collude to cause the filing of a petition for an Involuntary Borrower Party Bankruptcy. In any Involuntary Borrower Party Bankruptcy, neither any Borrower Party, nor Member or any Related Person of any Borrower Party shall, without the prior written consent of Lender, consent to the entry of any order, file any motion, or support any motion (irrespective of the subject of the motion), and neither any Borrower Party, nor Member or any such Related Person shall file or support any plan of reorganization. Each Borrower Party and Member having any interest in any Involuntary Borrower Party Bankruptcy shall do all things reasonably requested by Lender to assist Lender in obtaining such relief as Lender shall seek, and shall in all events vote as directed by Lender. Without limitation of the foregoing, each such Borrower Party and Member shall do all things reasonably requested by Lender to support any motion for relief from stay or plan of reorganization proposed or supported by Lender.

SECTION 5.23 ERISA.

(A) NO ERISA PLANS. None of the Primary Borrower Parties will establish any Employee Benefit Plan, Pension Plan or Multiemployer Plan, or will commence making contributions to (or become obligated to make contributions to) any Employee Benefit Plan, Pension Plan or Multiemployer Plan other than contributions to the plans described on Schedule 4.14.



(B) COMPLIANCE WITH ERISA. Borrower shall not: (i) engage in any prohibited transaction under Section 406 of ERISA or Section 4975 of the IRC; or (ii) permit the establishment of any Employee Benefit Plan providing post-retirement welfare benefits or establish or amend any Employee Benefit Plan which establishment or amendment could result in liability to Borrower or any ERISA Affiliate or increase the obligation of Borrower, except for the existing Plans that currently provide post-retirement welfare benefits as set forth on Schedule 4.14 attached hereto.

(C) NO PLAN ASSETS. Borrower shall not at any time during the term of this Loan Agreement become (1) an employee benefit plan defined in Section 3(3) of ERISA which is subject to ERISA, (2) a plan as defined in Section 4975(e)(1) of the IRC which is subject to Section 4975 of the IRC, (3) a "governmental plan" within the meaning of Section 3(32) of ERISA or (4) an entity any of whose underlying assets constitute "plan assets" of any such employee benefit plan, plan or governmental plan for purposes of Title I or ERISA, Section 4975 of the IRC or any state statutes applicable to the Borrowers regulating investments of governmental plans.

SECTION 5.24 PRESS RELEASE. No Borrower Party shall, or permit any other within its control to, disclose the name of Lender or terms of this Loan Agreement or the Loan Documents in any press release without the prior written consent of Lender, not to be unreasonably withheld or delayed.

SECTION 5.25 LENDER'S EXPENSES. Borrower shall pay, on demand by Lender, all reasonable expenses, charges, costs and fees (including reasonable attorneys' fees and expenses) in connection with the negotiation, documentation, closing, administration, servicing, enforcement interpretation, and collection of the Loan and the Loan Documents, and in the preservation and protection of Lender's rights hereunder and thereunder. Without limitation Borrower shall pay all costs and expenses, including reasonable attorneys' fees, incurred by Lender in any case or proceeding under the Bankruptcy Code (or any law succeeding or replacing any of the same). At the Closing, Lender is authorized to pay directly from the proceeds of the Loan any or all of the foregoing expenses then or theretofore incurred.

#### ARTICLE VI RESERVES

SECTION 6.1 SECURITY INTEREST IN RESERVES; OTHER MATTERS PERTAINING TO RESERVES.

(A) Borrower hereby pledges, assigns and grants to Lender a security interest in and to all of Borrower's right, title and interest in and to the Reserves, as security for payment and performance of all of the Obligations hereunder and under the Note and the other Loan Documents. The Reserves constitute Account Collateral and are subject to the security interest in favor of Lender created herein and all provisions of this Loan Agreement and the other Loan Documents pertaining to Account Collateral.

(B) In addition to the rights and remedies provided in Article VII and elsewhere herein, upon the occurrence of any Event of Default, Lender shall have all rights and remedies pertaining to the Reserves as are provided for in any of the Loan Documents or under any

applicable law. Without limiting the foregoing, upon and at all times after the occurrence and during the continuance of an Event of Default, Lender in its sole and absolute discretion, may use the Reserves (or any portion thereof) for any purpose, including but not limited to any combination of the following: (i) payment of any of the Obligations including the Prepayment Consideration applicable upon such payment in such order as Lender may determine in its sole discretion; provided, however, that such application of funds shall not cure or be deemed to cure any default; (ii) reimbursement of Lender for any losses or expenses (including, without limitation, reasonable legal fees) suffered or incurred as a result of such default; (iii) payment for the work or obligation for which such Reserves were reserved or were required to be reserved; and (iv) application of the Reserves in connection with the exercise of any and all rights and remedies available to Lender at law or in equity or under this Loan Agreement or pursuant to any of the other Loan Documents. Nothing contained in this Loan Agreement shall obligate Lender to apply all or any portion of the funds contained in the Reserves during the continuance of an Event of Default to payment of the Loan or in any specific order of priority.

#### SECTION 6.2 FUNDS DEPOSITED WITH LENDER.

(A) INTEREST, OFFSETS. Except only as expressly provided otherwise herein, all funds of Borrower which are deposited with Lender as Reserves hereunder shall be held by Lender in one or more Permitted Investments. Lender is authorized to commingle any of the Reserves with each other. All interest which accrues on the Reserves shall be taxable to Borrower and shall be added to and disbursed in the same manner and under the same conditions as the principal sum on which said interest accrued. Additional provisions pertaining to investments are set forth in Article VII. After repayment of all of the Obligations, all funds held as Reserves will be returned to Borrower.

(B) FUNDING AT CLOSING. Borrower shall deposit with Lender the amounts necessary to fund each of the Reserves as set forth below. Deposits into the Reserves at Closing may occur by deduction from the amount of the Loan that otherwise would be disbursed to Borrower, followed by prompt deposit of the same into the applicable Sub-Account of the Central Account in accordance with the Cash Management Agreement. Notwithstanding such deductions, the Loan shall be deemed for all purposes to be fully disbursed at Closing.

SECTION 6.3 IMPOSITIONS AND INSURANCE RESERVE. On the Closing Date, Borrower shall deposit with Lender (or the Servicer or such agent of Lender as Lender may designate in writing to Borrower from time to time) \$1,354,668 and, pursuant to the Cash Management Agreement, Borrower shall deposit monthly, on each Payment Date commencing on April 30, 2001, 1/12th of the annual charges (as reasonably estimated by Lender) for all Impositions and all Insurance Premiums payable with respect to the Property hereunder (said funds, together with any interest thereon and additions thereto, the "IMPOSITIONS AND INSURANCE RESERVE"). For purposes of this Section 6.3, the amount of Insurance Premiums required to be escrowed hereunder shall be calculated assuming that the insurance coverages required under Section 5.4 are maintained for the Property on a stand alone basis (rather than as part of blanket policies covering the Property and other properties of Borrower's Affiliates) (such insurance policies, "STAND ALONE INSURANCE POLICIES") as determined by Lender in its sole good faith discretion. The initial amount of the monthly deposit to be made to the Impositions and Insurance Reserve from and after the date hereof is \$688,000. Borrower shall also deposit with Lender on demand, to be added to and

included within such reserve, a sum of money which Lender reasonably estimates, together with such monthly deposits, will be sufficient to make the payment of each such charge at least thirty (30) days prior to the date initially due or, with respect to Impositions, the date same become delinquent. Borrower shall provide Lender with tax bills and all other documents necessary for the payment of Impositions at least thirty (30) days prior to the date on which each payment of Impositions shall first become due. So long as (i) no Event of Default has occurred and is continuing, (ii) Borrower has provided Lender with the foregoing tax bills and other documents in a timely manner, and (iii) sufficient funds are held by Lender for the payment of the Impositions relating to the Property, Lender shall pay said Impositions or disburse to Borrower from such Reserve an amount sufficient to pay said Impositions. Borrower shall also provide certificates of insurance or other evidence of renewal (including evidence of payment) of the insurance policies required to be maintained under Section 5.4 at least fifteen (15) Business Days prior to the expiration of each of such insurance policies. If Borrower fails to deliver such certificates of insurance or other evidence of renewal and payment within the above time period, Lender may use funds available in the Impositions and Insurance Reserve to purchase Stand Alone Insurance Policies for the Property on Borrower's behalf. Borrower hereby appoints Lender as Borrower's attorney-in-fact for such purposes, which power of attorney is coupled with an interest and irrevocable. If the amount then held in the Impositions and Insurance Reserve on account of Insurance Premiums shall be less than the actual insurance premiums payable for such Stand Alone Insurance Policies, Borrower shall be required to pay (or reimburse Lender for) such deficiency within two (2) Business Days after request therefor from Lender. If Borrower provides such certificates of insurance or evidence of renewal and payment within the above time period, then Lender shall disburse to Borrower the amount then held in the Impositions and Insurance Reserve on account of the portion of Insurance Premiums attributable to the insurance policies for which such evidence of renewal was delivered.

SECTION 6.4 FF&E RESERVE. Pursuant to the Cash Management Agreement, Borrower shall deposit with Lender (or its Servicer or agent) monthly, on each Payment Date commencing with April 30, 2001, the Monthly FF&E Payment (as hereinafter defined), for the purpose of creating a reserve for Approved FF&E Expenditures (as hereinafter defined) and Replacements in accordance with the applicable FF&E Budget approved by Lender (said funds, together with any interest thereon and additions thereto, the "FF&E RESERVE"). The amount to be deposited by Borrower with Lender in the FF&E Reserve on each Payment Date (such amount, the "MONTHLY FF&E PAYMENT") shall be equal to one-twelfth (1/12) of 4.0% of the Operating Revenues (excluding service charges) generated from the Property for the prior calendar year (the "MEASUREMENT YEAR"); provided that until Operating Revenues for any Measurement Year have been determined, Borrower shall continue to make Monthly FF&E Payments in the succeeding calendar year in the amount in effect for the applicable prior year. The initial amount of the Monthly FF&E Payment to be made to the FF&E Reserve from and after the date hereof is \$749,853. Upon determination of Operating Revenues for the Measurement Year, the required Monthly FF&E Payments for the succeeding calendar year shall be recalculated and Borrower shall be required to deposit into the FF&E Reserve, within ten (10) Business Days after such determination, any shortfall between such required Monthly FF&E Payments and the actual Monthly FF&E Payments theretofore made by Borrower in such year. If the actual Monthly FF&E Payments theretofore made by Borrower in any year exceed the required Monthly FF&E Payments as recalculated based on the actual Operating Revenues for the Measurement Year, the amount of such excess shall be applied as a credit against future Monthly FF&E Payments as

they become due hereunder. Borrower shall be required to perform the capital repairs and improvements to the Property during the calendar years 2001 and 2002 as described on Schedule 6.4 (the "REQUIRED REPAIRS"). In addition to the Required Repairs, Borrower shall also perform such capital repairs, improvements and replacements of FF&E (the "REPLACEMENTS") that are reasonably necessary or appropriate in accordance with sound hotel management practices in order to keep the Property in good operating condition and repair consistent with other first class convention center hotel properties, and to keep the Property or any portion thereof from deteriorating. Upon Borrower's request for disbursement, Lender shall disburse funds from the FF&E Reserve to or for the account of Borrower, to reimburse Borrower for the amount of Borrower's actual bona fide out-of-pocket expenditures for (i) Required Repairs and (ii) Replacements which are consistent with the FF&E Budget and which are not part of the Capital Improvement Plan ("APPROVED FF&E EXPENDITURES"), on the Payment Date following such request, upon satisfaction by Borrower of each of the conditions listed on Schedule 6.6 and each of the conditions set forth in Section 6.6.

SECTION 6.5 CAPITAL IMPROVEMENT RESERVE; REQUIRED CAPITAL IMPROVEMENTS. At Closing, Borrower shall reserve from the proceeds of the Loan and shall deposit with Lender (or its Servicer or agent) \$20,000,000 (said funds, together with any interest thereon, the "CAPITAL IMPROVEMENT RESERVE"), which funds shall be made available to Borrower solely for payment of certain Capital Improvements required to be made to the Property and designated as "Required Capital Improvements" on the Capital Improvement Plan attached hereto as Exhibit A (the "REQUIRED CAPITAL IMPROVEMENTS") (or other Capital Improvements approved by Lender in its reasonable discretion) and shall not be used by Borrower for purposes for which any other Reserve is established. Borrower shall promptly commence and diligently prosecute completion of the Required Capital Improvements within twenty-four (24) months after the date hereof. Upon Borrower's request for disbursement, Lender shall disburse funds from the Capital Improvement Reserve to or for the account of Borrower, to reimburse Borrower for the amount of Borrower's actual bona fide out-of-pocket expenditures for such Required Capital Improvements ("APPROVED CAPITAL IMPROVEMENT EXPENDITURES"), on the Payment Date following such request, upon satisfaction by Borrower of each of the conditions listed on Schedule 6.6 and each of the conditions set forth in Section 6.6. Subject to the foregoing conditions, any remaining balance in the Capital Improvement Reserve after the Required Capital Improvements under the Capital Improvement Plan have been completed to Lender's reasonable satisfaction and paid for shall be promptly disbursed to Borrower.

SECTION 6.6 CONDITIONS TO DISBURSEMENTS FROM FF&E RESERVE AND CAPITAL IMPROVEMENT RESERVE; PERFORMANCE OF WORK.

(A) DISBURSEMENTS FROM THE FF&E RESERVE AND CAPITAL IMPROVEMENT RESERVE. Upon Borrower's request for disbursement, Lender shall disburse funds from the FF&E Reserve or the Capital Improvement Reserve (such Reserves, the "WORK RESERVES") to or for the account of Borrower, to reimburse Borrower for Approved FF&E Expenditures or Approved Capital Improvement Expenditures, respectively (collectively, "APPROVED EXPENDITURES"; and the related Replacements or Required Capital Improvements to which any such request for disbursement relates shall be referred to as the "WORK"), on the Payment Date following such request, upon satisfaction of each of the conditions listed on Schedule 6.6 and each of the conditions set forth below:

(i) Except as provided in this Section 6.6, each request for disbursement from the Work Reserves shall be made only after completion of the Approved Expenditures for which disbursement is requested.

(ii) If (i) the cost of a particular item of the Approved Expenditures exceeds \$25,000, (ii) the contractor performing such item of the Approved Expenditures requires periodic payments pursuant to the terms of a written contract, and (iii) Lender has approved in writing in advance such periodic payments (such approval not to be unreasonably withheld or delayed), a request for disbursement from the Work Reserves may be made after completion of a portion of the work under such contract, provided (1) such contract requires payment upon completion of such portion of the work, (2) the materials for which the request is made are on site at the Property and are properly secured or have been installed in the Property, (3) all other conditions in this Loan Agreement for disbursement have been satisfied, (4) funds remaining in the FF&E Reserve together with the amounts that are scheduled to be deposited therein by Borrower pursuant to Section 6.4(A) are, in Lender's reasonable judgment, sufficient to complete such item of the Replacements and other Replacements when required and/or funds remaining in the Capital Improvement Reserve are, in Lender's reasonable judgment, sufficient to complete such item of Required Capital Improvements and any other Required Capital Improvements remaining to be performed, as the case may be, and (5) if required by Lender, each contractor or subcontractor receiving payments under such contract shall provide a waiver of lien with respect to amounts which have been paid to that contractor or subcontractor.

(iii) To the extent the contract with the relevant contractor or supplier provides for a retainage, each disbursement from a Work Reserve, except for a final disbursement, shall be in the amount of actual costs incurred less the percentage of such costs that the contract with the relevant contractor or supplier specifies to be retained and advanced as part of the final disbursement. No funds will be advanced for materials stored at the Property unless such materials are properly stored and secured at the Property in accordance with Borrower's customary procedures and sound construction practices as reasonably determined by Lender.

(iv) The amount of all invoices in connection with the Work with respect to which a disbursement is requested and which has been approved by Lender shall be disbursed by Lender either directly to Borrower (in which event, Borrower covenants and agrees to promptly pay such invoices) or, if an Event of Default has occurred and is continuing, at Lender's option and in Lender's sole and absolute discretion, directly to the contractor, supplier, materialman, mechanic or subcontractor indicated on said invoices unless already paid by Borrower and Lender has received satisfactory evidence of such payment in which case Lender shall reimburse Borrower. In the event that Borrower requests that any amounts be disbursed directly to Borrower pursuant to the foregoing sentence, Borrower shall be required to deliver evidence reasonably acceptable to Lender of payment of all invoices for which disbursements were previously made to Borrower as a condition to such requested disbursement.

(v) No more than one disbursement will be made by Lender from a Work Reserve in any calendar month and no disbursement will be made on any day other than a Payment Date. Lender shall not be required to make any disbursement from a Work Reserve with respect to the Property unless such requested disbursement is in an amount equal to or greater than \$10,000.

(vi) Lender reserves the right, at its option and as a condition to any disbursement from a Work Reserve, to approve (i) all drawings and plans and specifications, if any, for any Work which require aggregate payments in amounts exceeding \$500,000 and (ii) all contracts and work orders with materialmen, mechanics, suppliers, subcontractors, contractors and other parties providing labor or materials in connection with any Work which require aggregate payments in amounts exceeding \$500,000. Any such approval shall not be unreasonably withheld, conditioned or delayed and shall be deemed given if Lender fails to respond within ten (10) Business Days after Lender receives all information reasonably required to adequately review such drawings, plans and specifications, contracts or work orders. Upon Lender's request, Borrower shall assign any drawings, plans and specifications, contracts or subcontracts to Lender. Drawings, plans and specifications, contracts and work orders approved by Lender shall not be changed in any material respect without Lender's prior written consent, which consent shall not be unreasonably withheld.

(vii) For any Work which requires aggregate payments in amounts exceeding \$500,000, Lender may require an inspection of the Property prior to making a monthly disbursement from the applicable Work Reserve in order to verify completion of the work for which disbursement is sought. Lender may require that such inspection be conducted by an appropriate independent qualified architect or engineer selected by Lender and/or may require a copy of a certificate of completion by an independent qualified architect or engineer based in Nashville, Tennessee and otherwise acceptable to Lender prior to the disbursement of any amounts from the applicable Work Reserve. Borrower shall pay the reasonable, out-of-pocket expense of such inspections as required hereunder, whether such inspections are conducted by Lender or by an independent qualified professional, up to a maximum of four (4) such inspections during any calendar year. If Lender should require more than four (4) such inspections during any calendar year, unless a Default has occurred during such calendar year, the expense of each additional inspection in any calendar year (over the four maximum) shall be borne by Lender. Such expenses payable by Borrower may be paid from the FF&E Reserve.

**(B) PERFORMANCE OF WORK.**

(i) Borrower shall complete all Work in a good and workmanlike manner as soon as practicable following the commencement thereof. The insufficiency of the balance in the applicable Work Reserve shall not relieve Borrower from its obligation to perform and complete the related Work as herein provided or to fulfill all other preservation and maintenance covenants in the Loan Documents.

(ii) In the event Lender determines in its reasonable discretion that any Work is not being performed in a workmanlike or timely manner or that any Work has not been completed in a workmanlike manner, Lender shall have the option to withhold disbursement for such unsatisfactory work and so notify Borrower with reasonable detail regarding the basis for Lender's dissatisfaction and, after the expiration of thirty (30) days from the giving of such notice by Lender to Borrower of such unsatisfactory work without the cure thereof (or, if such unsatisfactory work is susceptible of a cure but cannot reasonably be cured within said 30-day period and provided that Borrower shall have commenced to cure such unsatisfactory work within said 30-day period and thereafter diligently and expeditiously proceeds to cure the same, after the expiration of such longer period as is reasonably necessary for Borrower in the exercise

of due diligence to cure such unsatisfactory work, up to a maximum of an additional sixty (60) days, without the cure thereof), Lender may proceed under existing contracts or contract with third parties to complete such Work, as the case may be, and apply amounts contained in the applicable Work Reserve toward the labor and materials necessary to complete the same, without providing any additional prior notice to Borrower, and exercise any and all other remedies available to Lender upon and during the continuance of an Event of Default hereunder.

(iii) In order to facilitate Lender's completion or making of any Work pursuant to Section 6.6(B)(ii) above, Borrower grants Lender the right to enter onto the Property after the expiration of the notice specified above and perform any and all work and labor necessary to complete the applicable Work and/or employ watchmen to protect the Property from damage. All sums so expended by Lender shall be deemed to have been advanced under the Loan to Borrower and secured by the Deed of Trust. For this purpose, Borrower constitutes and appoints Lender its true and lawful attorney-in-fact with full power of substitution to complete or undertake the applicable Work in the name of Borrower pursuant to Section 6.6(B)(ii) above. Such power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked. Borrower empowers said attorney-in-fact as follows: (i) to use any funds in the applicable Work Reserve for the purpose of making or completing any Work; (ii) to make such additions, changes and corrections to any Work as shall be reasonably necessary or desirable to complete the same; (iii) to employ such contractors, subcontractors, agents, architects and inspectors as shall be required for such purposes; (iv) to pay, settle or compromise all existing bills and claims which are or may become Liens against the Property, or as may be necessary or desirable for the completion of any Work, or for clearance of title; (v) to execute all applications and certificates in the name of Borrower which may be required by any of the contract documents; (vi) in its reasonable discretion, to prosecute and defend all actions or proceedings in connection with the Property or the rehabilitation and repair of the Property; and (vii) to do any and every act which Borrower might do in its own behalf to fulfill the terms of this Loan Agreement.

(iv) Nothing in this Section shall: (i) make Lender responsible for making or completing any Work; (ii) require Lender to expend funds in addition to the amounts on deposit in the applicable Work Reserve to make or complete any Work; (iii) obligate Lender to proceed with any Work; or (iv) obligate Lender to demand from Borrower additional sums to make or complete any Work.

(v) Borrower shall permit Lender and Lender's agents and representatives (including, without limitation, Lender's engineer, architect or inspector) or third parties performing any Work pursuant to this Section 6.6 to enter onto the Property during normal business hours upon reasonable notice (subject to the rights of tenants under their Leases) to inspect the progress of any Work and all materials being used in connection therewith, to examine all plans and shop drawings relating thereto which are or may be kept at the Property, and to complete any Work made pursuant to Section 6.6(B)(ii). Borrower shall cause all contractors and subcontractors to cooperate with Lender or Lender's representatives or such other persons described above in connection with inspections described in this Section 6.6(B) or the completion of the Work pursuant to this Section 6.6(B).

(vi) All Work and all materials, equipment, fixtures and any other item comprising a part thereof shall be constructed, installed or completed, as applicable, free and clear of all mechanic's, materialman's or other liens (except for the Permitted Encumbrances).

(vii) All Work shall comply with all applicable legal requirements of all Governmental Authorities having jurisdiction over the Property and applicable insurance requirements, including, without limitation, applicable building codes, special use permits, environmental regulations and requirements of insurance underwriters.

(C) INDEMNIFICATION. Borrower shall indemnify Lender and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations, costs and expenses (including, without limitation, litigation costs and reasonable attorneys fees and expenses) arising from or in any way connected with the performance of the Work, except to the extent caused by the bad faith, willful misconduct or gross negligence of Lender. Borrower shall assign to Lender all rights and claims Borrower may have against all Persons supplying labor or materials in connection with the Work; provided, however, that Lender may not pursue any such right or claim unless an Event of Default has occurred and remains uncured.

SECTION 6.7 SELF-INSURANCE RESERVE. On the Closing Date, Borrower shall deposit with Lender (or its Servicer or agent) \$1,300,000 (said funds together with any interest thereon, the "SELF-INSURANCE RESERVE"), which funds shall be held by Lender in an Eligible Account (the "SELF-INSURANCE RESERVE ACCOUNT") in connection with Borrower's self-insurance program with respect to liability insurance and worker's compensation as described in Section 5.4. Borrower shall at all times maintain a balance in the Self-Insurance Reserve Account of not less than the greater of (a) \$1,300,000 and (b) 125% of the aggregate amount of estimated claims payable during the following twelve (12) months as set forth in the Insurance Committee Certificate (as defined below) for that month (the "SELF-INSURANCE RESERVE MINIMUM BALANCE"). On a monthly basis, promptly after the meeting of Borrower's insurance claims review committee (the "INSURANCE COMMITTEE"), Borrower shall deliver notice (the "INSURANCE COMMITTEE CERTIFICATE") in form and substance acceptable to Lender executed by an independent certified claims adjuster that is a member of the Insurance Committee setting forth (i) all pending and threatened claims (and known incidents that may result in a claim) to be covered by Borrower's self-insurance, and with respect to each such claim: (A) the nature of such claim and amount thereof (if available), (B) the opinion of the Insurance Committee as to the likelihood of recovery by the plaintiff thereunder and (C) the Insurance Committee's estimate of the amount which will be required to be paid to settle such claim and the estimated date that such claim will be payable (including the estimated length of time required for settlement or litigation of such claim) and (ii) the aggregate amount estimated to be payable from self-insurance during the next twelve (12) months. If, at any time, the balance in the Self-Insurance Reserve Account shall be less than the Self-Insurance Reserve Minimum Balance (such deficiency, a "SELF-INSURANCE DEFICIENCY"), such Self-Insurance Deficiency shall be payable to the Self-Insurance Reserve Account from funds available in the Central Account pursuant to Section 3.3 of the Cash Management Agreement. Notwithstanding the foregoing, if Borrower, in lieu of self-insuring the liability and worker's compensation coverages described above, shall hereafter purchase and maintain the insurance policies required for liability and worker's compensation under Sections 5.4(vii) and (viii), respectively, which policies shall be with carriers, in amounts and with deductibles



reasonably acceptable to Lender and otherwise comply with the requirements of Section 5.4, then Borrower shall have no further obligation to maintain the Self-Insurance Reserve Account or the Self-Insurance Reserve Minimum Balance under this Section 6.7. In such event, any balance then available in the Self-Insurance Reserve Account shall be promptly paid to Borrower, provided that Borrower shall apply such funds to payment of any outstanding claims payable which were to be covered by Borrower's self-insurance to the extent such funds are necessary to satisfy same.

ARTICLE VII  
LOCK BOX, CLEARING ACCOUNT;  
CENTRAL ACCOUNT; CASH MANAGEMENT

SECTION 7.1 ESTABLISHMENT OF LOCK BOX, CLEARING ACCOUNT AND CENTRAL ACCOUNT.

(A) (i) LOCK BOX; CLEARING ACCOUNT. On or before the Closing Date, Borrower shall establish, at Borrower's cost and expense, a lock box (the "LOCK BOX") and related lock box account which shall be an Eligible Account in the name of Lender, as secured party hereunder (said account, and any account replacing same in accordance with this Loan Agreement and the Clearing Account Agreement, the "CLEARING ACCOUNT") with a financial institution selected or otherwise approved by Lender (the "CLEARING BANK"), pursuant to an agreement (the "CLEARING ACCOUNT AGREEMENT") in Lender's form or otherwise in form and substance acceptable to Lender, executed and delivered by Borrower and the Clearing Bank. The LockBox and the Clearing Account shall be under the sole dominion and control of Lender (which dominion and control may be exercised by Servicer). Among other things, the Clearing Account Agreement shall provide that Borrower shall have no access to or control over the Lock Box or the Clearing Account, that all deposits into the Lock Box shall be deposited by the Clearing Bank into the Clearing Account as received, and that all available funds on deposit in the Clearing Account shall be deposited by wire transfer (or transfer via the ACH System) on a daily basis by the Clearing Bank into the Central Account, for application in accordance with the Cash Management Agreement. Provided no Event of Default and exercise of remedies has occurred, Borrower shall be entitled to receive copies of bank statements and other information made available by the Clearing Bank and the Central Account Bank concerning the Clearing Account and the Central Account.

(ii) Upon establishing the Lock Box and Clearing Account, (1) Borrower shall instruct, by irrevocable written direction, in Lender's form or otherwise in form and substance acceptable to Lender, each tenant and other Person from time to time party to any Lease or other agreement pursuant to which Operating Revenues are payable to Borrower or Manager on a recurring basis (including without limitation all Persons paying or disbursing credit card receivables (the "CREDIT CARD COMPANIES")) to pay all Rents and other amounts owed under such Leases and other agreements directly to the Lock Box, unless Lender shall otherwise direct in writing, and (2) Borrower shall obtain an agreement (each, a "CREDIT CARD RECEIVABLES PAYMENT DIRECTION LETTER") from each of the Credit Card Companies, in Lender's form or otherwise in form and substance acceptable to Lender, pursuant to which the Credit Card Companies agree to pay all credit card receivables into the Lock Box, and acknowledge and agree that Lender shall have a first priority perfected security interest in such credit card receivables. Borrower shall cause any and all other Receipts (including Rents that are not paid

into the Clearing Account in accordance with the foregoing) to be deposited promptly into the Clearing Account and in no event later than two (2) Business Days after the same are paid to or for the benefit of Borrower. To the extent that Borrower or any Person on Borrower's behalf holds any Receipts, whether in accordance with this Loan Agreement or otherwise, Borrower shall be deemed to hold the same in trust for Lender for the protection of the interests of Lender hereunder and under the Loan Documents. Borrower represents and warrants that, as of the date hereof, the only Credit Card Companies paying or disbursing credit card receivables with respect to the Property are Discover Financial Services, Inc., American Express Travel Related Services Company, Inc. and Chase Merchant Services, L.L.C. and, in the event that Borrower shall hereafter enter into an agreement with any other Credit Card Company pursuant to which such Credit Card Company shall pay credit card receivables with respect to the Property, Borrower shall promptly obtain a Credit Card Receivables Payment Direction Letter in form and substance acceptable to Lender from such Credit Card Company.

(iii) Borrower shall pay all costs and expenses incurred by Lender in connection with the transactions and other matters contemplated by this Section 7.1, including but not limited to, Lender's reasonable attorneys fees and expenses, and all fees and expenses of the Clearing Bank and the Central Account Bank, including without limitation their attorneys fees and expenses.

(B) CENTRAL ACCOUNT. On or before the Closing Date, pursuant to the terms of the Cash Management Agreement, Borrower shall establish and maintain an Eligible Account in the name of Lender, as secured party hereunder, to serve as the "Central Account" (said account, and any account replacing the same in accordance with this Loan Agreement and the Cash Management Agreement, the "CENTRAL ACCOUNT"; and the depository institution in which the Central Account is maintained, the "CENTRAL ACCOUNT BANK"). The Central Account shall be under the sole dominion and control of Lender (which dominion and control may be exercised by Servicer); and except as expressly provided hereunder and/or in the Cash Management Agreement, Borrower shall have no rights to control or direct the investment or payment of funds therein. Lender may elect to change any financial institution in which the Central Account shall be maintained. The Central Account shall be deemed to contain such sub-accounts as Lender may designate ("SUB-ACCOUNTS"), which may be maintained as separate ledger accounts and need not be separate Eligible Accounts. The Sub-Accounts shall include the following as more particularly described in the Cash Management Agreement:

(i) "DEBT SERVICE SUB-ACCOUNT" shall mean the Sub-Account of the Central Account established for the purposes of reserving for payments of principal and interest and other amounts due under the Loan Documents (but without duplication of amounts covered under item (ii) below); and

(ii) "RESERVE SUB-ACCOUNTS" shall mean the Sub-Accounts of the Central Account established for the purpose of holding funds in the Reserves including: (a) the "Imposition and Insurance Reserve Sub-Account"; (b) the "FF&E Reserve Sub-Account"; (c) the "Cash Trap Reserve Sub-Account"; and (d) the "Self Insurance Reserve Deficiency Sub-Account".

SECTION 7.2 APPLICATION OF FUNDS IN CENTRAL ACCOUNT. Funds in the Central Account shall be allocated to the Sub-Accounts (or paid, as the case may be) in accordance with the Cash Management Agreement.

SECTION 7.3 APPLICATION OF FUNDS AFTER EVENT OF DEFAULT. If any Event of Default shall occur and be continuing, then notwithstanding anything to the contrary in this Section or elsewhere, Lender shall have all rights and remedies available under applicable law and under the Loan Documents. Without limitation of the foregoing, for so long as an Event of Default exists, Lender may apply any and all funds in the Lock Box, the Clearing Account, the Central Account and/or any Sub-Accounts against all or any portion of any of the Obligations, in any order.

ARTICLE VIII  
DEFAULT, RIGHTS AND REMEDIES

SECTION 8.1 EVENT OF DEFAULT.

"EVENT OF DEFAULT" shall mean the occurrence or existence of any one or more of the following:

(A) SCHEDULED PAYMENTS. Failure of Borrower to pay any scheduled payment amount when the same is due under this Loan Agreement, the Note, or any other Loan Documents (whether such amount is interest, principal, Reserves, or otherwise); or

(B) OTHER PAYMENTS. Failure of Borrower to pay any amount from time to time owing under this Loan Agreement, the Note, or any other Loan Documents (other than amounts subject to the preceding paragraph) within ten (10) days after written notice to Borrower; or

(C) BREACH OF REPORTING PROVISIONS. Failure of any Borrower Party to deliver any financial statement, report or information required under Section 5.1 which continues for a period of twenty (20) days after written notice to Borrower; or

(D) BREACH OF PROVISIONS REGARDING INSURANCE, TRANSFERS, LIENS, SINGLE PURPOSE. Breach or default under any of Section 5.4, 5.12(A), 5.13(B), 5.13(D), 5.17, 5.18, 5.19, 5.20, Article IX, or Section 11.1 (provided that in the case of an involuntary Lien under Section 11.1 or 5.18, the same shall not constitute an Event of Default if within thirty (30) days after the filing thereof, Borrower shall either (i) cause the same to be removed of record, or (ii) provide to Lender security for the same in an amount and pursuant to terms both satisfactory to Lender in Lender's sole discretion). Except as permitted under Section 5.5(A) or otherwise expressly permitted hereunder or under the other Loan Documents, the demolition or removal of any of the Improvements or the making of any Material Alterations to any of the Improvements, without Lender's consent; or

(E) BREACH OF WARRANTY. Any representation, warranty, certification or other statement made by any Borrower Party or Member or Affiliate thereof in any Loan Document or in any statement or certificate at any time given in writing pursuant to or in connection with any Loan Document is false in any material respect as of the date made; or

(F) OTHER DEFAULTS UNDER LOAN DOCUMENTS. A default shall occur in the performance of or compliance with any term contained in this Loan Agreement or the other Loan Documents and such default is not fully cured within thirty (30) days after receipt by Borrower of written notice from Lender of such default (other than occurrences described in other provisions of this Section 8.1 for which a different grace or cure period is specified or which constitute immediate Events of Default); provided however that if (i) the default is capable of cure but with diligence cannot be cured within such period of thirty (30) days, (ii) Borrower (or the applicable Borrower Party) has commenced the cure within such thirty (30) day period and has pursued such cure diligently, and (iii) Borrower delivers to Lender promptly following written demand (which demand may be made from time to time by Lender) evidence satisfactory to Lender of the foregoing, then such period shall be extended for so long as is reasonably necessary for Borrower in the exercise of due diligence to cure such default, but in no event beyond the 60th day after the original notice of default; or

(G) INVOLUNTARY BANKRUPTCY; APPOINTMENT OF RECEIVER, ETC. (i) A court enters a decree or order for relief with respect to any Borrower Party or Member, in an Involuntary Borrower Party Bankruptcy, which decree or order is not stayed or other similar relief is not granted under any applicable federal or state law; (ii) the occurrence and continuance of any of the following events for sixty (60) days unless dismissed or discharged within such time: (x) an Involuntary Borrower Party Bankruptcy is commenced, (y) a decree or order of a court for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over any Borrower Party or Member or over all or a substantial part of its property, is entered, or (z) an interim receiver, trustee or other custodian is appointed without the consent of any Borrower Party or Member, for all or a substantial part of the property of such Person; or

(H) VOLUNTARY BANKRUPTCY; APPOINTMENT OF RECEIVER, ETC. (i) An order for relief is entered with respect to any Borrower Party or Member, or any such Person commences a voluntary case under the Bankruptcy Code or any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or consents to the entry of an order for relief in an involuntary case or to the conversion of an involuntary case to a voluntary case under any such law or consents to the appointment of or taking possession by a receiver, trustee or other custodian for any Borrower Party or Member or for all or a substantial part of the property of any Borrower Party or Member; (ii) any Borrower Party or Member makes any assignment for the benefit of creditors; or (iii) the Board of Directors or other governing body of any Borrower Party or Member adopts any resolution or otherwise authorizes action to approve any of the actions referred to in this subsection 8.1(H); or

(I) BANKRUPTCY INVOLVING OWNERSHIP INTERESTS OR PROPERTY. Other than as described in either of Subsections 8.1(G) or 8.1(H), all or any portion of the Collateral becomes property of the estate or subject to the automatic stay in any case or proceeding under the Bankruptcy Code or any applicable bankruptcy, insolvency or other similar law now or hereafter in effect (provided that if the same occurs in the context of an involuntary proceeding, it shall not constitute an Event of Default if it is dismissed or discharged within sixty (60) days following its occurrence); or

(J) SOLVENCY. Any Borrower Party or Member ceases to be solvent or admits in writing its present or prospective inability to pay its debts as they become due; or

(K) JUDGMENT AND ATTACHMENTS. Any lien, money judgment, writ or warrant of attachment, or similar process is entered or filed against any Borrower Party or any of its assets, which claim is not fully covered by insurance (other than with respect to the amount of commercially reasonable deductibles permitted hereunder), would have a Material Adverse Effect and remains undischarged, unvacated, unbonded or unstayed for a period of thirty (30) days; or

(L) INJUNCTION. Any Borrower Party is enjoined, restrained or in any way prevented by the order of any court or any administrative or regulatory agency from conducting all or any material part of its business and such order continues for more than thirty (30) days; or

(M) INVALIDITY OF LOAN DOCUMENTS. This Loan Agreement, the Deed of Trust or any of the Loan Documents for any reason ceases to be in full force and effect or ceases to be a legally valid, binding and enforceable obligation of Borrower or any Lien securing the Obligations shall, in whole or in part, cease to be a perfected first priority Lien, subject to the Permitted Encumbrances (except in any of the foregoing cases in accordance with the terms hereof or under any other Loan Document), or any Person who is a party thereto, other than Lender, denies that it has any further liability (as distinguished from denial of the existence of a Default or Event of Default) under any Loan Documents to which it is party, or gives notice to such effect; or

(N) CROSS-DEFAULT WITH OTHER LOAN DOCUMENTS. A default beyond any applicable grace periods shall occur under any of the other Loan Documents; or

(O) DEFAULT UNDER MANAGEMENT AGREEMENT OR FRANCHISE AGREEMENT. Any breach or default shall occur in the material obligations of Borrower under the Management Agreement or any Franchise Agreement which may hereafter be entered into with respect to the Property, and such breach or default either is of such a nature or continues for such a period of time that Manager or the franchisor, as applicable, shall have the right to exercise material remedies as a consequence thereof.

If more than one of the foregoing paragraphs shall describe the same condition or event, then Lender shall have the right to select which paragraph or paragraphs shall apply. In any such case, Lender shall have the right (but not the obligation) to designate the paragraph or paragraphs which provide for non-written notice (or for no notice) or for a shorter time to cure (or for no time to cure).

## SECTION 8.2 ACCELERATION AND REMEDIES.

(A) Upon the occurrence of any Event of Default described in any of Subsections 8.1(G), 8.1(H), or 8.1(I), the unpaid principal amount of and accrued interest and fees on the Loan and all other Obligations shall automatically become immediately due and payable, without presentment, demand, protest, notice of intent to accelerate, notice of acceleration or other requirements of any kind, all of which are hereby expressly waived by each Borrower Party and Member. Upon and at any time after the occurrence of any other Event of Default, at the option

of Lender, which may be exercised without notice or demand to anyone, all or any portion of the Loan and other Obligations shall immediately become due and payable.

(B) Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to Lender against Borrower under this Loan Agreement or any of the other Loan Documents, or at law or in equity, may be exercised by Lender at any time and from time to time, whether or not all or any of the Obligations shall be declared due and payable, and whether or not Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to the Property. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, if an Event of Default is continuing (i) to the fullest extent permitted by law, Lender shall not be subject to any "one action" or "election of remedies" law or rule, and (ii) all liens and other rights, remedies or privileges provided to Lender shall remain in full force and effect until Lender has exhausted all of its remedies against the Property and the Deed of Trust has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Obligations or the Obligations have been paid in full.

(C) Lender shall have the right from time to time to partially foreclose the Deed of Trust in any manner and for any amounts secured by the Deed of Trust then due and payable as determined by Lender in its sole discretion including, without limitation, the following circumstances: (i) in the event Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and interest, Lender may foreclose the Deed of Trust to recover such delinquent payments, or (ii) in the event Lender elects to accelerate less than the entire outstanding principal balance of the Loan, Lender may foreclose the Deed of Trust to recover so much of the principal balance of the Loan as Lender may accelerate and such other sums secured by the Deed of Trust as Lender may elect. Notwithstanding one or more partial foreclosures, the Property shall remain subject to the Deed of Trust to secure payment of sums secured by the Deed of Trust and not previously recovered.

(D) Lender shall have the right from time to time to sever the Note and the other Loan Documents into one or more separate notes, mortgages and other security documents in such denominations as Lender shall determine in its sole discretion for purposes of evidencing and enforcing its rights and remedies provided hereunder. Borrower shall execute and deliver to Lender from time to time, promptly after the request of Lender, a severance agreement and such other documents as Lender shall request in order to effect the severance described in the preceding sentence, all in form and substance reasonably satisfactory to Lender. Borrower hereby absolutely and irrevocably appoints Lender as its true and lawful attorney, coupled with an interest, in its name and stead to make and execute all documents necessary or desirable to effect the aforesaid severance, Borrower ratifying all that its said attorney shall do by virtue thereof; provided, however, Lender shall not make or execute any such documents under such power until three (3) days after notice has been given to Borrower by Lender of Lender's intent to exercise its rights under such power.

(E) Any amounts recovered from the Property or any other collateral for the Loan after an Event of Default may be applied by Lender toward the payment of any interest and/or principal of the Loan and/or any other amounts due under the Loan Documents in such order, priority and proportions as Lender in its sole discretion shall determine.

(F) The rights, powers and remedies of Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Lender may have against Borrower pursuant to this Loan Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Lender's rights, powers and remedies may be pursued singly, concurrently or otherwise, at such time and in such order as Lender may determine in Lender's sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default or Event of Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default or Event of Default by Borrower or to impair any remedy, right or power consequent thereon.

#### SECTION 8.3 PERFORMANCE BY LENDER.

(A) If any Borrower Party shall fail to perform, or cause to be performed, any covenant, duty or agreement contained in any of the Loan Documents (subject to applicable notice and cure periods), Lender may perform or attempt to perform such covenant, duty or agreement on behalf of such Borrower Party. In such event, Borrower shall, at the request of Lender, promptly pay to Lender any amount reasonably expended by Lender in such performance or attempted performance, together with interest thereon at the Default Rate, from the date of such expenditure until paid. Any amounts advanced or expended by Lender to perform or attempt to perform any such matter shall be added to and included within the indebtedness evidenced by the applicable Note and shall be secured by all of the Collateral securing the applicable Loan. Notwithstanding the foregoing, it is expressly agreed that Lender shall not have any liability or responsibility for the performance of any obligation of Borrower under this Loan Agreement or any other Loan Document.

(B) Lender may cease or suspend any and all performance required of Lender under the Loan Documents upon and during the continuance of any Default, and upon and at any time after the occurrence and during the continuance of any Event of Default.

SECTION 8.4 EVIDENCE OF COMPLIANCE. Promptly following request by Lender, each Borrower Party shall provide such documents and instruments as shall be reasonably satisfactory to Lender to evidence compliance with any provision of the Loan Documents applicable to such Borrower Party.

#### ARTICLE IX SINGLE-PURPOSE, BANKRUPTCY-REMOTE REPRESENTATIONS, WARRANTIES AND COVENANTS

SECTION 9.1 APPLICABLE TO ALL PRIMARY BORROWER PARTIES. Each of the Primary Borrower Parties and Member hereby jointly and severally represents, warrants and covenants as of the

Closing Date and until such time as all Obligations are paid in full, that absent express advance written waiver from Lender, which may be withheld in Lender's sole discretion, such Primary Borrower Party or Member:

(A) does not own and will not own any assets other than the Property (including incidental personal property necessary for the operation thereof and proceeds therefrom) or direct or indirect ownership interests in Borrower or, with respect to the Independent Manager, such incidental assets as are necessary to enable it to discharge its obligations with respect to the Borrower (the "OWNERSHIP INTERESTS");

(B) is not engaged and will not engage in any business, directly or indirectly, other than the ownership, management and operation of the Property or the Ownership Interests;

(C) will not enter into any contract or agreement with any partner, member, shareholder, trustee, beneficiary, principal or Affiliate of any Borrower Party except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than such Affiliate;

(D) has not incurred and will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than (i) the Obligations and (ii) Permitted Indebtedness;

(E) has not made and will not make any loan or advances to any Person (including any of its Affiliates and has not acquired and will not acquire obligations or securities of any of its Affiliates);

(F) is and reasonably expects to remain solvent and pay its own liabilities, indebtedness, and obligations of any kind from its own separate assets as the same shall become due;

(G) has done or caused to be done and will do all things necessary to preserve its existence, and will not, nor will any partner, member, shareholder, trustee, beneficiary, or principal amend, modify or otherwise change its partnership certificate, partnership agreement, articles of incorporation, by-laws, articles of organization, operating agreement, or other organizational documents in any manner;

(H) shall continuously maintain its existence and be qualified to do business in all states necessary to carry on its business, specifically including in the case of Borrower, the state where the Property is located;

(I) will conduct and operate its business as presently conducted and operated;

(J) will maintain books and records and bank accounts separate from those of its partners, members, shareholders, trustees, beneficiaries, principals, Affiliates, and any other Person and will maintain separate financial statements except that it may also be included in consolidated financial statements of its Affiliates;



(K) will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other Person (including any of its partners, members, shareholders, trustees, beneficiaries, principals and Affiliates, and any Affiliates of any of the same), and not as a department or division of any Person and will correct any known misunderstandings regarding its existence as a separate legal entity;

(L) will pay the salaries of its own employees, if any;

(M) will allocate fairly and reasonably any overhead for shared office space;

(N) will use separate stationery, invoices and checks;

(O) will file its own tax returns with respect to itself as may be required under applicable law;

(P) has and reasonably expects to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(Q) will not seek, acquiesce in, or suffer or permit its liquidation, dissolution or winding up, in whole or in part;

(R) will not enter into any transaction of merger or consolidation, or acquire by purchase or otherwise all or substantially all of the business or assets of, or any stock or beneficial ownership of, any Person;

(S) will not commingle or permit to be commingled its funds or other assets with those of any other Person;

(T) has and will maintain its assets in such a manner that it is not costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(U) does not and will not hold itself out to be responsible for the debts or obligations of any other Person;

(V) has not and will not guarantee or otherwise become liable on or in connection with any obligation of any other Person;

(W) except for funds deposited into the Accounts in accordance with the Loan Documents, shall not hold title to its assets other than in its name;

(X) shall not institute proceedings to be adjudicated bankrupt or insolvent; consent to the institution of bankruptcy or insolvency proceedings against it; file a petition seeking, or consent to, reorganization or relief under any applicable federal or state law relating to bankruptcy; consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of it or a substantial part of its property; or make any assignment for the benefit of creditors; or admit in writing its inability to pay its debts generally as they become due; and

(Y) shall comply and cause its Affiliates to comply with all of the assumptions, statements, certifications, representations, warranties and covenants regarding or made by it contained in or appended to the nonconsolidation opinion delivered pursuant hereto.

SECTION 9.2 APPLICABLE TO BORROWER, MEMBER AND INDEPENDENT MANAGER. In addition to their respective obligations under Section 9.1, each of Member and Independent Manager hereby represents, warrants and covenants as of the Closing Date and until such time as all Obligations are paid in full, that absent express advance written waiver from Lender, which may be withheld in Lender's sole discretion, it:

(A) Member shall at all times act as the sole member of Borrower and Independent Manager shall at all times act as the manager of Borrower, with all of the rights, powers, obligations and liabilities thereof under the limited liability company agreement of Borrower and shall take any and all actions and do any and all things necessary or appropriate to the accomplishment of the same and will engage in no other business;

(B) Borrower shall not, without the affirmative vote of Member and Independent Manager (including the unanimous written consent of the board directors of the Independent Manager including the Independent Directors), institute proceedings for itself to be adjudicated bankrupt or insolvent; consent to the institution of a bankruptcy or insolvency proceedings against it; file a petition seeking, or consent to, reorganization or relief under any applicable federal or state law relating to bankruptcy; consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) for itself or a substantial part of its property; make any assignment for the benefit of creditors; or admit in writing its inability to pay its debts generally as they become due;

(C) Member shall not, without the affirmative vote of its member and Member's Manager (as hereinafter defined) (including the unanimous written consent of the board directors of Member's Manager including its independent directors (as described below)), institute proceedings for itself or Borrower to be adjudicated bankrupt or insolvent; consent to the institution of a bankruptcy or insolvency proceedings against it or Borrower; file a petition seeking, or consent to, reorganization or relief under any applicable federal or state law relating to bankruptcy; consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) for itself or Borrower or a substantial part of its or Borrower's property; make any assignment for the benefit of creditors; or admit in writing its or Borrower's inability to pay its or Borrower's debts generally as they become due;

(D) Neither Member nor Independent Manager shall for itself or for Borrower (i) liquidate or dissolve, in whole or in part; (ii) consolidate, merge or enter into any form of consolidation with or into any other Person, nor convey, transfer or lease its or Borrower's assets substantially as an entirety to any Person nor permit any Person to consolidate, merge or enter into any form of consolidation with or into itself or Borrower, nor convey, transfer or lease its or Borrower's assets substantially as an entirety to any Person; and (iii) amend any provisions of its or Borrower's organizational documents containing provisions similar to those contained in this Article IX.

(E) Independent Manager shall promptly elect and at all times maintain at least two (2) Independent Directors on its board of directors, who shall be selected by the shareholders of Independent Manager, and shall be satisfactory to Lender. Pursuant to its limited liability company agreement, Member is required to at all times have a corporation or other entity act as its independent manager ("Member's Manager"). Member's Manager shall promptly elect and at all times maintain at least two (2) independent directors on its board of directors (which independent directors shall be required to meet the standards for an Independent Director hereunder except that, solely for purposes of determining the standards for an independent director of Member's Manager under this Section 9.2, wherever the term "Independent Manager" appears in the definition of "Independent Director", same shall be deemed to mean Member's Manager), who shall be selected by the shareholders of Member's Manager.

ARTICLE X  
RESTRUCTURING LOAN, SECONDARY MARKET TRANSACTIONS

SECTION 10.1 SECONDARY MARKET TRANSACTIONS GENERALLY. Lender shall have the right to engage in one or more Secondary Market Transactions with respect to the Loan, and to structure and restructure all or any part of the Loan, including without limitation in multiple tranches, as a wraparound loan, or for inclusion in a REMIC or other Securitization. Without limitation, Lender shall have the right to cause the Note and the Deed of Trust to be split into a first and a second mortgage loan, or into one or more loans secured by mortgages and by ownership interests in Borrower in whatever proportion Lender determines, and thereafter to engage in Secondary Market Transactions with respect to all or any part of the indebtedness and loan documentation. Each of the Borrower Parties and Member acknowledge that it is the intention of the parties that all or a portion of the Loan will be securitized and that all or a portion of the Loan will be rated by one or more Rating Agencies. Each of the Borrower Parties and Member further acknowledge that additional structural modifications may be required to satisfy issues raised by any Rating Agencies. As used herein, "SECONDARY MARKET TRANSACTION" means any of (i) the sale, assignment, or other transfer of all or any portion of the Obligations or the Loan Documents or any interest therein to one or more investors, (ii) the sale, assignment, or other transfer of one or more participation interests in the Obligations or Loan Documents to one or more investors, (iii) the transfer or deposit of all or any portion of the Obligations or Loan Documents to or with one or more trusts or other entities which may sell certificates or other instruments to investors evidencing an ownership interest in the assets of such trust or the right to receive income or proceeds therefrom or (iv) any other Securitization backed in whole or in part by the Loan or any interest therein.

SECTION 10.2 COOPERATION; LIMITATIONS. Borrower Parties and Member shall use all reasonable efforts and cooperate reasonably and in good faith with Lender in effecting any such restructuring or Secondary Market Transaction. Such cooperation shall include without limitation, executing and delivering such reasonable amendments to the Loan Documents and the organizational documents of Borrower and Member as Lender or any Interested Party (as defined below) may request, provided however that, except as provided in the Securitization Side Letter, no such amendment shall modify (i) the interest rate payable under the Note; (ii) the stated maturity date of the Note, (iii) the amortization of the principal amount of the Note, (iv) any other material economic terms of the Obligations, (v) the non-recourse provisions of the Loan or (vi) any provision, the effect of which would materially increase Borrower's obligations or

materially decrease Borrower's rights under the Loan Documents. Such cooperation also shall include using best efforts to obtain such certificates and assurances from governmental entities and others as Lender may request. Borrower Parties shall not be required to provide additional collateral that was not initially contemplated by the parties to effect any such restructuring or Secondary Market Transaction after the Closing Date. Borrower shall be required to pay on the date of closing of any Secondary Market Transaction involving the Loan (the "SECONDARY MARKET CLOSING DATE") the fees charged by each of the Rating Agencies for the issuance of the ratings assigned to the Securities issued in connection with such Secondary Market Transaction and thereafter Borrower shall be required to pay any and all fees of the Rating Agencies for maintaining and/or monitoring such ratings during the terms of the Loan. Borrower Parties shall not be required to pay any third party costs and expenses incurred by Lender in connection with any such Secondary Market Transaction unless otherwise payable by the Borrower Parties under this Loan Agreement or the other Loan Documents.

SECTION 10.3 INFORMATION. Borrower Parties and Member, at their sole cost and expense, shall provide such access to personnel and such information and documents relating to Borrower Parties, Member, Manager, the Property and Collateral and the business and operations of all of the foregoing and such opinions of counsel (including nonconsolidation opinions) as any Rating Agency may request or as Lender or any other Interested Party (as defined below) may reasonably request (and in form and substance reasonably acceptable to Lender and each Interested Party) in connection with any such Secondary Market Transaction including, without limitation, updated financial information, appraisals, market studies, environmental reviews (Phase I's and, if appropriate, Phase II's), property condition reports and other due diligence investigations together with appropriate verification of such updated information and reports through letters of auditors and consultants and, as of the closing date of the Secondary Market Transaction, updated representations and warranties made in the Loan Documents and such additional representations and warranties as any Rating Agency may request or any purchaser, transferee, assignee, trustee, servicer or potential investor (the Rating Agencies and all of the foregoing parties, collectively, "INTERESTED PARTIES") may reasonably request. Prior to the issuance of any preliminary offering memorandum with respect to any Secondary Market Transaction, Borrower, at its sole cost and expense, shall cause Sherrard & Roe, PLC or other counsel for Borrower reasonably satisfactory to Lender, to deliver to Lender a form of an opinion of counsel to the effect that the description of the Loan, the terms of the Loan Documents and description of the Property contained in the Disclosure Documents (hereinafter defined) and such other legal matters contained therein as Lender may reasonably require do not contain any untrue statement of any material fact or omit to state any material fact necessary to make the statements therein not misleading (such opinion, a "10B-5 OPINION") and on or prior to the date of closing of any Secondary Market Transaction, Borrower, at its sole cost and expense, shall cause Sherrard & Roe, PLC or such other counsel to execute and deliver such 10b-5 Opinion and, if required by any Rating Agency or reasonably required by Lender, provide revisions or "bringdowns" to any opinions delivered at Closing (including nonconsolidation opinions), or if required new versions of such opinions, addressed to Lender, any trustee under any Securitization backed in whole or in part by the Loan, any Rating Agency that assigns a rating to any securities in connection therewith and any investor purchasing securities therein. Lender shall be permitted to share all such information with the investment banking firms, Rating Agencies, accounting firms, law firms, other third party advisory firms, potential investors, servicers and other service providers and other parties involved in any proposed Secondary

Market Transaction. Borrower understands that any such information may be incorporated into any offering circular, prospectus, prospectus supplement, private placement memorandum or other offering documents for any Secondary Market Transaction. Lender and all of the aforesaid third-party advisors and professional firms and investors shall be entitled to rely upon such information. Without limiting the foregoing, Borrower and Guarantor shall each provide in connection with each of (i) a preliminary and a final private placement memorandum or (ii) a preliminary and final prospectus or prospectus supplement, as applicable (the documents referred to in the foregoing clauses (i) and (ii), collectively, the "DISCLOSURE DOCUMENTS"), an agreement certifying that Borrower and Guarantor have examined such Disclosure Documents specified by Lender and that each such Disclosure Document, as it relates to Borrower, Guarantor, any Affiliates, the Property, Manager and all other aspects of the Loan, does not, and as to information provided in third party reports of engineers and environmental consultants, to Borrower's and Guarantor's knowledge, does not, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. Borrower and Guarantor shall each execute and deliver to Lender on or before the date of closing of any Secondary Market Transaction an indemnity agreement in form and substance acceptable to Lender, pursuant to which they shall agree to indemnify, defend, protect and hold harmless Lender, Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MERRILL LYNCH"), First Union National Bank, Prudential Mortgage Capital Company, LLC and their respective Affiliates, directors, employees, agents and each Person, if any, who controls Lender, Merrill Lynch or any such Affiliate within the meaning of Section 15 of the Securities Act of 1933 or Section 20 of the Securities Exchange Act of 1934, and any other placement agent or underwriter with respect to any Securitization or Secondary Market Transaction from and against any losses, claims, damages and liabilities that arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in any information or documents furnished by Borrower, Guarantor or their Affiliates or representative or in any representation or warranty of any Borrower Party contained herein or in the other Loan Documents or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated in such information or necessary in order to make the statements in such information not materially misleading. Lender may publicize the existence of the Obligations in connection with Lender's Secondary Market Transaction activities or otherwise.

SECTION 10.4 ADDITIONAL PROVISIONS. In any Secondary Market Transaction, Lender may transfer its obligations under this Loan Agreement and under the other Loan Documents (or may transfer the portion thereof corresponding to the transferred portion of the Obligations), and thereafter Lender shall be relieved of any obligations hereunder and under the other Loan Documents arising after the date of said transfer with respect to the transferred interest. Each transferee investor shall become a "Lender" hereunder.

SECTION 10.5 FORMATION OF DEPOSITOR. Prior to the Secondary Market Closing Date, Borrower, at its sole cost and expense, will form or cause to be formed a corporation, single member limited liability company or other special purpose entity (the "DEPOSITOR"), the sole purpose of which will be to act as the "depositor" of the trust to be formed in connection with any Secondary Market Transaction with respect to the Loan. The Depositor will be a direct or indirect wholly-owned subsidiary of Guarantor and will, at all times, comply with all of the terms and conditions of Article IX of this Loan Agreement other than the requirement to

maintain two Independent Directors on its board of directors (or the board of directors of a member or independent manager of the Depositor, as the case may be). Borrower will at all times during the term of the Loan preserve and keep in full force and effect the legal existence of the Depositor, including its qualification to do business in each state where it is required by law to so qualify. On or before the Secondary Market Closing Date, Borrower will cause Sherrard & Roe, PLC or other legal counsel for the Depositor acceptable to Lender to deliver legal opinions for the Depositor in form and substance acceptable to Lender and the Interested Parties as to such matters as Lender or any Interested Party shall reasonably request, including, without limitation, opinions with respect to organizational formalities, due authority, execution and delivery by the Depositor, and enforceability against the Depositor, of all documents to which it is a party and a bankruptcy non-consolidation opinion with respect to the Depositor.

ARTICLE XI  
RESTRICTIONS ON LIENS, TRANSFERS; ASSUMABILITY

SECTION 11.1 RESTRICTIONS ON TRANSFER AND ENCUMBRANCE. Except for a Transfer and Assumption in accordance with Section 11.3 or as otherwise expressly permitted under this Article XI, Borrower shall not cause or suffer to occur or exist, directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, any sale, transfer, mortgage, pledge, Lien or encumbrance (other than Permitted Encumbrances) of (i) all or any part of the Property or any interest therein, or (ii) any direct or indirect ownership or beneficial interest in Borrower, irrespective of the number of tiers of ownership. Nothing contained in this Section 11.1 shall be deemed to prohibit Borrower from (a) entering into Leases in accordance with the provisions of Section 5.12 or (b) selling or disposing of FF&E which is being replaced in the ordinary course of business provided that such sale or transfer would not have a material adverse effect on the value of the Property and provided further that any new FF&E acquired by Borrower shall be subject to the Lien of the Deed of Trust.

SECTION 11.2 TRANSFERS OF BENEFICIAL INTERESTS IN BORROWER. For purposes of this Section, a sale or transfer of a beneficial interest in Borrower shall be deemed to include, but is not limited to the following ("PROHIBITED OWNERSHIP INTEREST TRANSFERS"):

(A) if Borrower or any general partner or managing member of Borrower is a corporation, (i) the voluntary or involuntary sale, conveyance, transfer or pledge (any of the foregoing, a "TRANSFER") of a majority of such corporation's stock (or the stock of any corporation directly or indirectly controlling such corporation by operation of law or otherwise) or (ii) the creation or issuance of new stock, in any of the foregoing cases, by which an aggregate of more than 49% of such corporation's stock shall be vested in a party or parties who are not now stockholders or which results in a change of control of such corporation;

(B) if Borrower or any general partner or managing member (or, for a single member limited liability company, the sole member) of Borrower is a limited liability company, (i) the change, removal or resignation of a managing member (or sole member) of Borrower or such general partner or managing member (or sole member) or (ii) the Transfer of all or any portion of the membership interests of a managing member (or sole member) of Borrower or such general partner or managing member or any profits or proceeds relating to such membership interest; provided, however, that if Borrower or any general partner or managing member (or sole

member) of Borrower is a single member limited liability company, the Transfer in the aggregate of not more than 49% of the sole member's interest in Borrower or such general partner or managing member (or sole member), or any profits or proceeds relating to such member's interest, shall not constitute a sale or transfer prohibited by this Section 11 provided that such Transfer does not in the aggregate result in a change of control of Borrower or such general partner or managing member (or sole member);

(C) if Borrower, or any general partner or managing member (or, for a single member limited liability company, the sole member) of Borrower, is a limited or general partnership, (i) the change, removal or resignation of a managing general partner or managing partner or (ii) the Transfer of all or any portion of the general partner's interest of any general partner or managing partner or any profits or proceeds relating to such partnership interest;

(D) if Borrower or any general partner or managing member (or, for a single member limited liability company, the sole member) of Borrower is a limited partnership or limited liability company, the Transfer of limited partnership interests or non-managing membership interests which in the aggregate constitute more than a 49% interest in Borrower or any managing general partner or managing member (or sole member) of Borrower, or any profits or proceeds relating to such limited partnership interests or non-managing membership interests or any other Transfer which in the aggregate results in a change of control of Borrower or such general partner or managing member (or sole member).

Notwithstanding anything to the contrary contained in this Article XI, the provisions of Section 11.1 shall not be deemed applicable to (w) transfers of publicly-traded stock in Guarantor, (x) pledges of direct or indirect ownership interests in Borrower to the Mezzanine Lender in connection with the Mezzanine Loan in accordance with Section 5.17(C) (or to any subsequent holder of a New Mezzanine Loan) in accordance with Section 5.17(C), (y) transfers of such direct or indirect ownership interests in Borrower to the Mezzanine Lender or an Institutional Lender/Owner upon exercise of remedies under the Mezzanine Loan by the Mezzanine Lender or such Institutional Lender/Owner in accordance with the Intercreditor Agreement or (z) the creation or issuance of additional membership interests in Member which result in the dilution of Guarantor's sole member interest in Member by not more than 49%, in the aggregate. In addition, transfers of direct or indirect ownership interests in Borrower to Institutional Investors not constituting Prohibited Ownership Interest Transfers as provided above shall be permitted without Lender's consent provided that (i) no Event of Default then exists, (ii) in each case, Borrower shall give Lender written notice of such transfer together with copies of all instruments effecting such transfer not less than ten (10) Business Days prior to the date of such transfer; (iii) in each case, such transfer does not and will not result in the termination or dissolution of Borrower, Member or any Borrower Party, by operation of law or otherwise; (iv) Guarantor, or one or more wholly owned subsidiaries of Guarantor, shall continue to together hold at least fifty-one percent (51%) of the outstanding ownership interests in the partner(s) or member(s) of Borrower, and Guarantor continues to directly or indirectly control the business and affairs of Borrower; (v) such transfer shall not result in a change of control of Borrower or Member or a change of the Manager without Lender's consent; and (vi) in each case, the single purpose nature and bankruptcy remoteness of Borrower, Member and each Borrower Party after such transfer is satisfactory to Lender and in accordance with the standards of the Rating Agencies.

For purposes of this Section 11.2, "control" shall have the meaning given thereto in the definition of "Affiliate" in Section 1.1 and a "change of control" of any Person shall include the Transfer of legal or equitable ownership interests in such Person which after giving effect to such Transfer results in any transferee or pledgee of such interests holding more than a 49% legal or equitable ownership interest or security interest in such Person.

SECTION 11.3 ASSUMABILITY.

(A) In the event Borrower desires to transfer all of the Property to another party (the "TRANSFEREE BORROWER") and have the Transferee Borrower assume all of Borrower's obligations under the Loan Documents, and have replacement guarantors and indemnitors assume all of the obligations of the indemnitors and guarantors of the Loan Documents, and have replacement pledgors pledge all of the ownership interests in the Transferee Borrower (collectively, a "TRANSFER AND ASSUMPTION"), Borrower may make a written application to Lender for Lender's consent to the Transfer and Assumption, subject to the conditions set forth in paragraphs (B) and (C) of this Section. Together with such written application, Borrower will pay to Lender the reasonable review fee then required by Lender. Borrower also shall pay on demand all of the reasonable costs and expenses incurred by Lender, including reasonable attorneys' fees and expenses, and including the fees and expenses of Rating Agencies and other outside entities, in connection with considering any proposed Transfer and Assumption, whether or not the same is permitted or occurs.

(B) Lender shall not withhold its consent to a Transfer and Assumption provided and upon the conditions that:

(i) No Event of Default shall have occurred and be continuing;

(ii) Borrower shall have submitted to Lender true, correct and complete copies of any and all information and documents reasonably requested by Lender concerning the Property, Transferee Borrower, replacement guarantors and indemnitors and Borrower and all of such information and documents shall be reasonably acceptable to Lender;

(iii) Evidence satisfactory to Lender shall have been provided showing that the Transferee Borrower and such of its Affiliates as shall reasonably be designated by Lender comply and will comply with Article IX, as those provisions may be modified by Lender taking into account the ownership structure of Transferee Borrower and its Affiliates;

(iv) Borrower shall have obtained (and delivered to Lender) a Rating Confirmation with respect to the Transfer and Assumption and all related transactions;

(v) Borrower shall have paid all of Lender's reasonable costs and expenses in connection with considering the Transfer and Assumption, and shall have paid the amount requested by Lender as a deposit against Lender's costs and expenses in connection with effecting the Transfer and Assumption;

(vi) Borrower, the Transferee Borrower, and the replacement guarantors and indemnitors shall have indicated in writing in form and substance reasonably satisfactory to Lender their readiness and ability to satisfy the conditions set forth in Subsection (C) below;



(vii) (a) The Transferee Borrower shall be a Permitted Transferee or an Affiliate of a Permitted Transferee or (b) the identity, experience and financial condition of the Transferee Borrower shall otherwise be satisfactory to Lender; and

(viii) The identity and financial condition of the replacement guarantors and indemnitors shall be satisfactory to Lender.

(C) If Lender consents to the Transfer and Assumption, the Transferee Borrower and/or Borrower, as the case may be, shall promptly and as condition to the Transfer and Assumption of the Property deliver the following to Lender:

(i) Borrower shall deliver to Lender an assumption fee in the amount of one percent (1.0%) of the then unpaid principal balance of the Loan;

(ii) Borrower, Transferee Borrower, the original and replacement guarantors and indemnitors shall execute and deliver any and all documents reasonably required by Lender to evidence the Transfer and Assumption of the Loan, in form and substance required by Lender;

(iii) Counsel to the Transferee Borrower and replacement guarantors and indemnitors shall deliver to Lender opinions in form and substance reasonably satisfactory to Lender as to such matters as Lender shall reasonably require in connection with such Transfer and Assumption, which may include opinions as to substantially the same matters and were required in connection with the origination of the Loan including, without limitation, a bankruptcy non-consolidation opinion;

(iv) Borrower shall cause to be delivered to Lender, an endorsement (relating to the change in the identity of the vestee and execution and delivery of the Transfer and Assumption documents) to Lender's policy of title insurance in form and substance acceptable to Lender, in Lender's reasonable discretion; and

(v) Borrower shall deliver to Lender a payment in the amount of all remaining unpaid costs incurred by Lender in connection with the Transfer and Assumption, including but not limited to, Lender's reasonable attorneys' fees and expenses, all recording fees, and all fees payable to the title company in connection with the Transfer and Assumption.

#### ARTICLE XII RECOURSE; LIMITATIONS ON RECOURSE

SECTION 12.1 LIMITATIONS ON RECOURSE. Subject to the provisions of this Article, and notwithstanding any provision of the Loan Documents other than this Article, the personal liability of Borrower to pay the principal of and interest on the debt evidenced by the Note and any other agreement evidencing Borrower's obligations under the Note shall be limited to (i) the Property, (ii) the rents, profits, issues, products and income of the Property, received or collected by or on behalf of Borrower or any Borrower Party or Member after an Event of Default, and (iii) any other Collateral.

Notwithstanding anything to the contrary in this Loan Agreement, the Deed of Trust or any of the Loan Documents, Lender shall not be deemed to have waived any right which Lender may

have under Section 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Obligations secured by the Deed of Trust or to require that all collateral shall continue to secure all of the Obligations owing to Lender in accordance with the Loan Documents.

SECTION 12.2 PARTIAL RECOURSE. Notwithstanding Section 12.1, Borrower and Guarantor shall be personally liable to the extent of any liability, loss, damage, cost or expense (including, without limitation, attorneys' fees and expenses) suffered or incurred by Lender resulting from any and all of the following: (i) fraud; (ii) any material misrepresentation made by Borrower or any Borrower Party in this Loan Agreement or any other Loan Document or otherwise in connection with obtaining the Loan; (iii) insurance proceeds, condemnation awards, or other sums or payments attributable to the Property which are not applied in accordance with the provisions of the Loan Documents; (iv) all rents, profits, issues, products and income of the Property received or collected by or on behalf of Borrower or any Borrower Party, Manager or Member and not deposited into the Central Account in accordance with Article VI and the Cash Management Agreement or otherwise applied in accordance with the Loan Documents; (v) failure to turn over to Lender, after an Event of Default, or misappropriation of any tenant security deposits or rents collected in advance (other than by Lender or Servicer); (vi) failure to notify Lender of any change in the principal place of business address of Borrower or of any change in the name of Borrower or if Borrower takes any other action which could make the information set forth in the Financing Statements relating to the Loan materially misleading; (vii) failure by Borrower, any general partner of Borrower, or any indemnitor or guarantor to comply with the covenants, obligations, liabilities, warranties and representations contained in the Environmental Indemnity or otherwise pertaining to environmental matters; (viii) waste; (ix) all reasonable costs and expenses, including attorneys' fees and expenses, incurred in collecting any amount due under the Loan Documents; (x) all liabilities and expenses under the indemnification provisions of Section 10.3; (xi) any uncured default under Section 11.1; (xii) any material uncured default under Article IX; and (xiii) any condition or event described in any of Subsections 8.1(G), 8.1(H), or 8.1(I) (except that Borrower and Guarantor shall not be liable under this Section 12.2 in connection with any Involuntary Borrower Party Bankruptcy unless such involuntary proceeding is solicited, procured, consented to or acquiesced in by Borrower, Guarantor or any Related Person of either of them).

SECTION 12.3 MISCELLANEOUS. No provision of this Article shall (i) affect the enforcement of the Environmental Indemnity, the Guaranty or any guaranty or similar agreement executed in connection with the Loan, (ii) release or reduce the debt evidenced by the Note, (iii) impair the lien of the Deed of Trust or any other security document, (iv) impair the rights of Lender to enforce any provisions of the Loan Documents, or (v) limit Lender's ability to obtain a deficiency judgment or judgment on the Note or otherwise against any Borrower Party to the extent necessary to obtain any amount for which such Borrower Party may be liable in accordance with this Article or any other Loan Document.

ARTICLE XIII  
WAIVERS OF DEFENSES OF GUARANTORS AND SURETIES

SECTION 13.1 WAIVERS. To the extent that any Borrower Party (in this Article, a "WAIVING PARTY") is deemed for any reason to be a guarantor or surety of or for any other Borrower Party

or Affiliate or to have rights or obligations in the nature of the rights or obligations of a guarantor or surety (whether by reason of execution of a guaranty, provision of security for the obligations of another, or otherwise) then this Article shall apply. This Article shall not affect the rights of the Waiving Party other than to waive or limit rights and defenses that Waiving Party would have (i) in its capacity as a guarantor or surety or (ii) in its capacity as one having rights or obligations in the nature of a guarantor or surety. Waiving Party, in the broadest and most comprehensive sense, hereby waives any and all claims, rights, or defenses that may be asserted by a guarantor or surety against a creditor. Without limitation of the foregoing:

Waiving Party hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of receivership or bankruptcy of any of the other Borrower Parties, protest or notice with respect to any of the obligations of any of the other Borrower Parties, setoffs and counterclaims and all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor and notices of acceptance, the benefits of all statutes of limitation, and all other demands whatsoever (and shall not require that the same be made on any of the other Borrower Parties as a condition precedent to the obligations of Waiving Party), and covenants that the Loan Documents will not be discharged, except by complete payment and performance of the obligations evidenced and secured thereby, except only as limited by the express contractual provisions of the Loan Documents. Waiving Party further waives all notices that the principal amount, or any portion thereof, and/or any interest on any instrument or document evidencing all or any part of the obligations of any of the other Borrower Parties to Lender is due, notices of any and all proceedings to collect from any of the other Borrower Parties or any endorser or any other guarantor of all or any part of their obligations, or from any other person or entity, and, to the extent permitted by law, notices of exchange, sale, surrender or other handling of any security or collateral given to Lender to secure payment of all or any part of the obligations of any of the other Borrower Parties.

Except only to the extent provided otherwise in the express contractual provisions of the Loan Documents, Waiving Party hereby agrees that all of its obligations under the Loan Documents shall remain in full force and effect, without defense, offset or counterclaim of any kind, notwithstanding that any right of Waiving Party against any of the other Borrower Parties or defense of Waiving Party against Lender may be impaired, destroyed, or otherwise affected by reason of any action or inaction on the part of Lender. Waiving Party waives all rights and defenses arising out of an election of remedies by the Lender, even though that election of remedies, may have destroyed the Waiving Party's rights of subrogation and reimbursement against the other Borrower Parties.

Lender is hereby authorized, without notice or demand, from time to time, (a) to renew, extend, accelerate or otherwise change the time for payment of, or other terms relating to, all or any part of the obligations of any of the other Borrower Parties; (b) to accept partial payments on all or any part of the obligations of any of the other Borrower Parties; (c) to take and hold security or collateral for the payment of all or any part of the obligations of any of the other Borrower Parties; (d) to exchange, enforce, waive and release any such security or collateral for such obligations; (e) to apply such security or collateral and direct the order or manner of sale thereof as in its discretion it may determine; (f) to settle, release, exchange, enforce, waive, compromise or collect or otherwise liquidate all or any part of such obligations and any security or collateral for such obligations. Any of the foregoing may be done in any

manner, and Waiving Party agrees that the same shall not affect or impair the obligations of Waiving Party under the Loan Documents.

Waiving Party hereby assumes responsibility for keeping itself informed of the financial condition of all of the other Borrower Parties and any and all endorsers and/or other guarantors of all or any part of the obligations of the other Borrower Parties, and of all other circumstances bearing upon the risk of nonpayment of such obligations, and Waiving Party hereby agrees that Lender shall have no duty to advise Waiving Party of information known to it regarding such condition or any such circumstances.

Waiving Party agrees that neither Lender nor any person or entity acting for or on behalf of Lender shall be under any obligation to marshal any assets in favor of Waiving Party or against or in payment of any or all of the obligations secured hereby. Waiving Party further agrees that, to the extent that any of the other Borrower Parties or any other guarantor of all or any part of the obligations of the other Borrower Parties makes a payment or payments to Lender, or Lender receives any proceeds of collateral for any of the obligations of the other Borrower Parties, which payment or payments or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid or refunded, then, to the extent of such payment or repayment, the part of such obligations which has been paid, reduced or satisfied by such amount shall be reinstated and continued in full force and effect as of the time immediately preceding such initial payment, reduction or satisfaction.

Waiving Party (i) shall have no right of subrogation with respect to the obligations of the other Borrower Parties; (ii) waives any right to enforce any remedy that Lender now has or may hereafter have against any of the other Borrower Parties any endorser or any guarantor of all or any part of such obligations or any other person; and (iii) waives any benefit of, and any right to participate in, any security or collateral given to Lender to secure the payment or performance of all or any part of such obligations or any other liability of the other parties to Lender.

Waiving Party agrees that any and all claims that it may have against any of the other Borrower Parties, any endorser or any other guarantor of all or any part of the obligations of the other Borrower Parties, or against any of their respective properties, shall be subordinate and subject in right of payment to the prior payment in full of all obligations secured hereby. Notwithstanding any right of any of the Waiving Party to ask, demand, sue for, take or receive any payment from the other Borrower Parties, all rights, liens and security interests of Waiving Party, whether now or hereafter arising and howsoever existing, in any assets of any of the other Borrower Parties (whether constituting part of the security or collateral given to Lender to secure payment of all or any part of the obligations of the other Borrower Parties or otherwise) shall be and hereby are subordinated to the rights of Lender in those assets.

ARTICLE XIV  
MISCELLANEOUS

SECTION 14.1 EXPENSES AND ATTORNEYS' FEES. Whether or not the transactions contemplated hereby shall be consummated, Borrower agrees to promptly pay all reasonable fees, costs and expenses incurred by Lender in connection with any matters contemplated by or arising out of

this Loan Agreement, including the following, and all such fees, costs and expenses shall be part of the Obligations, payable on demand: (A) reasonable fees, costs and expenses (including reasonable attorneys' fees, and other professionals retained by Lender) incurred in connection with the examination, review, due diligence investigation, documentation and closing of the financing arrangements evidenced by the Loan Documents; (B) reasonable fees, costs and expenses (including reasonable attorneys' fees and other professionals retained by Lender) incurred in connection with the administration of the Loan Documents and the Loan and any amendments, modifications and waivers relating thereto; (C) reasonable fees, costs and expenses (including reasonable attorneys' fees) incurred in connection with the review, documentation, negotiation, closing and administration of any subordination or intercreditor agreements; and (D) reasonable fees, costs and expenses (including attorneys' fees and fees of other professionals retained by Lender) incurred in any action to enforce or interpret this Loan Agreement or the other Loan Documents or to collect any payments due from Borrower under this Loan Agreement, the Note or any other Loan Document or incurred in connection with any refinancing or restructuring of the credit arrangements provided under this Loan Agreement, whether in the nature of a "workout" or in connection with any insolvency or bankruptcy proceedings or otherwise. Any costs and expenses due and payable to Lender after the Closing Date may be paid to Lender pursuant to the Cash Management Agreement.

SECTION 14.2 INDEMNITY. In addition to the payment of expenses as required elsewhere herein, whether or not the transactions contemplated hereby shall be consummated, Borrower agrees to indemnify, defend, protect, pay and hold Lender, its successors and assigns (including, without limitation, the trustee and/or the trust under any trust agreement executed in connection with any Securitization backed in whole or in part by the Loan and any other Person which may hereafter be the holder of the Note or any interest therein), and the officers, directors, stockholders, partners, members, employees, agents, Affiliates and attorneys of Lender and such successors and assigns (collectively called the "INDEMNITEES") harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, Tax Liabilities, broker's or finders fees, reasonable costs, expenses and disbursements of any kind or nature whatsoever (including the reasonable fees and disbursements of counsel for such Indemnitees in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not such Indemnitee shall be designated a party thereto) that may be imposed on, incurred by, or asserted against that Indemnitee, in any manner relating to or arising out of (A) the negotiation, execution, delivery, performance, administration, ownership, or enforcement of any of the Loan Documents; (B) any of the transactions contemplated by the Loan Documents; (C) any breach by Borrower of any representation, warranty, covenant, or other agreement contained in any of the Loan Documents; (D) the presence, release, threatened release, disposal, removal, or cleanup of any Hazardous Material located on, about, within or affecting the Property or any violation of any applicable Environmental Law for which Borrower is liable; (E) Lender's agreement to make the Loan hereunder; (F) any claim brought by any third party arising out of any condition or occurrence at or pertaining to the Property; (G) any design, construction, operation, repair, maintenance, use, non-use or condition of the Property or Improvements, including claims or penalties arising from violation of any applicable laws or insurance requirements, as well as any claim based on any patent or latent defect, whether or not discoverable by Lender; (H) any performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (I) any contest referred to in Section 5.3(B) hereof; (J) any obligation or undertaking

relating to the performance or discharge of any of the terms, covenants and conditions of the landlord contained in the Leases; or (K) the use or intended use of the proceeds of any of the Loan (the foregoing liabilities herein collectively referred to as the "INDEMNIFIED LIABILITIES"); provided that Borrower shall not have an obligation to an Indemnitee hereunder with respect to Indemnified Liabilities arising from the gross negligence or willful misconduct of such Indemnitee as determined by a court of competent jurisdiction. The obligations and liabilities of Borrower under this Section 14.2 shall survive the term of the Loan and the exercise by Lender of any of its rights or remedies under the Loan Documents, including the acquisition of the Property by foreclosure or a conveyance in lieu of foreclosure.

**SECTION 14.3 AMENDMENTS AND WAIVERS.** Except as otherwise provided herein, no amendment, modification, termination or waiver of any provision of this Loan Agreement, the Note or any other Loan Document, or consent to any departure therefrom, shall in any event be effective unless the same shall be in writing and signed by Lender and any other party to be charged. Each amendment, modification, termination or waiver shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on Borrower in any case shall entitle Borrower or other Person to any other or further notice or demand in similar or other circumstances.

**SECTION 14.4 RETENTION OF BORROWER'S DOCUMENTS.** Lender may, in accordance with Lender's customary practices, destroy or otherwise dispose of all documents, schedules, invoices or other papers, delivered by Borrower to Lender unless Borrower requests in writing that same be returned. Upon such request and at such Borrower's expense, Lender shall return such papers when Lender's actual or anticipated need for same has terminated.

**SECTION 14.5 NOTICES.** Unless otherwise specifically provided herein, any notice or other communication required or permitted to be given shall be in writing and addressed to the respective party as set forth below. Notices shall be effective (i) three (3) days after the date such notice is mailed, (ii) on the next Business Day if sent by a nationally recognized overnight courier service, (iii) on the date of delivery by personal delivery and (iv) on the date of transmission if sent by telefax during business hours on a Business Day (otherwise on the next Business Day).

Notices shall be addressed as follows:

If to Borrower, Member or any Borrower Party:

c/o Gaylord Entertainment Company  
One Gaylord Drive  
Nashville, Tennessee 37214  
Attn: Chief Financial Officer  
Facsimile: (615) 316-6105

With a copy to:

Sherrard & Roe, PLC  
424 Church Street  
Suite 2000  
Nashville, Tennessee 37219  
Attn: Kim A. Brown, Esq.  
Facsimile: (615) 742-4539

If to Lender:

c/o Merrill Lynch & Co.  
100 Church Street  
18th Floor  
New York, New York 10080  
Attn: Andrea Balkan  
Facsimile: (212) 602-7552

With a copy to:

Sidley & Austin  
875 Third Avenue  
New York, New York 10022  
Attn: Robert L. Boyd, Esq.  
Facsimile: (212) 906-2021

Any party may change the address at which it is to receive notices to another address in the United States at which business is conducted (and not a post-office box or other similar receptacle), by giving notice of such change of address in accordance with the foregoing. This provision shall not invalidate or impose additional requirements for the delivery or effectiveness of any notice (i) given in accordance with applicable statutes or rules of court, or (ii) by service of process in accordance with applicable law. If there is any assignment or transfer of Lender's interest in the Loan, then the new Lenders may give notice to the parties in accordance with this Section, specifying the addresses at which the new Lenders shall receive notice, and they shall be entitled to notice at such address in accordance with this Section.

SECTION 14.6 SURVIVAL OF WARRANTIES AND CERTAIN AGREEMENTS. All agreements, representations and warranties made herein shall survive the execution and delivery of this Loan Agreement, the making of the Loan hereunder and the execution and delivery of the Note. Notwithstanding anything in this Loan Agreement or implied by law to the contrary, the agreements of Borrower Parties to indemnify or release Lender or Persons related to Lender, or to pay Lender's costs, expenses, or taxes shall survive the payment of the Loan and the termination of this Loan Agreement.

SECTION 14.7 FAILURE OR INDULGENCE NOT WAIVER; REMEDIES CUMULATIVE. No failure or delay on the part of Lender in the exercise of any power, right or privilege hereunder or under the Note or any other Loan Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege. All rights and remedies existing under this Loan Agreement, the Note and the other Loan Documents are cumulative to, and not exclusive of, any rights or remedies otherwise available.

SECTION 14.8 MARSHALING; PAYMENTS SET ASIDE. Lender shall not be under any obligation to marshal any assets in favor of any Person or against or in payment of any or all of the Obligations. To the extent that any Person makes a payment or payments to Lender, or Lender enforces its remedies or exercises its rights of set off, and such payment or payments or the proceeds of such enforcement or set off or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then to the extent of such recovery, the Obligations or part thereof originally intended to be satisfied, and all Liens, if any, and rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or set off had not occurred.

SECTION 14.9 SEVERABILITY. The invalidity, illegality or unenforceability in any jurisdiction of any provision in or obligation under this Loan Agreement, the Note or other Loan Documents shall not affect or impair the validity, legality or enforceability of the remaining provisions or obligations under this Loan Agreement, the Note or other Loan Documents or of such provision or obligation in any other jurisdiction.

SECTION 14.10 HEADINGS. Section and subsection headings in this Loan Agreement are included herein for convenience of reference only and shall not constitute a part of this Loan Agreement for any other purpose or be given any substantive effect.

SECTION 14.11 APPLICABLE LAW. THIS LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS WERE NEGOTIATED IN THE STATE OF NEW YORK, AND EXECUTED AND DELIVERED IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE LOAN WERE DISBURSED FROM NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE. THIS LOAN AGREEMENT AND



THE OTHER LOAN DOCUMENTS AND THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN THE STATE OF NEW YORK AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT TO THE DEED OF TRUST AND THE ASSIGNMENT OF LEASES SHALL BE GOVERNED BY THE LAWS OF THE STATE WHERE THE PROPERTY IS LOCATED, EXCEPT THAT THE SECURITY INTERESTS IN ACCOUNT COLLATERAL SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK OR THE STATE WHERE THE SAME IS HELD, AT THE OPTION OF LENDER.

SECTION 14.12 SUCCESSORS AND ASSIGNS. This Loan Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns except that no Borrower Party may assign its rights or obligations hereunder or under any of the other Loan Documents except as expressly provided in Article XI.

SECTION 14.13 SOPHISTICATED PARTIES, REASONABLE TERMS, NO FIDUCIARY RELATIONSHIP. Borrower Parties represent, warrant and acknowledge that (i) they are sophisticated real estate investors, familiar with transactions of this kind, and (ii) they have entered into this Loan Agreement and the other Loan Documents after conducting their own assessment of the alternatives available to them in the market, and after lengthy negotiations in which they have been represented by legal counsel of their choice. Borrower Parties also acknowledge and agree that the rights of Lender under this Loan Agreement and the other Loan Documents are reasonable and appropriate, taking into consideration all of the facts and circumstances including without limitation the quantity of the Loan, the nature of the Property, and the risks incurred by Lender in this transaction. No provision in this Loan Agreement or in any of the other Loan Documents and no course of dealing between the parties shall be deemed to create (i) any partnership or joint venture between Lender and Borrower or any other Person, or (ii) any fiduciary or similar duty by Lender to Borrower or any other Person. The relationship between Lender and Borrower is exclusively the relationship of a creditor and a debtor, and all relationships between Lender and any other Borrower Party are ancillary to such creditor/debtor relationship.

SECTION 14.14 REASONABLENESS OF DETERMINATIONS. In any instance where any consent, approval, determination or other action by Lender is, pursuant to the Loan Documents or applicable law, required to be done reasonably or required not to be unreasonably withheld, then Lender's action shall be presumed to be reasonable, and Borrower shall bear the burden of proof of showing that the same was not reasonable. In all cases Lender shall conclusively be deemed to be acting reasonably when implementing any standard or requirement of any applicable Rating Agency. In the event that a claim or adjudication is made that Lender or its agents have acted unreasonably or unreasonably delayed acting in any case where, by law or under this Loan Agreement or the other Loan Documents, Lender or such agent, as the case may be, has an obligation to act reasonably or promptly, neither Lender nor its agents shall be liable for any monetary damages, and Borrower's sole remedy shall be limited to commencing an action seeking injunctive relief or declaratory judgment. Any action or proceeding to determine

whether Lender has acted reasonably shall be determined by an action seeking declaratory judgment.

SECTION 14.15 LIMITATION OF LIABILITY. Neither Lender, nor any Affiliate, officer, director, employee, attorney, or agent of Lender, shall have any liability with respect to, and each of the Borrower Parties and Member hereby waives, releases, and agrees not to sue any of them upon, any claim for any special, indirect, incidental, or consequential damages suffered or incurred by the Borrower Parties or Member in connection with, arising out of, or in any way related to, this Loan Agreement or any of the other Loan Documents, or any of the transactions contemplated by this Loan Agreement or any of the other Loan Documents, other than the gross negligence or willful misconduct of Lender. Each of the Borrower Parties and Member hereby waives, releases, and agrees not to sue Lender or any of Lender's Affiliates, officers, directors, employees, attorneys, or agents for punitive damages in respect of any claim in connection with, arising out of, or in any way related to, this Loan Agreement or any of the other Loan Documents, or any of the transactions contemplated by this Loan Agreement or any of the transactions contemplated hereby, except to the extent the same is caused by the gross negligence or willful misconduct of Lender.

SECTION 14.16 NO DUTY. All attorneys, accountants, appraisers, and other professional Persons and consultants retained by Lender shall have the right to act exclusively in the interest of Lender and shall have no duty of disclosure, duty of loyalty, duty of care, or other duty or obligation of any type or nature whatsoever to any Borrower Party or Affiliates thereof, or any other Person.

SECTION 14.17 ENTIRE AGREEMENT. This Loan Agreement, the Note, and the other Loan Documents referred to herein embody the final, entire agreement among the parties hereto and supersede any and all prior commitments, agreements, representations, and understandings, whether written or oral, relating to the subject matter hereof and may not be contradicted or varied by evidence of prior, contemporaneous, or subsequent oral agreements or discussions of the parties hereto. There are no oral agreements among the parties to the Loan Documents.

SECTION 14.18 CONSTRUCTION; SUPREMACY OF LOAN AGREEMENT. Borrower Parties and Lender acknowledge that each of them has had the benefit of legal counsel of its own choice and has been afforded an opportunity to review this Loan Agreement and the other Loan Documents with its legal counsel and that this Loan Agreement and the other Loan Documents shall be construed as if jointly drafted by Borrower and Lender. If any term, condition or provision of this Loan Agreement shall be inconsistent with any term, condition or provision of any other Loan Document, then this Loan Agreement shall control.

SECTION 14.19 CONSENT TO JURISDICTION. EACH OF THE BORROWER PARTIES AND MEMBER HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF NEW YORK, STATE OF NEW YORK OR WITHIN THE COUNTY AND STATE IN WHICH THE PROPERTY IS LOCATED AND IRREVOCABLY AGREES THAT, SUBJECT TO LENDER'S ELECTION, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS SHALL BE LITIGATED IN SUCH COURTS. EACH OF THE BORROWER PARTIES AND MEMBER ACCEPTS FOR ITSELF AND IN CONNECTION WITH THE PROPERTY,

GENERALLY AND UNCONDITIONALLY, THE NONEXCLUSIVE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS, AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS AGREEMENT, THE NOTE, SUCH OTHER LOAN DOCUMENTS OR SUCH OBLIGATION. NOTHING HEREIN SHALL AFFECT THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT OF LENDER TO BRING PROCEEDINGS AGAINST ANY BORROWER PARTY IN THE COURTS OF ANY OTHER JURISDICTION.

SECTION 14.20 WAIVER OF JURY TRIAL. EACH OF THE BORROWER PARTIES, MEMBER AND LENDER HEREBY WAIVES ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS LOAN AGREEMENT, ANY OF THE LOAN DOCUMENTS, OR ANY DEALINGS BETWEEN ANY BORROWER PARTY OR MEMBER AND LENDER RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION AND THE LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED. EACH OF THE BORROWER PARTIES, MEMBER AND LENDER ALSO WAIVES ANY BOND OR SURETY OR SECURITY UPON SUCH BOND WHICH MIGHT, BUT FOR THIS WAIVER, BE REQUIRED OF IT. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH OF THE BORROWER PARTIES, MEMBER AND LENDER ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THIS LOAN AGREEMENT, THAT EACH HAS ALREADY RELIED ON THE WAIVER IN ENTERING INTO THIS LOAN AGREEMENT AND THAT EACH WILL CONTINUE TO RELY ON THE WAIVER IN THE FUTURE. EACH OF THE BORROWER PARTIES, MEMBER AND LENDER FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS LOAN AGREEMENT, THE LOAN DOCUMENTS, OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOAN. IN THE EVENT OF LITIGATION, THIS LOAN AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

SECTION 14.21 COUNTERPARTS; EFFECTIVENESS. This Loan Agreement and other Loan Documents and any amendments or supplements thereto may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all of which counterparts together shall constitute but one and the same instrument. This Loan Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto.

SECTION 14.22 SERVICER. Lender shall have the right from time to time to designate and appoint one or more Servicers, and to change or replace any Servicer. All rights of the Lender hereunder may exercised by Servicer. Servicer shall be entitled to the benefit of all obligations of any of Borrower Party in favor of Lender.

SECTION 14.23 OBLIGATIONS OF BORROWER PARTIES. Member and the Borrower Parties other than Borrower are parties to this Loan Agreement only with regard to the representations, warranties, and covenants specifically applicable to them.

[signatures follow on next page]

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Loan Agreement as of the date first written above.

BORROWER:

OPRYLAND HOTEL NASHVILLE, LLC  
a Delaware limited liability company

By: /s/ J. Russell Worsham

-----  
Name: J. Russell Worsham  
Title: Vice President

MEMBER:

Subject to the limitations set forth in  
Section 14.23 herein:

OHN HOLDINGS, LLC,  
a Delaware limited liability company,

By: /s/ J. Russell Worsham

-----  
Name: J. Russell Worsham  
Title: Vice President

GUARANTOR:

GAYLORD ENTERTAINMENT COMPANY,  
a Delaware corporation

By: /s/ J. Russell Worsham

-----  
Name: J. Russell Worsham  
Title: Vice President

LENDER:

MERRILL LYNCH MORTGAGE LENDING, INC.,  
a Delaware corporation

By: /s/ Andrea Balkan

-----  
Name: Andrea Balkan  
Title: Vice President

STATE OF NEW YORK            )  
                                  ) SS:  
COUNTY OF NEW YORK        )

On this \_\_\_\_\_ day of March, 2001, before me appeared  
\_\_\_\_\_, to me personally known, or satisfactorily proven to be the  
person whose name is subscribed to the foregoing as \_\_\_\_\_ of  
\_\_\_\_\_, for the purposes therein set forth, and that the same is  
its act and deed.

-----  
Name of Notary:  
Notary Public  
My Commission expires:\_\_\_\_\_

## LIST OF EXHIBITS AND SCHEDULES

Exhibit A	- Capital Improvements Plan
Exhibit B	- Form of Subordination, Non-Disturbance and Attornment Agreement
Exhibit C	- Form of Intercreditor Agreement
Schedule 3.1(A)	- Loan Documents
Schedule 4.1(C)	- Organizational Chart for Borrower Parties
Schedule 4.2	- Consents
Schedule 4.7	- Rent Roll
Schedule 4.9	- Litigation
Schedule 4.14	- Employee Benefit Plans
Schedule 4.20	- Insurance
Schedule 5.14	- Material Agreements
Schedule 6.4	- Required Repairs
Schedule 6.5	- Required Capital Improvements
Schedule 6.6	- FF&E Reserve & Capital Improvement Reserve Funding Condition

## EXHIBIT A

## CAPITAL IMPROVEMENTS PLAN

OPRYLAND HOTEL NASHVILLE, LLC

REVISED 3-YEAR CAPITAL PLAN

2001		
CAPITAL IMPROVEMENT PLAN		
Magnolia Lobby Renovation		\$ 1,500,000
New Entrance Road		1,630,000
Replace Sidewalks Areas in Veranda		150,000
Ice Palace Project		550,000
Wayfinding Phase II		5,325,000
Magnolia Corridor Carpet & Vinyl		700,000
Renovate 236 Guestrooms Magnolia Building		6,396,000
Conservatory Fountain Project		100,000
Magnolia Building Elevator Cab Upgrade		100,000
Delta Building Trash Receptacles		5,000
Volare's Awning		15,000
Jack Daniel's Bar Upgrade		80,000
Veranda & Cascades Pool Awnings		75,000
Delta Sundry Shop Hallway Carpet		39,900
		-----
	TOTAL 2001	\$16,665,900
	CAPITAL	
	IMPROVEMENT	-----
		-----
SPA		\$ 800,000
		-----
FF&E EXPENDITURE PLAN		
Rooms - General		\$ 403,000
Rooms Housekeeping		165,600
Rooms - Public Space		50,000
Food & Beverage		1,753,284
Convention Services		58,000
Retail		122,600
Transportation		310,000
Engineering		2,329,540
Strategic Systems Development		2,117,900
Purchasing		23,825
Accounting		35,451
Training		8,907
Human Resources		42,120
Security		118,062
Laundry/Wardrobe		16,100
Contingency		800,000
		-----
	TOTAL 2001	\$ 8,354,389
	FF&E	
	EXPENDITURE	
	PLAN	-----
	TOTAL 2001	\$25,820,289
	CAPITAL	=====

Exhibit A



2002		
CAPITAL IMPROVEMENT PLAN		
Wayfinding Phase III		\$ 2,000,000
Presidential & Tennessee Mezzanines		3,000,000
Renovate Guestrooms - Garden Conservatory		5,000,000
New Delta River Boat Attraction		1,000,000
Renovate 141 Guestrooms - Magnolia		3,804,000
Guestroom Lobby Furniture		150,000
Mite Lite Tables		175,000
Retail Shop Upgrade and Relocation		236,000
		-----
	TOTAL 2002	\$15,365,000
	CAPITAL	
	IMPROVEMENT	-----
		-----
SPA		\$6,000,000
		-----
FF&E EXPENDITURE PLAN		
Tennessee Ballroom Upgrade Architectural		\$ 175,000
Lighting		
Governor's Ballroom Outside Loading Ramp		290,000
Upgrade		
Magnolia Sidewalk Replacement		250,000
Meeting Room Ceiling Tile Replacement		350,000
Air Handling Unit Variable Frequency Motor		475,000
Drives		
Electrical Circuit Board Upgrades - Main Hotel		285,000
Buildings		
Chat N Chew Carpet		50,000
Meeting Room Door Replacement		50,000
Magnolia Fence Replacement		75,000
Cascades Skylight Expansion Joints		150,000
Hermitage Meeting Room Renovation		325,000
F & B Kitchen Equipment		350,000
Presidential Ballroom Roof Replacement		625,000
Delta Ballroom Renovation		1,700,000
Magnolia Mezzanine Renovation		2,750,000
Pickin Parlor Lounge Renovation		800,000
Delta Ballroom Public Space Carpet		950,000
Housekeeping Equipment (vacuums, rollaways,		95,000
cribs)		
Contingency		800,000
		-----
	TOTAL 2002	\$10,545,000
	FF&E	
	EXPENDITURE	
	PLAN	-----
	TOTAL 2002	\$31,910,000
	CAPITAL	=====

Exhibit A

2003

CAPITAL IMPROVEMENT PLAN	
Renovate Guestrooms - Garden Conservatory	\$1,000,000
	-----
TOTAL 2003 CAPITAL IMPROVEMENT	\$1,000,000  -----
 SPA	 \$ 6,000,000
 FF&E EXPENDITURE PLAN	
F & B Renovation - Volare's Restaurant	\$ 1,050,000
Renovate 10 - 6th Floor Suites	500,000
Housekeeping Equipment (radios, vacuums, cribs)	125,000
Magnolia & Presidential Meeting Rooms Renovation	1,950,000
Tennessee Ballroom Renovation	500,000
Cascades Sunscreen Replacement	300,000
Cascades Roof Replacement	300,000
Country Christmas Electrical Upgrade	200,000
Replastering Magnolia Pool	150,000
Replace Engineering 4 Trucks & Equipment	75,000
Country Christmas Decoration Replacement	300,000
Delta & Magnolia Sundry Shop Renovation	500,000
New Indoor / outdoor Pool	1,500,000
Upgrade Computer Systems	750,000
Airport Bus for Transportation	315,000
Laundry Equipment - Tunnel Washers, Flatware Folder	800,000
Contingency	900,000
	-----
TOTAL 2003 FF&E EXPENDITURE PLAN	\$10,215,000  -----
TOTAL 2003 CAPITAL	\$17,215,000 =====

Exhibit A

EXHIBIT B

FORM OF SUBORDINATION,  
NON DISTURBANCE AND ATTORNMENT AGREEMENT

TENANT: \_\_\_\_\_

SUBORDINATION,  
NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "AGREEMENT") is entered into by and among \_\_\_\_\_, a \_\_\_\_\_ ("TENANT"), whose address is \_\_\_\_\_, \_\_\_\_\_, a \_\_\_\_\_ ("LANDLORD"), whose address is \_\_\_\_\_, and \_\_\_\_\_, its successors and/or assigns ("LENDER"), whose address is \_\_\_\_\_.

W I T N E S S E T H:

WHEREAS, Landlord is the owner in fee simple of the real property described in Exhibit A attached hereto, together with the improvements thereon (the "PROPERTY");

WHEREAS, Landlord or its predecessor and Tenant have entered into a certain lease, dated \_\_\_\_\_ [and amended/modified/extended/renewed by \_\_\_\_\_, dated \_\_\_\_\_] (as the same may hereafter be amended, modified, renewed, extended or replaced, the "LEASE"), leasing to Tenant a portion of the Property (the "PREMISES");

WHEREAS, Lender has agreed to make a certain mortgage loan to Landlord (the "LOAN"), which will be evidenced by Landlord's Promissory Note in such amount (the "NOTE") and secured by, among other things, a certain Mortgage [Deed of Trust], Assignment of Rents, Security Agreement and Fixture Filing (as the same may hereafter be amended, modified, extended or recast, the "MORTGAGE") and a certain Assignment of Leases and Rents (the "ASSIGNMENT OF LEASES") encumbering the Property, which Mortgage and Assignment of Leases are to be recorded simultaneously herewith;

WHEREAS, Lender, Landlord and Tenant desire to confirm their understanding with respect to the Lease and the Loan and the rights of Tenant and Lender thereunder.

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

1. Subordination. The Lease, including all of the terms thereof, is and shall be subject and subordinate to the lien and all of the terms of the Mortgage to the full extent of all amounts secured by the Mortgage and interest thereon.

Exhibit B

2. Attornment. Tenant agrees that it will attorn to and recognize any purchaser of the Property at a Mortgage foreclosure sale or any transferee who acquires the Property by deed in lieu of foreclosure or exercise of a power of sale or otherwise in respect of the Mortgage (in any such case, the "NEW OWNER") and the successors and assigns of such purchaser or transferee, as its landlord for the unexpired balance (and any extensions or renewals, if exercised) of the term of said Lease upon the same terms and conditions set forth in said Lease.

3. Non-Disturbance. Provided there is no default under the Lease which continues beyond the expiration of any applicable notice and grace period, such New Owner will not terminate the Lease or disturb Tenant's possession of the Premises under the Lease or the right to quiet enjoyment thereof, but the Lease shall continue in accordance with its terms as a direct lease between Tenant and New Owner.

4. Cure by Lender of Landlord Defaults. Tenant agrees to give Lender or any other New Owner (in accordance with Paragraph 8 hereof) a copy of any notice of default served upon Landlord which with the passage of time or otherwise would entitle Tenant to cancel the Lease or abate the rent under the Lease, provided that prior to such notice Tenant has been notified in writing of the address of the New Owner, or its agent, servicer or designee. Tenant further agrees that if Landlord shall have failed to cure such default within the time provided for in the Lease, then Lender have an additional ten (10) days with respect to a monetary default and thirty (30) days with respect to a non-monetary default after its receipt of notice within which to cure such default or if such non-monetary default cannot be cured within that time, then such additional time as may be necessary to cure such default shall be granted if within such thirty (30) days Lender has commenced and is diligently pursuing the remedies necessary to cure such default (including, but not limited to, commencement of foreclosure proceedings necessary to effect such cure), in which event the Lease shall not be terminated while such remedies are being so diligently pursued.

5. Payments to Lender and Exculpation of Tenant. Tenant is hereby notified that the Lease and the rent and all other sums due thereunder have been assigned to Lender as security for the Loan. In the event that Lender notifies Tenant of a default under the Mortgage and directs that Tenant pay its rent and all other sums due under the Lease to Lender, Tenant shall honor such direction without inquiry and pay its rent and all other sums due under the Lease in accordance with such notice. Landlord agrees that Tenant shall have the right to rely on any such notice from Lender without incurring any obligation or liability to Landlord as if such notice were given at the direction of Landlord. Tenant is hereby instructed to disregard any notice to the contrary received from or at the behest of Landlord.

6. Limitation of Liability. If the New Owner acquires the interest of Landlord under the Lease, the New Owner shall not be:

(a) liable for any act or omission of any prior landlord (including Landlord);

(b) subject to any claims, offsets, defenses or counterclaims which Tenant might have against any prior landlord (including Landlord) arising prior to the date upon which the New Owner shall succeed to the interests of Landlord under the Lease;

Exhibit B

(c) bound by any rent or additional rent which Tenant shall have paid more than one (1) month in advance to any prior landlord (including Landlord) unless received by New Owner;

(d) liable for the return of any security deposit not actually received by New Owner;

(e) bound by any amendment or modification of the Lease made without the written consent of New Owner (if consent is required under the Mortgage or any of the other loan documents evidencing and/or securing the Loan);

(f) bound by any covenant to undertake or complete any improvement to or restoration of the Premises or the Property, except to the extent insurance proceeds or condemnation awards are made available to New Owner to cover the cost of the improvement.

Lender shall not, either by virtue of the Mortgage, the Assignment of Leases or this Agreement, be or become (i) a mortgagee-in-possession or (ii) subject to any liability or obligation under the Lease or otherwise until Lender shall have acquired by foreclosure or otherwise the interest of Landlord in the Premises. Lender's liability or obligation under the Lease shall extend only to those liabilities or obligations accruing subsequent to the date that Lender has acquired the interest of Landlord in the Premises as modified by the terms of this Agreement. In addition, upon such acquisition, Lender shall have no obligation, nor incur any liability, beyond Lender's then interest in the Property. In the event of the assignment or transfer of the interest of Lender under this Agreement, all obligations and liabilities of Lender under this Agreement shall terminate and, thereupon, all such obligations and liabilities shall be the sole responsibility of the party to whom Lender's interest is assigned or transferred.

7. Notice. Any notice, consent or other communication made hereunder shall be in writing and delivered (i) personally, (ii) mailed by certified or registered mail, postage prepaid, return receipt requested or (iii) by depositing the same with a reputable overnight courier service, postage prepaid, for next business day delivery, to the parties at their addresses first set forth above and if to Lender, with a copy to Merrill Lynch Credit Corporation at 4802 Deer Lake Drive East, Jacksonville, Florida 32246-6484, Attention: Commercial Mortgage Servicing. Notice shall be deemed given when delivered personally, or four (4) business days after being placed in the United States mail, if sent by certified or registered mail, or one (1) business day after deposit with such overnight courier service. Any party can change its address or party to receive notice by giving at least fifteen (15) days prior notice to the other parties hereto in accordance with this provision. Tenant agrees to send a copy of any notice or statement under the Lease to Lender at the same time such notice or statement is sent to Landlord.

#### 8. Miscellaneous.

(a) Successors and Assigns. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

(b) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Property is located.

Exhibit B

(c) Amendment. This Agreement shall be deemed to amend any provisions of the Lease which are inconsistent with the terms hereof.

(d) Counterparts. This Agreement may be executed in any number of separate counterparts, each of which shall be deemed an original, but all of which, collectively and separately, shall constitute one and the same agreement.

(e) Non-disturbance. Tenant agrees that this Agreement satisfies any condition or requirement in the Lease relating to the granting of a non-disturbance agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates set forth adjacent to their signatures below to be effective as of the date of the Mortgage.

Date: \_\_\_\_\_ TENANT: \_\_\_\_\_

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

Date: \_\_\_\_\_ LANDLORD: \_\_\_\_\_

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

Date: \_\_\_\_\_ LENDER: \_\_\_\_\_

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

WHEN RECORDED, RETURN TO:

Exhibit B

EXHIBIT C

FORM OF INTERCREDITOR AGREEMENT

INTERCREDITOR AGREEMENT

BY AND BETWEEN

MERRILL LYNCH MORTGAGE LENDING, INC.  
AS SENIOR LENDER

AND

MERRILL LYNCH MORTGAGE CAPITAL INC.  
AS MEZZANINE LENDER

PREMISES: OPRYLAND HOTEL AND CONVENTION CENTER  
NASHVILLE, TENNESSEE

C-1

## INTERCREDITOR AGREEMENT

THIS INTERCREDITOR AGREEMENT (this "AGREEMENT"), dated as of March 27, 2001, by and between MERRILL LYNCH MORTGAGE LENDING, INC., a Delaware corporation, having an office at 100 Church Street, 18th Floor, New York, New York 10080-6518 (together with its successors, assigns and participants as permitted hereunder, collectively, "SENIOR LENDER"), and MERRILL LYNCH MORTGAGE CAPITAL INC., a Delaware corporation, having an office at Four World Financial Center, 10th Floor, New York, New York 10080 (together with its successors, assigns and participants as permitted hereunder, collectively, "MEZZANINE LENDER").

## W I T N E S S E T H:

WHEREAS, pursuant to the terms, provisions and conditions set forth in that certain Amended and Restated Loan and Security Agreement, dated as of March 27, 2001, between Opryland Hotel Nashville, LLC, a Delaware limited liability company ("BORROWER") and Senior Lender (the "SENIOR LOAN AGREEMENT"), Senior Lender has made or is about to make a loan to Borrower in the original principal amount of \$275,000,000 (the "SENIOR LOAN"), which Senior Loan is evidenced by a certain Amended and Restated Promissory Note, dated as of March 27, 2001, made by Borrower to Senior Lender in the amount of \$275,000,000, (the "SENIOR NOTE"), and secured by, among other things, a certain (a) Amended and Restated Deed of Trust, Assignment of Leases and Rents and Security Agreement, dated as of March 27, 2001, from Borrower for the benefit of Senior Lender (the "SENIOR MORTGAGE"), encumbering the real property, and all improvements thereon and appurtenances thereto, described on EXHIBIT A attached hereto and made a part hereof (the "PREMISES"), (b) Guaranty of Recourse Obligations from Gaylord Entertainment Company ("GUARANTOR") for the benefit of Senior Lender (the "SENIOR LENDER'S GUARANTY") and (c) Cash Management Agreement, among Borrower, Senior Lender and the agent bank named therein ("SENIOR LENDER'S LOCKBOX AGREEMENT"); and, together with the Senior Loan Agreement, the Senior Note, the Senior Mortgage, Senior Lender's Guaranty and all other agreements and instruments executed and delivered pursuant to or in connection therewith and/or as security for the Senior Loan, whether or not specifically described above, as any of the foregoing may be modified, amended, extended, supplemented, restated or replaced from time to time, subject to the limitations and agreements contained in this Agreement, the "SENIOR LOAN DOCUMENTS"); and

WHEREAS, pursuant to the terms, provisions and conditions set forth in that certain Mezzanine Loan Agreement, dated as of March 27, 2001, between OHN Holdings, LLC, a Delaware limited liability company ("MEZZANINE BORROWER") and Mezzanine Lender (the "MEZZANINE LOAN AGREEMENT"), Mezzanine Lender has made or is about to make a loan to Mezzanine Borrower in the original principal amount of \$100,000,000 (the "MEZZANINE LOAN"), which Mezzanine Loan is evidenced by a certain Promissory Note, dated as of March 27, 2001, made by Mezzanine Borrower to Mezzanine Lender in the amount of the Mezzanine Loan (the "MEZZANINE NOTE"), and secured by, among other things, a certain (a) Pledge of Limited Liability Membership Interest, dated as of March 27, 2001, from Mezzanine Borrower to Mezzanine Lender (the "MEMBERSHIP PLEDGE AGREEMENT"), pursuant to which Mezzanine Lender was granted a first priority perfected Uniform Commercial Code ("UCC") security



interest in all the membership interests of Borrower owned by Mezzanine Borrower, (b) Stock Pledge Agreement dated as of March 27, 2001 from Guarantor to Mezzanine Lender pursuant to which Mezzanine Lender was granted a first priority perfected security interest in all the outstanding stock in the Manager of the Borrower (the Membership Pledge Agreement and Stock Pledge Agreement, collectively "MEZZANINE LENDER'S EQUITY PLEDGE AGREEMENT"); (c) Guaranty of Recourse Obligations dated March 27, 2001 from Guarantor for the benefit of Mezzanine Lender ("MEZZANINE LENDER'S GUARANTY") and (d) Mezzanine Deposit Account Agreement, among Mezzanine Borrower, Mezzanine Lender and the mezzanine deposit bank named therein ("MEZZANINE LENDER'S CASH MANAGEMENT AGREEMENT"; and, together with the Mezzanine Loan Agreement, the Mezzanine Note, Mezzanine Lender's Guaranty, Mezzanine Lender's Cash Management Agreement and all other agreements and instruments executed and delivered pursuant to or in connection therewith and/or as security for the Mezzanine Loan, whether or not specifically described above, as any of the foregoing may be modified, amended, extended, supplemented, restated or replaced from time to time, subject to the limitations and agreements contained in this Agreement, the "MEZZANINE LOAN DOCUMENTS"); and

WHEREAS, as an inducement to Senior Lender to make the Senior Loan and to Mezzanine Lender to make the Mezzanine Loan, Senior Lender and Mezzanine Lender desire to enter into this Agreement to provide for the relative priority of the Senior Loan Documents and the Mezzanine Loan Documents on the terms and conditions herein below set forth, and to evidence certain agreements with respect to the relationship between the Mezzanine Loan and the Mezzanine Loan Documents, on the one hand, and the Senior Loan and the Senior Loan Documents, on the other hand.

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Senior Lender and Mezzanine Lender hereby agree as follows:

1. CERTAIN DEFINITIONS: RULES OF CONSTRUCTION.

(a) As used in this Agreement, the following capitalized terms shall have the following meanings:

(i) "AFFILIATE" means, as to any particular Person, any Person (as hereinafter defined) directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with the Person or Persons in question.

(ii) "BANKRUPTCY CODE" shall have the meaning ascribed thereto in Section 5(d).

(iii) "CONTROL" (and the correlative terms "CONTROLLED BY" and "UNDER COMMON CONTROL WITH") mean, with respect to a Person that is a corporation, the right to exercise, directly or indirectly, more than 50% of the voting rights attributable to the shares of the controlled corporation, and, with respect to a Person that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled Person.

(iv) "ENFORCEMENT ACTION" means any (x) judicial or non-judicial foreclosure proceeding, the exercise of any power of sale, the taking of a deed or assignment in lieu of foreclosure, the obtaining of a receiver or the taking of any other enforcement action against the Premises or Borrower, including, without limitation, the taking of possession or control of the Premises, (y) acceleration of or judicial action taken in order to collect, all or any indebtedness secured by the Premises or (z) exercise of any right or remedy available to (1) Senior Lender under the Senior Loan Documents, at law, in equity or otherwise with respect to Borrower or the Premises or (2) Mezzanine Lender under the Mezzanine Loan Documents, at law, in equity or otherwise with respect to Mezzanine Borrower and/or Borrower, as the case may be; provided, however, that neither (A) any of the foregoing actions taken by Mezzanine Lender with respect to the Separate Collateral, or with respect to the Mezzanine Lender's Guaranty or any Other Guaranty/Indemnity to the extent permitted under Section 5(b) hereof nor (B) any increase in the interest rate or payment of principal of the Mezzanine Loan resulting from the enforcement of the Mezzanine Loan Documents or of the Senior Loan resulting from the enforcement of the Senior Loan Documents shall constitute an Enforcement Action.

(v) "EVENT OF DEFAULT" as used herein with respect to the Senior Loan and the Senior Loan Documents means any Event of Default as defined in the Senior Loan Agreement which has occurred, is continuing (i.e., has not been cured by Borrower) and has not otherwise been cured by Mezzanine Lender in accordance with the terms of this Agreement.

(vi) "EXPENSES" has the meaning ascribed thereto in the Mezzanine Loan Agreement.

(vii) "IMPOSITIONS" has the meaning ascribed thereto in the Mezzanine Loan Agreement.

(viii) "INSOLVENCY PROCEEDING" means any proceeding under Title 11 of the United States Code (11 U.S.C. Sec. 101 et. seq.) or any other insolvency, liquidation, reorganization or other similar proceeding concerning Borrower, any action for the dissolution of Borrower, any proceeding (judicial or otherwise) concerning the application of the assets of Borrower, for the benefit of its creditors, the appointment of or any proceeding seeking the appointment of a trustee, receiver or other similar custodian for all or any substantial part of the assets of Borrower or any other action concerning the adjustment of the debts of Borrower, the cessation of business by Borrower, except following a sale, transfer or other disposition of all or substantially all of the assets of Borrower in a transaction permitted under the Senior Loan Documents.

(ix) "INSTITUTIONAL LENDER/OWNER" means (1) Merrill Lynch & Co., Goldman Sachs Group, Inc., Archon Capital, LP, FleetBoston Financial Corp., Wilmington Trust Company and Lennar Corporation or any Affiliates under the Control of any of the aforementioned entities, or (2) one or more of the following: (i) a bank, savings and loan association, investment bank, insurance company, real estate investment trust, commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, trust company, government entity or plan, (ii) an investment company, money management firm or "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act of 1933, as amended, which is regularly engaged in the business of making or owning mezzanine loans of

similar types to the Mezzanine Loan in question, (iii) a trustee in connection with a securitization of the Mezzanine Loan, so long as the trustee, the servicer and special servicer therefor is an entity that otherwise would be an Institutional Lender/Owner, and are approved by the applicable Rating Agencies as approved trustee, servicer or special servicer, as the case may be, or a Delaware business trust in which the trustee is an Institutional Lender/Owner and the majority of each class (including any controlling class) of beneficial interests in such securitization or trust is (and shall at all times remain under the governing provisions of such securitization or trust) under the Control of an Institutional Lender/Owner (iv) an institution substantially similar to any of the foregoing described in clauses (i), (ii), or (iii) of this definition, which, in each case of clauses (i), (ii), (iii), or (iv) of this definition, (A) has total assets (in name or under management) in excess of \$800,000,000 and (except with respect to a pension advisory firm or similar fiduciary) capital/statutory surplus or shareholder's equity of \$300,000,000, and (B) is regularly engaged in the business of making or owning commercial loans, and either owns, operates, invests in or lends on hotels or has hired an advisory firm that owns, operates, invests in or lends on hotels, (v) any entity Controlled (as defined below) by any of the entities described in clause (i) above, or (vi) any other entity approved by the Rating Agencies as evidenced by a Rating Confirmation Letter. For purposes of this definition only, "Control" means the ownership, directly or indirectly, in the aggregate of more than fifty percent (50%) of the beneficial ownership interests of an entity or the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity, whether through the ability to exercise voting power, by contract or otherwise ("Controlled" has the meaning correlative thereto). The preapproval by the Rating Agencies of the entities in clause (1) above shall apply only to the extent that interests in the Mezzanine Loan are acquired by such entities within one (1) year of the date hereof, or in the case of Lennar Corporation or its Affiliates within ninety (90) days of the date hereof.

(x) "MEZZANINE LOAN" means all obligations of Mezzanine Borrower now or hereafter arising under the Mezzanine Loan Documents, whether for principal, interest, default interest, exit fees, fees on account of loan servicing and other fees, costs and expenses payable to Mezzanine Lender pursuant to the Mezzanine Loan Documents (including, without limitation, reasonable attorneys' fees and disbursements), and all amounts payable to Mezzanine Lender in respect of any breach of a representation or warranty made in the Mezzanine Loan Documents or protective advance made by Mezzanine Lender pursuant to the Mezzanine Loan Documents to protect and preserve the Premises and Mezzanine Lender's rights and security under the Mezzanine Loan Documents.

(xi) "NON-SUSCEPTIBLE DEFAULT" means any default by Borrower under the Senior Loan Documents which cannot be cured by Mezzanine Lender without obtaining possession of the Premises.

(xii) "OTHER GUARANTY/INDEMNITY" means any guaranty or indemnity granted in favor of Mezzanine Lender or Senior Lender, as applicable, by any Person other than Mezzanine Borrower or Borrower, as applicable (such as, for example, any indemnity against environmental liabilities).

(xiii) "PERSON" means any individual, sole proprietorship, corporation, general partnership, limited partnership, limited liability company or partnership, joint venture,

association, joint stock company, bank, trust, estate unincorporated organization, any federal, state, county or municipal government (or any agency or political subdivision thereof) endowment fund or any other form of entity.

(xiv) "RATING AGENCIES" shall mean, prior to the final Securitization of the Senior Loan, each of Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., Moody's Investors Service, Inc. and Fitch, Inc., or any other nationally-recognized statistical rating agency which has been designated by Senior Lender and, after the final Securitization of the Senior Loan, shall mean any of the foregoing that have rated any of the certificates issued in connection with such Securitization.

(xv) "RATING CONFIRMATION LETTER" means a letter issued by each applicable Rating Agency confirming that the taking of the action referenced therein will not result in any qualification, withdrawal or downgrade of any certificates issued in connection with the Securitization of the Senior Loan.

(xvi) "SECURITIZATION" has the meaning ascribed thereto in the Mezzanine Loan Agreement.

(xvii) "SENIOR LOAN" means all obligations of Borrower now or hereafter arising under the Senior Loan Documents, whether for principal, interest, default interest, prepayment fees, fees on account of loan servicing and other fees, costs and expenses payable to Senior Lender as holder of the Senior Note pursuant to the Senior Loan Documents (including, without limitation, reasonable attorneys' fees and disbursements), and all amounts payable to Senior Lender in respect of any breach of a representation or warranty made in the Senior Loan Documents or protective advance made by Senior Lender pursuant to the Senior Loan Documents to protect and preserve the Premises and rights and security of Senior Lender as holder of the Senior Note under the Senior Loan Documents.

(xviii) "SENIOR LOAN DEFAULT NOTICE" has the meaning ascribed thereto in Section 8.

(xix) "SEPARATE COLLATERAL" means (a) all collateral and all products or proceeds thereof pledged and all rights and remedies granted pursuant to Mezzanine Lender's Equity Pledge Agreement and (b) the accounts (and monies therein from time to time) established pursuant to Mezzanine Lender's Cash Management Agreement, in each case not directly constituting security for the Senior Loan or any proceeds therefrom.

(xx) "SEPARATE COLLATERAL ENFORCEMENT ACTION" means any action or proceeding or other exercise of Mezzanine Lender's rights and remedies commenced by Mezzanine Lender, in law or in equity, or otherwise, in order to realize upon the Separate Collateral.

(xxi) "TRANSFER" means any assignment, conveyance, sale, transfer, mortgage, encumbrance, grant of a security interest or issuance of a participation interest, directly or indirectly, by operation of law or otherwise.

(b) For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(i) all capitalized terms defined in the recitals to this Agreement shall have the meanings ascribed thereto whenever used in this Agreement;

(ii) the terms defined in this Agreement have the meanings assigned to them in this Agreement, and the use of any gender herein shall be deemed to include the other genders;

(iii) all references in this Agreement to designated Sections, Subsections, Paragraphs, Articles, Exhibits, Schedules and other subdivisions or addenda without reference to a document are to the designated sections, subsections, paragraphs and articles and all other subdivisions of and exhibits, schedules and all other addenda to this Agreement, unless otherwise specified;

(iv) a reference to a Subsection without further reference to a Section is a reference to such Subsection as contained in the same Section in which the reference appears, and this rule shall apply to paragraphs and other subdivisions;

(v) the headings and captions used in this Agreement are for convenience of reference only and do not define, limit or describe the scope or intent of the provisions of this Agreement;

(vi) the terms "includes" or "including" shall mean without limitation by reason of enumeration;

(vii) the words "herein", "hereof", "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular provision;

(viii) the words "to Mezzanine Lender's knowledge" or "to the knowledge of Mezzanine Lender" (or words of similar meaning) shall mean to the actual knowledge of officers or agents, including without limitation, any servicer of Mezzanine Lender with direct oversight responsibility for the Mezzanine Loan without independent investigation or inquiry and without any imputation whatsoever; and

(ix) the words "to Senior Lender's knowledge" or "to the knowledge of Senior Lender" (or words of similar meaning) shall mean to the actual knowledge of officers or agents, including without limitation, any servicer of Senior Lender with direct oversight responsibility for the Senior Loan without independent investigation or inquiry and without any imputation whatsoever.

## 2. APPROVAL OF LOANS AND LOAN DOCUMENTS.

(a) Mezzanine Lender hereby acknowledges that (i) it has received and reviewed and, subject to the terms and conditions of this Agreement, hereby consents to the making of the Senior Loan (ii) the execution and delivery of the Senior Loan Documents will not constitute a default or an event which, with the giving of notice or the lapse of time, or both,

would constitute a default under the Mezzanine Loan Documents, (iii) Senior Lender is under no obligation or duty to, nor has Senior Lender represented that it will see to, the application of the proceeds of the Senior Loan by Borrower or any other Person to whom Senior Lender disburses such proceeds and (iv) any application or use of such proceeds for purposes other than those provided in the Senior Loan Documents shall not affect, impair or defeat the terms and provisions of this Agreement.

(b) Senior Lender hereby acknowledges that (i) it has received and reviewed, and, subject to the terms and conditions of this Agreement, hereby consents to the making of the Mezzanine Loan (ii) the execution and delivery of the Mezzanine Loan Documents will not constitute a default or an event which, with the giving of notice or the lapse of time, or both, would constitute a default under the Senior Loan Documents, (iii) Mezzanine Lender is under no obligation or duty to, nor has Mezzanine Lender represented that it will see to, the application of the proceeds of the Mezzanine Loan by Mezzanine Borrower or any other Person to whom Mezzanine Lender disburses such proceeds and (iv) any application or use of such proceeds for purposes other than those provided in the Mezzanine Loan Documents shall not affect, impair or defeat the terms and provisions of this Agreement.

### 3. REPRESENTATIONS AND WARRANTIES.

(a) Mezzanine Lender hereby represents and warrants as follows:

(i) The Mezzanine Loan is now outstanding in the full amount thereof and the Mezzanine Loan Documents (x) to Mezzanine Lender's knowledge, have been duly authorized, executed and delivered by Mezzanine Borrower and (y) have not been amended, modified, supplemented or restated. The documents listed in Section 3.1(a)(2) of the Mezzanine Loan Agreement is a true, correct and complete listing of all of the Mezzanine Loan Documents as of the date hereof. To Mezzanine Lender's knowledge, there currently exists no default or event which, with the giving of notice or the lapse of time, or both, would constitute a default under any of the Mezzanine Loan Documents.

(ii) Mezzanine Lender is the legal and beneficial owner of the entire Mezzanine Loan free and clear of any lien, security interest, option or other charge or encumbrance, other than any lien or security interest granted to any Loan Pledgee (as hereinafter defined) as contemplated by the provisions of Section 12(b) hereof.

(iii) There are no conditions precedent to the effectiveness of this Agreement that have not been satisfied or waived.

(iv) Mezzanine Lender has, independently and without reliance upon Senior Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement.

(v) It is duly organized and is validly existing under the laws of the jurisdiction under which it was organized with full power to execute, deliver, and perform this Agreement and consummate the transactions contemplated hereby.

(vi) All actions necessary to authorize the execution, delivery, and performance of this Agreement on behalf of Mezzanine Lender have been duly taken, and all such actions continue in full force and effect as of the date hereof.

(vii) It has duly executed and delivered this Agreement and this Agreement constitutes the legal, valid, and binding agreement of Mezzanine Lender enforceable against Mezzanine Lender in accordance with its terms subject to (y) applicable bankruptcy, reorganization, insolvency and moratorium laws, and (z) general principles of equity which may apply regardless of whether a proceeding is brought in law or in equity.

(viii) To Mezzanine Lender's knowledge, no consent of any other Person and no consent, license, approval, or authorization of, or exemption by, or registration or declaration or filing with, any governmental authority, bureau or agency is required in connection with the execution, delivery or performance by Mezzanine Lender of this Agreement or consummation by Mezzanine Lender of the transactions contemplated by this Agreement.

(ix) The Mezzanine Loan Documents are not cross-defaulted with any other loan from Mezzanine Lender to Mezzanine Borrower or to any other Affiliate of Borrower.

(b) Senior Lender hereby represents and warrants as follows:

(i) The Senior Loan is now outstanding in the full amount thereof and the Senior Loan Documents (x) to Senior Lender's knowledge, have been duly authorized, executed and delivered by Borrower and (y) have not been amended, modified, supplemented or restated. The documents listed on Schedule 3.1(A) of the Senior Loan Agreement is a true, correct and complete listing of the Senior Loan Documents as of the date hereof. To Senior Lender's knowledge, there currently exists no default or event which, with the giving of notice or the lapse of time, or both, would constitute a default under any of the Senior Loan Documents.

(ii) Lender is the legal and beneficial owner of the Senior Note free and clear of any lien, security interest, option or other charge or encumbrance and subject to the rights of First Union National Bank and Prudential Mortgage Capital Company, LLC under that certain Co-Lender Agreement, dated as of the date hereof. Notwithstanding such Co-Lender Agreement, Mezzanine Lender may continue to deal exclusively with Senior Lender as holder of the Senior Loan hereunder.

(iii) There are no conditions precedent to the effectiveness of this Agreement that have not been satisfied or waived.

(iv) Senior Lender has, independently and without reliance upon Mezzanine Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement.

(v) It is duly organized and is validly existing under the laws of the jurisdiction under which it was organized with full power to execute, deliver, and perform this Agreement and consummate the transactions contemplated hereby.

(vi) All actions necessary to authorize the execution, delivery, and performance of this Agreement on behalf of Senior Lender have been duly taken, and all such actions continue in full force and effect as of the date hereof.

(vii) It has duly executed and delivered this Agreement and this Agreement constitutes the legal, valid, and binding agreement of Senior Lender enforceable against Senior Lender in accordance with its terms subject to (y) applicable bankruptcy, reorganization, insolvency and moratorium laws and (z) general principles of equity which may apply regardless of whether a proceeding is brought in law or in equity.

(viii) To Senior Lender's knowledge, no consent of any other Person and no consent, license, approval, or authorization of, or exemption by, or registration or declaration or filing with, any governmental authority, bureau or agency is required in connection with the execution, delivery or performance by Senior Lender of this Agreement or consummation by Senior Lender of the transactions contemplated by this Agreement.

(ix) The Senior Loan Documents are not cross-defaulted with any other loan from Senior Lender to Borrower or Mezzanine Borrower or any other Affiliate of Borrower, and the Premises do not secure any such other loan from Senior Lender to Borrower or Mezzanine Borrower or any other Affiliate of Borrower.

#### 4. MODIFICATIONS, AMENDMENTS, ETC.

(a) Notwithstanding any provision in the Mezzanine Loan Documents, the Senior Lender shall have the right to modify, amend, consolidate, spread, restate or waive any provision of the Senior Loan Documents without obtaining the consent of Mezzanine Lender provided that, prior to the occurrence of an Event of Default and the commencement of an Enforcement Action by the Senior Lender, no such modification, amendment, consolidation, spreader, restatement or waiver shall: (i) increase the interest rate, amortization rate or principal amount of the Senior Note except as presently and expressly set forth in the Senior Loan Documents, (ii) increase in any other material respect any monetary obligations or modify any default provisions of Borrower or Guarantor under the Senior Loan Documents, (iii) extend or shorten the scheduled maturity date of the Senior Loan, provided that Senior Lender may extend the maturity in connection with a work-out or other surrender, compromise, release, renewal or indulgence relating to repayment of the Senior Note or as otherwise presently and expressly set forth in the Senior Loan Documents, (iv) converts or exchanges the Senior Loan into or for any other indebtedness or subordinates any of the Senior Loan to any indebtedness of Borrower or adds or modifies transfer provisions which would restrict or prohibit the Mezzanine Lender from realizing on the Separate Collateral, (v) cross-default the Senior Loan with any other indebtedness, (vi) amends or modifies the cash flow provisions set forth in the Senior Lender's Lockbox Agreement, (vii) obtains any contingent interest, additional interest or so-called "kicker" measured on the basis of the cash flow or appreciation of the Premises, in any case, senior in lien right or right to payment to the Mezzanine Loan, or (viii) spreads the lien of the Senior Mortgage to encumber additional real property or other Collateral of the Borrower. Notwithstanding the foregoing (A) any amounts funded by the Senior Lender under the Senior Loan Documents as a result of the making of any protective advances or other advances by the Senior Lender (or any servicer, special servicer or trustee) expressly permitted by the terms of



the Senior Loan Documents, or (B) interest accruals or accretions and any compounding thereof (including default interest) shall not at any time be deemed to contravene this Section 4(a). Notwithstanding any provisions herein to the contrary, Senior Lender agrees that no default or Event of Default under the Mezzanine Loan Documents shall, in and of itself, constitute or give rise to a default or Event of Default under the Senior Loan Documents, entitle the Senior Lender to accelerate payments under the Senior Loan Documents or entitle Senior Lender to modify any provisions of the Senior Loan Documents.

(b) The Senior Lender shall deliver to the Mezzanine Lender copies of any and all modifications, amendments, extensions, consolidations, spreaders, restatements, alterations, changes or revisions to any one or more of the Senior Loan Documents (including, without limitation, any side letters, waivers or consents entered into, executed or delivered by the Senior Lender) within a reasonable time after any of such applicable instruments have been executed by the Senior Lender.

(c) Notwithstanding any provision in the Senior Loan Documents, the Mezzanine Lender shall have the right to enter into, execute and agree to modify, amend, consolidate, spread, restate or waive any provision of the Mezzanine Loan Documents without obtaining the consent of the Mortgage Lender, provided no such modification, amendment, consolidation, spreader, restatement or waiver shall (i) increase the principal amount secured by the Mezzanine Loan, (ii) increase the interest rate payable under the Mezzanine Loan, (iii) provide for the payment of any additional interest, kicker or similar equity feature, (iv) modify the maturity date of the Mezzanine Loan provided that Mezzanine Lender may extend the maturity in connection with a work-out or other surrender, compromise, release, renewal or indulgence relating to the repayment of the Mezzanine Note, (v) spread the lien of the Mezzanine Loan Documents to encumber any additional collateral, or (vi) cross-default the Mezzanine Loan with any other indebtedness. Notwithstanding the foregoing, any amounts funded by the Mezzanine Lender under the Mezzanine Loan Documents as a result of (A) the making of any protective advances or other advances by Mezzanine Lender expressly permitted by the terms of the Mezzanine Loan Documents and this Agreement, or (B) interest accruals or accretions and any compounding thereof (including default interest) shall not at any time be deemed to contravene this Section 4(c).

(d) The Mezzanine Lender shall deliver to the Senior Lender copies of any and all modifications, amendments, extensions, consolidations, spreaders, restatements, alterations, changes or revisions to any one or more of the Mezzanine Loan Documents, respectively (including, without limitation, any side letters, waivers or consents entered into, executed or delivered by the Mezzanine Lender) within five (5) business days after any of such applicable instruments have been executed by the Mezzanine Lender, as applicable.

(e) Mezzanine Lender shall consent to the amendment or modification of the Mezzanine Borrower's organizational documents upon request by the Senior Lender in order to satisfy requests made by Rating Agencies rating any certificates related to a Securitization.

## 5. SUBORDINATION OF MEZZANINE LOAN AND MEZZANINE LOAN DOCUMENTS.

(a) Mezzanine Lender hereby subordinates and makes junior the Mezzanine Loan, the Mezzanine Loan Documents and the liens and security interests created thereby, and all rights, remedies, terms and covenants contained therein to (i) the Senior Loan, (ii) the liens and security interests created by the Senior Loan Documents and (iii) all of the terms, covenants, conditions, rights and remedies contained in the Senior Loan Documents and any modifications thereto and permitted hereunder, and any modifications to the Mezzanine Loan Documents shall not affect the subordination thereof as set forth hereinabove in this Section.

(b) Except with respect to the Separate Collateral, every document and instrument included within the Mezzanine Loan Documents shall be subject and subordinate to each and every document and instrument included within the Senior Loan Documents and all extensions, modifications, consolidations, supplements, amendments, replacements and restatements of and/or to the Senior Loan Documents.

(c) This Agreement shall not be construed as subordinating and shall not subordinate or impair Mezzanine Lender's first lien priority right, estate and interest in and to the Separate Collateral and Senior Lender hereby acknowledges and agrees that Senior Lender does not have and shall not hereafter acquire, any lien on, or any other interest whatsoever in, the Separate Collateral, or any part thereof, and that Mezzanine Lender's exercise of remedies and realization upon the Separate Collateral in accordance with Section 8 hereof shall not constitute a default or an event of default under the Senior Loan Documents.

(d) Until the satisfaction in full of the Senior Loan, Mezzanine Lender hereby covenants and agrees that it will not acquiesce, petition or otherwise invoke or cause any other Person to invoke an Insolvency Proceeding with respect to Borrower or Mezzanine Borrower or seek to appoint a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official with respect to Borrower or Mezzanine Borrower or all or any part of its property or assets or ordering the winding-up or liquidation of the affairs of Borrower or Mezzanine Borrower. Mezzanine Lender further agrees that the Mezzanine Lender shall not make any election, give any consent, commence any action or file any motion or take any other action in any case by or against the Borrower under the Bankruptcy Code (hereinafter defined) without the prior written consent of Senior Lender, which consent may be given or withheld in Senior Lender's sole discretion. Mezzanine Lender hereby appoints the Senior Lender as its agent, and grants to the Senior Lender an irrevocable power of attorney coupled with an interest, and its proxy, for the purpose of exercising any and all rights and taking any and all actions available to the Mezzanine Lender in connection with any case by or against the Borrower under the Bankruptcy Code, including without limitation, the right to vote to accept or reject a plan, to make any election under Section 1111(b) of the Bankruptcy Code with respect to the Mezzanine Loan and to file a motion to modify the automatic stay with respect to the Mezzanine Loan. Mezzanine Lender hereby agrees that, upon the request of the Senior Lender, the Mezzanine Lender shall execute, acknowledge and deliver to the Senior Lender all and every such further deeds, conveyances and instruments as the Senior Lender may reasonably request for the better assuring and evidencing of the foregoing appointment and grant. In the event of any Insolvency Proceeding of the Mezzanine Borrower, Mezzanine Lender agrees not to seek, and to diligently oppose the action by any other Person to seek, to consolidate the Property or any other assets of the Borrower with the assets of the Mezzanine Borrower or its affiliates.

## 6. PAYMENT SUBORDINATION.

(a) Except as otherwise expressly provided in this Agreement, including, without limitation, Section 6(b) below, all of Mezzanine Lender's rights to payment of the Mezzanine Note and the Mezzanine Loan and the obligations evidenced by the Mezzanine Loan Documents are hereby subordinated to all of Senior Lender's rights to payment by Borrower of the Senior Note and the obligations secured by the Senior Loan Documents, and Mezzanine Lender shall not accept or receive payments (including, without limitation, whether in cash or other property and whether received directly, indirectly or by set-off, counterclaim or otherwise) from Borrower and/or relating to the Premises prior to the date that all obligations of Borrower to Senior Lender with respect to the Senior Note under the Senior Loan Documents which are then due and owing are paid. If there shall have occurred and be continuing an Event of Default under the Senior Loan Documents, Senior Lender shall be entitled to receive payment and performance in full of all amounts due or to become due to Senior Lender before Mezzanine Lender is entitled to receive any payment (including any payment which may be payable by reason of the payment of any other indebtedness of Borrower being subordinated to the payment of the Mezzanine Loan) on account of the Mezzanine Loan. If no Event of Default exists under the Mezzanine Loan Documents, Mezzanine Lender shall not apply any funds held in the Cash Sweep Event Reserve under the Mezzanine Lender's Cash Management Agreement to any prepayments of principal of the Mezzanine Loan, but shall instead remit such amounts to the Senior Lender, to be applied to the Senior Loan. Any sums paid to Senior Lender and applied to the Senior Loan shall not be deemed a payment under the Mezzanine Loan Documents and the Mezzanine Loan shall not be reduced or discharged, in whole or part, by the payment of such sums. All payments or distributions upon or with respect to the Mezzanine Loan which are received by Mezzanine Lender contrary to the provisions of this Agreement shall be received in trust for the benefit of Senior Lender and shall be paid over to Senior Lender in the same form as so received (with any necessary endorsement) to be applied (in the case of cash) to, or held as collateral (in the case of non-cash property or securities) for, the payment or performance of the Senior Loan in accordance with the terms of the Senior Loan Documents.

(b) Notwithstanding anything to the contrary contained in this Agreement, including, without limitation, Section 6(a), provided that (i) no Event of Default under the Senior Loan Documents or Cash Trap Event (as defined in the Senior Loan Documents) shall have occurred and be continuing and (ii) the originally scheduled maturity date of the Senior Loan has not occurred, Mezzanine Lender may accept (x) current payments due and payable from time to time which Mezzanine Borrower is obligated to pay Mezzanine Lender in accordance with the terms and conditions of the Mezzanine Note and the Mezzanine Loan Agreement, (y) payments received by Mezzanine Lender in connection with its exercise of rights and remedies with respect to the Separate Collateral, and (z) prepayments of the Mezzanine Loan, together with any prepayment fee payable pursuant to the Mezzanine Loan Documents other than from funds held in the Cash Sweep Event Reserve under the Mezzanine Lender's Cash Management Agreement and applied by the Mezzanine Lender; provided, however, that if such prepayment is effected in connection with a refinancing of the Mezzanine Loan ("New Mezzanine Loan") which refinancing will not result in the repayment in full of the Senior Loan, the following conditions must be satisfied: (1) the holder of the New Mezzanine Loan is an Institutional Lender/Owner; (2) the principal amount of the New Mezzanine Loan shall not exceed the lesser of (i) \$100,000,000 and (ii) an amount which will produce an aggregate Debt Service Coverage Ratio

(calculated based upon Pro Forma Net Operating Income (as such term is defined in the Senior Loan Agreement) for the Premises for the 12 month period ended immediately prior to such refinancing and projected debt service on the Senior Loan and the New Mezzanine Loan for the 12 months following such refinancing with debt service on the Senior Loan calculated at an interest rate equal to the sum of the Cap Threshold Rate (as such term is defined in the Senior Loan Agreement) plus the then Applicable Spread (as such term is defined in the Senior Loan Agreement) and including required principal amortization payments under the Senior Loan Documents and debt service under the New Mezzanine Loan calculated in the same manner (giving effect to any interest rate cap maintained with respect to the New Mezzanine Loan)) of at least 1.15:1.00; (3) the maturity date of the New Mezzanine Loan shall be on or after the Maturity Date of the Senior Loan; (4) the New Mezzanine Loan documents shall be in form and substance reasonably acceptable to Senior Lender; (5) the Mezzanine Lender shall have delivered a Rating Confirmation Letter from each of the Rating Agencies; (6) the holder of the New Mezzanine Loan shall have executed and delivered a subordination and intercreditor agreement substantially in the form of this Agreement; and (7) Borrower shall have paid all of Senior Lender's reasonable costs and expenses incurred in connection with the review and approval of the New Mezzanine Loan and execution and delivery of all documents provided above including, without limitation, reasonable attorney's fees and disbursements.

(c) Mezzanine Lender may, in its sole and absolute discretion without Senior Lender's consent, take any Separate Collateral Enforcement Action subject to the requirements of Section 8(b); provided, however, that Mezzanine Lender shall provide Senior Lender with copies of any and all material notices, pleadings, agreements, motions and briefs served upon, delivered to or with any party to any Separate Collateral Enforcement Action and otherwise keep Senior Lender reasonably apprised as to the status of any Separate Collateral Enforcement Action (it being understood, however, that Mezzanine Lender's failure in good faith so to do shall not diminish Mezzanine Lender's rights hereunder).

#### 7. RIGHTS OF SUBROGATION.

(a) Mezzanine Lender hereby waives any requirement that Senior Lender marshal any assets in connection with any foreclosure of any security interest or any other realization upon collateral in respect of the Senior Loan Documents, or that Senior Lender exhaust its remedies against any portion of the Premises or collateral under the Senior Loan Documents. Each of Mezzanine Lender or Senior Lender assumes all responsibility for keeping itself informed as to the condition (financial or otherwise) of Borrower, the condition of the Premises and all other collateral and other circumstances and, except for notices expressly required by this Agreement, neither Senior Lender nor Mezzanine Lender shall have any duty whatsoever to obtain, advise or deliver information or documents to the other relative to such condition, business, assets and/or operations. Mezzanine Lender agrees that Senior Lender owes no fiduciary duty to Mezzanine Lender in connection with the administration of the Senior Loan and the Senior Loan Documents and Mezzanine Lender agrees never to assert any such claim. Senior Lender agrees that Mezzanine Lender owes no fiduciary duty to Senior Lender in connection with the administration of the Mezzanine Loan and the Mezzanine Loan Documents and Senior Lender agrees never to assert any such claim.

(b) Provided that any of Mezzanine Lender's rights of subrogation against the Borrower, the Premises or any other collateral under the Senior Loan Documents be fully subordinate in all respects to all rights of the Senior Lender and not be exercisable until the indefeasible payment in full of all the amounts due and owing to Senior Lender under the Senior Loan Documents, Mezzanine Lender shall be subrogated to the rights of Senior Lender to recover from Borrower, the Premises or any other collateral, all payments, distributions and protective advances made to Senior Lender pursuant to the provisions of this Agreement by Mezzanine Lender, together with interest thereon at the applicable default rate under the Mezzanine Loan Documents.

#### 8. RIGHTS OF CURE.

(a) Prior to Senior Lender commencing any Enforcement Action by reason of a default under the Senior Loan Documents, Senior Lender shall provide written notice of such default to Mezzanine Lender whether or not Senior Lender is obligated to give notice thereof to Borrower (each, a "Senior Loan Default Notice") and shall permit Mezzanine Lender an opportunity to cure such default upon the following terms. If the default is a monetary default relating to a liquidated sum of money, Mezzanine Lender shall have two (2) business days after the giving of the Senior Loan Default Notice with respect to a regular monthly debt service payment and the later of the applicable cure period under the Senior Loan Documents and five (5) business days with respect to other monetary obligations under the Senior Loan Documents (which Senior Loan Default Notice shall be given concurrently with the notice to Borrower under the Senior Loan Documents) in which to fully cure such monetary default. If the default is of a non-monetary nature (other than defaults defined in clauses (G), (H) and (I) of Section 8.1 of the Senior Loan Agreement), Mezzanine Lender shall be given the Senior Loan Default Notice concurrently with the notice to Borrower under the Senior Loan Documents and a cure period of thirty (30) days (or in the case of a Non-Susceptible Default, the longer of sixty (60) days and written notice of the commencement of an Enforcement Action by Senior Lender) beyond such cure period provided to Borrower under the Senior Loan Documents in which to fully cure such non-monetary default provided in each case, Mezzanine Lender is proceeding with due diligence to cure such default, and such default does not materially adversely affect the value of the Premises or Senior Lender's interest therein or the ability of the Senior Lender to enforce its rights and remedies under the Senior Loan Documents. If Mezzanine Lender cures a default after the giving of the Senior Loan Default Notice, any default interest which might otherwise be due will be reduced to the lesser of (x) default interest as provided under the Senior Loan Documents and (y) the costs and fees, including interest on advances, due to, or incurred by, the servicer, special servicer, trustee or fiscal agent of the Senior Loan. If the default is a maturity date payment default under the Senior Loan, the Mezzanine Lender shall have a one time right, within five (5) business days of the maturity date of the Senior Loan to extend the term for 30 days by making a Monthly Debt Service Payment for such 30 day period. If the Borrower or Mezzanine Lender does not make the maturity date payment within such 30 day extension period the Mezzanine Lender shall have the right to purchase the Senior Loan pursuant to the terms of Section 10 herein.

(b) To the extent that Mezzanine Lender or any Institutional Lender/Owner, in accordance with the provisions and conditions of this Agreement, acquires the ownership interests in Borrower pursuant to a Separate Collateral Enforcement Action, Mezzanine Lender

or such Institutional Lender/Owner shall acquire the same subject to the Senior Loan and the terms, conditions and provisions of the Senior Loan Documents for the balance of the term thereof, which shall not be accelerated by Senior Lender solely due to such acquisition; provided, however, that (A) Mezzanine Lender or such Institutional Lender/Owner shall prior to such acquisition, have agreed in writing, subject to such exculpatory provisions as shall be set forth in the Senior Loan Documents, thereafter to perform, or cause to be performed, all of the terms, conditions and provisions of the Senior Loan Documents on Borrower's part to be performed, it being understood and agreed, however, that if Mezzanine Lender or any Institutional Lender/Owner shall succeed to the ownership interests in Borrower pursuant to a Separate Collateral Enforcement Action, Senior Lender shall not demand the immediate payment of any amounts due and payable to Senior Lender which are secured by the Senior Loan Documents if such right of Senior Lender to demand immediate payment of said amounts is due to a violation of any "due on sale", change in management or similar provision contained in the Senior Loan Documents caused solely by Mezzanine Lender or such Institutional Lender/Owner succeeding to the ownership interests in Borrower pursuant to a Separate Collateral Enforcement Action in accordance with the terms hereof, (B) prior to such acquisition, Senior Lender has received a Rating Confirmation Letter with respect to the exercise of remedies and the acquisition of the ownership interest in the Borrower by Mezzanine Lender or any Institutional Lender/Owner, (C) prior to such acquisition, Senior Lender has received an acceptable substantive nonconsolidation opinion with respect to the Borrower and the acquired ownership interests therein based on the current rating agency standards and (D) prior to such acquisition, Senior Lender has received a management agreement, substantially in the form of the existing management agreement or otherwise in form and substance reasonably acceptable to the Senior Lender, between Mezzanine Lender or such Institutional Lender/Owner and an Approved Manager (as hereinafter defined) or such other property manager approved pursuant to Section 9(a) hereof. Notwithstanding any contrary or inconsistent provision of this Agreement, the Senior Loan Documents or the Mezzanine Loan Documents, no assumption, acquisition or other fee or similar charge shall be due in connection with Mezzanine Lender's or such other Institutional Lender/Owner's acquisition of any interest in Borrower or the Premises as the result of a Separate Collateral Enforcement Action or assignment in lieu of foreclosure or other negotiated settlement in lieu of any of the foregoing.

(c) So long as no Event of Default shall have occurred and be continuing under the Senior Loan Documents which has not been cured by Mezzanine Lender pursuant to this Agreement, all funds held and applied pursuant to Senior Lender's Lockbox Agreement, shall continue to be applied pursuant thereto.

#### 9. NO ACTIONS; RESTRICTIVE PROVISIONS.

(a) So long as either the Senior Loan or Mezzanine Loan is outstanding and either the Senior Loan Documents or Mezzanine Loan Documents are in force and effect, neither Mezzanine Lender nor Senior Lender will take any action which would effect the termination or modification of any management agreement now or hereafter affecting or pertaining to the Premises other than in connection with an Enforcement Action against the Borrower, property manager or the Premises. Unless the Senior Lender is exercising its rights under the Senior Loan Documents to cause the Borrower to replace the property manager, Mezzanine Lender shall, upon the occurrence of any event of default or any other event which gives the Mezzanine

Lender the right to terminate the property manager under the Mezzanine Loan Documents, be entitled to designate a replacement property manager for the Premises who has sufficient experience in managing properties similar to the Premises. Senior Lender hereby approves the property managers listed on Schedule 1 attached hereto, as acceptable replacement property managers (each, an "APPROVED MANAGER"). If the property manager designated by the Mezzanine Lender is not an Approved Manager, the replacement property manager shall be subject to the Senior Lender's prior written approval, not to be unreasonably withheld or delayed, and receipt of a Rating Confirmation Letter with respect to the replacement property manager.

(b) Senior Lender shall not (i) designate, replace or change the servicer or depository bank as provided under the Senior Loan Documents without prior written notice to Mezzanine Lender, (ii) modify any insurance coverage affecting the Premises without prior written notice to Mezzanine Lender provided that Senior Lender shall not modify the insurance requirements set forth in the Senior Loan Documents regarding the amounts and types of coverage or the credit ratings of the insurers without Mezzanine Lender's prior written consent not to be unreasonably withheld or delayed, or (iii) execute any easement, REA or right of way affecting the Premises that would have a material adverse affect on the value of the Premises if the consent of Senior Lender is required pursuant to the Senior Loan Agreement without first obtaining the prior written consent of Mezzanine Lender not to be unreasonably withheld or delayed.

(c) Senior Lender promptly shall notify Mezzanine Lender if Borrower seeks or requests a release of the liens securing the Senior Loan or seeks or requests Senior Lender's consent to, or take any action in connection with or in furtherance of, a Transfer of the Premises or a mortgage refinancing of the Senior Loan. Provided that no Event of Default has occurred which has resulted in the commencement of an Enforcement Action under the Senior Loan, Senior Lender shall not consent to a Transfer of or further encumbrance on the Premises or any portion thereof without the prior written consent of the Mezzanine Lender (to the extent Senior Lender has consent rights under the Senior Loan Documents) unless such Transfer or encumbrance is expressly permitted under the Senior Loan Documents and the proceeds of such Transfer or encumbrance repay the Mezzanine Loan in full. Within ninety (90) days of the scheduled maturity date of the Senior Loan, to the extent Senior Lender has consent rights under the Senior Loan Documents, the Senior Lender will not be required to obtain the consent of the Mezzanine Lender in connection with the sale of the Premises for its "fair market value" as determined by Senior Lender in good faith; provided, further, however that in connection with the sale of the Premises for its "fair market value" the Senior Lender will cause, to the extent it has such rights under the Senior Loan Documents, all amounts in excess of amounts due on the Senior Loan to be applied toward amounts outstanding under the Mezzanine Loan. Notwithstanding anything contained in the Mezzanine Loan Documents to the contrary, Mezzanine Lender, to the extent Mezzanine Lender has consent rights under the Mezzanine Loan Documents, will consent to a refinancing (the "TAKE OUT LOAN") of the Senior Loan if (i) the proceeds of the Take Out Loan does not exceed the balance of the Senior Loan on the refinancing date plus reasonable closing costs of the Take Out Loan, (ii) either (a) the monthly principal payment is not greater than the monthly principal due under the Senior Loan or (b) the amortization schedule for the Take Out Loan is no shorter than the current amortization schedule for the Senior Loan, (iii) the interest rate for the Take Out Loan is not greater than the prevailing

market interest rates for similar types of loans at the time of the refinancing and (iv) if the Take Out Loan does not produce sufficient proceeds to also repay the Mezzanine Loan in full, all amounts in excess of amounts due on the Senior Loan plus reasonable costs of the Take Out Loan are applied pursuant to the terms of the refinancing loan to the outstanding principal amount of the Mezzanine Loan and the Take Out Loan shall be subject to the terms of this Agreement..

(d) ANNUAL BUDGET. The Mezzanine Lender shall have the right to reasonably approve the annual operating budget of the Borrower in accordance with the terms of the Mezzanine Loan Documents. In the event the Mezzanine Lender objects to any such proposed budget, the Mezzanine Lender shall advise the Senior Lender of such objections, along with its suggestions for changes, within five (5) days after its receipt of such budget in accordance with the Mezzanine Loan Documents. The Mezzanine Lender shall consent to any changes in the budget requested by the Senior Lender.

(e) CONSENT RIGHTS. If the Mezzanine Loan Documents contain any provision or requirement that Mezzanine Lender's consent or approval be obtained for any act or determination by Borrower or Mezzanine Borrower in connection with the leasing of the Premises or alterations to the Premises, the Mezzanine Lender hereby agrees that it shall first advise the Senior Lender of whether the Mezzanine Lender objects to the requested consent or approval within ten (10) days after its receipt of a written request for a consent or approval from the Mezzanine Borrower. To the extent that such consent or approval is also required by the Senior Lender under the Senior Loan Documents, the Senior Lender shall consult with the Mezzanine Lender with respect to any such consent or approval right of the Mezzanine Lender. The Mezzanine Lender agrees that the Senior Lender's decision with respect to such consent or approval request shall govern. In addition, any right of Mezzanine Lender with respect to providing consent or approval to actions or determinations of the Borrower or Mezzanine Borrower relating to the Premises or the Senior Loan Documents shall be subject and limited to all rights of the Senior Lender as set forth in this Agreement.

10. PURCHASE OF SENIOR LOAN. Mezzanine Lender shall have the right of first offer to purchase the Senior Note in an amount equal to the outstanding principal plus accrued interest and any prepayment fees, advances made by, or on behalf of, the Senior Lender and other amounts owing under the Senior Loan Documents (including the lesser of default interest and the costs, fees and interest on advances due to, or incurred by, the servicer, special servicer, trustee or fiscal agent with respect to the Senior Loan) for a period of 30 days following receipt of written notice of an Event of Default under the Senior Loan Documents and the acceleration of the Senior Loan, whereupon Senior Lender will accept such payment in accordance with the Borrower's rights under the Senior Loan Documents to repay the Senior Loan, notwithstanding the occurrence and continuance of an Event of Default and will take such actions under the Senior Loan Documents as it would otherwise take upon a repayment of the Senior Loan by Borrower, provided that Mezzanine Lender shall not be required to pay any late charges or any default interest in excess of the costs, fees and interest on advances due to, or incurred by, the servicer, special servicer, trustee, or fiscal agent of the Senior Loan if the Event of Default is a maturity date payment default under the Senior Loan. Upon such purchase and upon Mezzanine Lender's request, Senior Lender will assign all of its right, title and interest in and to the Senior Note and the Senior Loan Documents to Mezzanine Lender or its designee, without



representation, warranty or covenant, express or implied of any kind whatsoever, except as to Senior Lender's free and clear ownership thereof and the outstanding principal balance of the Senior Loan. If and when the Senior Loan is purchased pursuant to this Section 10 and the Mezzanine Loan shall remain outstanding, then upon Mezzanine Lender's request, Senior Lender shall assign to Mezzanine Lender all of Senior Lender's right, title and interest in, to and under the Senior Lender's Lockbox Agreement and all accounts thereunder, without recourse, representation or warranty, express or implied of any nature or kind whatsoever. The right of Mezzanine Lender to purchase the Senior Loan shall automatically terminate upon a foreclosure sale, sale by power of sale or delivery of a deed in lieu of foreclosure or sale of the Senior Loan by the Senior Lender in connection with an Event of Default under the Senior Loan.

11. OBLIGATIONS HEREUNDER NOT AFFECTED.

(a) All rights, interests, agreements and obligations of Senior Lender and Mezzanine Lender under this Agreement shall remain in full force and effect irrespective of:

(i) any lack of validity or enforceability of the Senior Loan Documents or the Mezzanine Loan Documents or any other agreement or instrument relating thereto;

(ii) any taking, exchange, release or non-perfection of any other collateral, or any taking, release or amendment or waiver of or consent to or departure from any guaranty, for all or any portion of the Senior Loan or the Mezzanine Loan;

(iii) any manner of application of collateral, or proceeds thereof, to all or any portion of the Senior Loan or the Mezzanine Loan, or any manner of sale or other disposition of any collateral for all or any portion of the Senior Loan or the Mezzanine Loan or any other assets of Borrower or Mezzanine Borrower or any other Affiliates of Borrower;

(iv) any change, restructuring or termination of the corporate structure or existence of Borrower or Mezzanine Borrower or any other Affiliates of Borrower; or

(v) any other circumstance which might otherwise constitute a defense available to, or a discharge of, Borrower, Mezzanine Borrower or a subordinated creditor or a Senior Lender subject to the terms hereof.

(b) This Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any payment of all or any portion of the Senior Loan is rescinded or must otherwise be returned by Senior Lender or Mezzanine Lender upon the insolvency, bankruptcy or reorganization of Borrower or otherwise, all as though such payment had not been made.

12. TRANSFERS.

(a) Senior Lender may, from time to time, in its sole discretion upon written notice to Mezzanine Lender, Transfer all or any of the Senior Loan or any interest therein, provided that the terms and conditions of this Agreement shall be binding on Senior Lender's successors and assigns, and notwithstanding any such Transfer or subsequent Transfer, the Senior Loan and the Senior Loan Documents shall be and remain a senior obligation in the

respects set forth in this Agreement to the Mezzanine Loan and the Mezzanine Loan Documents in accordance with the terms and provisions of this Agreement.

(b) Mezzanine Lender may not Transfer all or any of the Mezzanine Loan or any interest therein without the written consent of the Senior Lender and receipt of a Rating Confirmation Letter, except for a Transfer: (x) to an Institutional Lender/Owner, provided that any Institutional Lender/Owner assumes in writing the obligations of Mezzanine Lender hereunder accruing from and after such Transfer and agrees to be bound by the terms and provisions hereof, thereupon such Transfer to an Institutional Lender/Owner shall be deemed permitted under the Senior Loan Documents, (y) to the counterparty to any repurchase arrangement which is an Institutional Lender/Owner entered into by Mezzanine Lender with respect to the Mezzanine Loan (a "REPURCHASE") or (z) to a Loan Pledgee (as hereinafter defined). Notwithstanding any other provision hereof, Senior Lender consents to Mezzanine Lender's pledge (a "PLEDGE") of the Mezzanine Loan and of the Separate Collateral to any Institutional Lender/Owner which has extended a credit facility to Mezzanine Lender (a "LOAN PLEDGEE"), on the terms and conditions set forth in this subsection (b). Upon written notice by Mezzanine Lender to Senior Lender that the Pledge has been effected, Senior Lender agrees to acknowledge receipt of such notice and thereafter agrees: (a) to give Loan Pledgee written notice of any default by Mezzanine Lender under this Agreement and any amendment, modification, waiver or termination of any of Mezzanine Lender's rights under this Agreement; (b) that Senior Lender shall deliver to Loan Pledgee such estoppel certificate(s) as Loan Pledgee shall reasonably request, provided that any such certificate(s) shall be in the form and upon the conditions set forth in Section 14 herein; and (c) that, upon written notice (a "REDIRECTION NOTICE") to Senior Lender by Loan Pledgee that Mezzanine Lender is in default, beyond applicable cure periods, under Mezzanine Lender's obligations to Loan Pledgee pursuant to the applicable credit agreement between Mezzanine Lender and Loan Pledgee (which notice need not be joined in or confirmed by Mezzanine Lender), and until such Redirection Notice is withdrawn or rescinded by Loan Pledgee, any payments to which the Mezzanine Lender is entitled from time to time pursuant to this Agreement, or any other agreement between Senior Lender and Mezzanine Lender that relates to the Senior Loan shall be paid or directed to Loan Pledgee. Mezzanine Lender hereby unconditionally and absolutely releases Senior Lender from any liability to Mezzanine Lender on account of Senior Lender's compliance with any Redirection Notice reasonably believed by Senior Lender to have been delivered in good faith. Loan Pledgee shall be permitted to fully exercise its rights and remedies against Mezzanine Lender, and realize on any and all collateral granted by Mezzanine Lender to Loan Pledgee (and accept an assignment in lieu of foreclosure as to such collateral), in accordance with applicable law and the provisions of this Agreement. In such event, the Senior Lender shall recognize Loan Pledgee, and its successors and assigns which are Institutional Lender/Owners as the successor to Mezzanine Lender's rights, remedies and obligations under this Agreement and the Mezzanine Loan Documents. The rights of Loan Pledgee under this subsection (b) shall remain effective unless and until Loan Pledgee shall have notified the Senior Lender in writing that its interest in the Mezzanine Loan has terminated.

13. NOTICES. All notices, demands and requests required or desired to be given hereunder shall be in writing and shall be delivered in person, by United States registered or certified mail, return receipt requested, postage prepaid, or by overnight courier addressed as follows:

To Mezzanine Lender:

Merrill Lynch Mortgage Capital Inc.  
Four World Financial Center, 10th Floor  
New York, New York 10080  
Attn: Steven Glassman and David Mahoney

with a copy to:

Sidley & Austin  
875 Third Avenue  
New York, New York 10022  
Attn: Alan S. Weil

To Senior Lender:

Merrill Lynch Mortgage Lending, Inc.  
c/o Merrill Lynch & Company  
100 Church Street, 18th Floor  
New York, New York 10080  
Attn: Andrea Balkan

with a copy to:

Willkie Farr & Gallagher  
787 Seventh Avenue  
New York, New York 10019-6099  
Attn: David S. Wolin, Esq.

or at such other addresses or to the attention of such other Persons as may from time to time be designated by the party to be addressed by written notice to the other in the manner herein provided. Notices, demands and requests given in the manner aforesaid shall be deemed sufficiently served or given for all purposes hereunder when received or when delivery is refused or when the same are returned to sender for failure to be called for.

14. ESTOPPEL.

(a) Mezzanine Lender shall, within fifteen (15) days following a request from Senior Lender, provide Senior Lender with a written statement setting forth to its knowledge the then current outstanding principal balance of the Mezzanine Loan, the aggregate accrued and unpaid interest under the Mezzanine Loan, and stating whether to Mezzanine Lender's knowledge any default or event of default exists under the Mezzanine Loan.

(b) Senior Lender shall, within fifteen (15) days following a request from Mezzanine Lender, provide Mezzanine Lender with a written statement setting forth to its knowledge the then current outstanding principal balance of the Senior Loan, the aggregate

accrued and unpaid interest under the Senior Loan, and stating whether to Senior Lender's knowledge any default or event of default exists under the Senior Loan.

15. FURTHER ASSURANCES. So long as all or any portion of the Senior Loan and the Mezzanine Loan remains unpaid and Senior Loan Documents or Mezzanine Loan Documents encumber any of the Premises or Separate Collateral, as the case may be, Mezzanine Lender and Senior Lender at the cost and expense of the requesting party will each execute, acknowledge and deliver in recordable form and upon demand of the other, any other instruments or agreements reasonably required in order to carry out the provisions of this Agreement or to effectuate the intent and purposes hereof.

16. NO THIRD PARTY BENEFICIARIES. The parties hereto do not intend the benefits of this Agreement to inure to Borrower, Mezzanine Borrower or any other Person other than any permitted successors and assigns.

17. NO MODIFICATION. This Agreement may not be changed or terminated orally, but only by an agreement in writing signed by the party against whom enforcement of any change is sought.

18. SUCCESSORS AND ASSIGNS. This Agreement shall bind all successors and permitted assigns of Mezzanine Lender and Senior Lender and shall inure to the benefit of all successors and permitted assigns of Senior Lender and Mezzanine Lender.

19. COUNTERPART ORIGINALS. This Agreement may be executed in counterpart originals, each of which shall constitute an original, and all of which together shall constitute one and the same agreement.

20. LEGAL CONSTRUCTION. In all respects, including, without limitation, matters of construction and performance of this Agreement and the obligations arising hereunder, this Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New York applicable to agreements intended to be wholly performed within the State of New York.

21. NO WAIVER; REMEDIES. No failure on the part of the Senior Lender or Mezzanine Lender to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

22. NO JOINT VENTURE. Nothing provided herein is intended to create a joint venture, partnership, tenancy-in-common or joint tenancy relationship between or among any of the parties hereto.

23. CAPTIONS. The captions in this Agreement are inserted only as a matter of convenience and for reference, and are not and shall not be deemed to be a part hereof.

24. CONFLICTS. In the event of any conflict, ambiguity or inconsistency between the terms and conditions of this Agreement and the terms and conditions of any of the Senior Loan

Documents or the Mezzanine Loan Documents, the terms and conditions of this Agreement shall control.

25. NO RELEASE. Nothing herein contained shall operate (a) to release Borrower from (i) its obligation to keep and perform all of the terms, conditions, obligations, covenants and agreements contained in the Senior Loan Documents or (ii) any liability of Borrower under the Senior Loan Documents or (b) to release Mezzanine Borrower from (i) its obligation to keep and perform all of the terms, conditions, obligations, covenants and agreements contained in the Mezzanine Loan Documents or (ii) any liability of Mezzanine Borrower under the Mezzanine Loan Documents.

26. CONTINUING AGREEMENT. This Agreement is a continuing agreement and shall remain in full force and effect until the payment in full of the Senior Loan.

27. SEVERABILITY. In the event that any provision of this Agreement or the application hereof to any party hereto shall, to any extent, be invalid or unenforceable under any applicable statute, regulation, or rule of law, then such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform to such statute, regulation or rule of law, and the remainder of this Agreement and the application of any such invalid or unenforceable provisions to parties, jurisdictions or circumstances other than to whom or to which it is held invalid or unenforceable, shall not be affected thereby nor shall same affect the validity or enforceability of any other provision of this Agreement.

28. TERMINATION. This Agreement shall terminate upon the earlier to occur of (a) the full and final payment of the Senior Loan or the Mezzanine Loan, (b) the transfer of the Premises by foreclosure or deed in lieu of foreclosure or (c) the completion of foreclosure by Mezzanine Lender of all interests pledged as security for the Mezzanine Loan; provided, however, that any right or remedies a party may have as a result of a breach by the other party herein, occurring prior to such date of termination shall survive hereunder.

29. REMEDIES. Senior Lender and Mezzanine Lender acknowledge and agree that upon a breach of this Agreement by the other, each party shall have the remedies available hereunder, at law or in equity.

30. MUTUAL DISCLAIMER.

(a) Each of Senior Lender and Mezzanine Lender are sophisticated lenders and/or investors in real estate and their respective decision to enter into the Senior Loan and the Mezzanine Loan is based upon their own independent expert evaluation of the terms, covenants, conditions and provisions of, respectively, the Senior Loan Documents and the Mezzanine Loan Documents and such other matters, materials and market conditions and criteria which each of Senior Lender and Mezzanine Lender deem relevant. Each of Senior Lender and Mezzanine Lender has not relied in entering into this Agreement, and respectively, the Senior Loan, the Senior Loan Documents, the Mezzanine Loan or the Mezzanine Loan Documents, upon any oral or written information, representation, warranty or covenant from the other, or any of the other's representatives, employees, Affiliates or agents other than the representations and warranties, if any, of the other contained herein. Each of Senior Lender and Mezzanine Lender further

acknowledges that no employee, agent or representative of the other has been authorized to make, and that each of Senior Lender and Mezzanine Lender have not relied upon, any statements, representations, warranties or covenants other than those specifically contained in this Agreement. Without limiting the foregoing, each of Senior Lender and Mezzanine Lender acknowledges that the other has made no representations or warranties as to the Senior Loan or the Mezzanine Loan or the Premises (including, without limitation, the cash flow of the Premises, the value, marketability, condition or future performance thereof, the existence, status, adequacy or sufficiency of the leases, the tenancies or occupancies of the Premises, or the sufficiency of the cash flow of the Premises, to pay all amounts which may become due from time to time pursuant to the Senior Loan or the Mezzanine Loan).

(b) Each of Senior Lender and Mezzanine Lender acknowledges that the other are distinct separate lenders with distinct and separate loans, and are each separate and distinct lenders with various rights and remedies with respect to the Premises which are not in all respects aligned.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Senior Lender and Mezzanine Lender have executed this Agreement as of the date and year first set forth above.

Senior Lender:

MERRILL LYNCH MORTGAGE LENDING, INC.  
a Delaware corporation

By:

-----  
Name: Andrea Balkan  
Title: Vice President

Mezzanine Lender:

MERRILL LYNCH MORTGAGE CAPITAL INC.,  
a Delaware corporation

By:

-----  
Name: Steven M. Glassman  
Title: Vice President

ACKNOWLEDGMENT

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

On the \_\_\_\_ day of in the year 2001, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures) on the instrument, the individuals), or the person upon behalf of which the individuals) acted, executed the instrument.

-----  
Notary Public  
Commission Expires:

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

On the \_\_\_\_ day of in the year 2001, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures) on the instrument, the individuals), or the person upon behalf of which the individuals) acted, executed the instrument.

-----  
Notary Public  
Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION OF THE PREMISES

C-26



SCHEDULE 1

APPROVED PROPERTY MANAGERS

1. Hilton
2. Hyatt
3. Marriott
4. Sheraton
5. Wyndham
6. Luxury Collection (Sheraton)

## SCHEDULE 3.1(A)

## LIST OF LOAN DOCUMENTS

1. Loan Agreement
2. Note
3. Deed of Trust
4. Assignment of Leases
5. Assignment of Management Agreement
6. Guaranty
7. Environmental Indemnity
8. Assignment of Rate Cap
9. Financing Statements
10. Cash Management Agreement

Schedule 3.1(A)

SCHEDULE 4.1(C)

ORGANIZATIONAL CHART FOR BORROWER PARTIES

Schedule 4.1(C)

SCHEDULE 4.2

CONSENTS

None.

Schedule 4.2

## SCHEDULE 4.7

## RENT ROLL

Tenant -----	Annual Rent -----	Monthly Rent -----	Percentage Rent -----	Expiration -----
1. Kinko's Inc.	\$20,000	\$1,667	0-23% of Revenue based on Revenue amt.	Feb. 2005
2. Godiva Choc., Inc.	\$38,000	\$3,167 per mo. w/ escalator	10% of gross sales beyond a threshold	Jan. 2011
3. Christie Cookie	\$24,000	\$2,000	10% monthly rev.	May 2005
4. Churchill Coffee	\$70,000	\$5,833.33 w/ escalator in renewal term	n/a unless renewal term	May 2003
5. La Petite	\$80,304 w/ esc.	\$6692		Aug. 2005
6. MSE Hospitality	\$200,000	\$16,667(1)	18% of gross receipts above \$2 million	Jan. 2006
7. Big Sky Carvers	Greater of \$2,291.67 or 12% Net Revenue			1 year term ending 4/01
8. Colonel Shops (d/b/a French Shoppe)		Greater of \$12,500 or 20%(2) of Net Revenue		8/31/2001
9. Colonel Shops (d/b/a Ms. Scarletts)		Greater of \$5,250 or 15%(3) of Net Revenue		1/31/2002
10. Ramon of California Salons	\$18,000	\$1,650		12/31/01

- - - - -

(1) Additional monthly charges include \$1,787.50 for utilities, \$104.00 for pest control, \$529.17 for hood cleaning, \$400.00 for POS system and \$83.33 for soft water system.

(2) Except when hotel occupancy falls below 76%, then whichever is less. Also Fascia Show Fee of 5% of gross revenue in connection with any fashion show presented by Lessee to guests of hotel, whether such Fashion Show is conducted at hotel or another location.

(3) Except when hotel occupancy rate falls below 76%, then whichever is less.

Schedule 4.7

## SCHEDULE 4.9

## LITIGATION

## OPRYLAND HOTEL

## A. WORKERS' COMPENSATION.

1. Mohamed Abo-Gamiza. Lawsuit filed July 28, 2000 in Davidson County Circuit Court. Hotel employee alleges injury from July 30, 1999 incident. Currently in discovery stage and scheduling depositions.
2. Vivian Adkins. Lawsuit filed October 2, 2000 in Montgomery County Circuit COURT. SERVER AT HOTEL ALLEGES A BACK INJURY ON SEPTEMBER 18, 2000 SUSTAINED WHILE LIFTING A HEAVY TRAY. CURRENTLY IN DISCOVERY STAGE.
3. Peggy Jean Autry. Lawsuit filed December 11, 2000 in Davidson County Circuit Court. Hotel employee alleges injury to right arm, wrist and hand on or about August 31, 1999. Currently in pleading stage.
4. Gerda Baucom. Lawsuit filed August 29, 2000 in Davidson County Chancery Court. Server in Cascades restaurant alleges an injury to the left shoulder and arm on April 14, 1999, when the ice machine door hit her left shoulder. Currently in discovery stage. Plaintiff's deposition is scheduled for February 22, 2001.
5. Ali Chorazghiazad. Lawsuit filed July 14, 2000 in Davidson County Chancery Court. Server in Cascades alleges injury to right shoulder on August 30, 1999. Currently in discovery stage. A September 29, 2000 benefit review conference was not successful. The plaintiff refused to accept the 5% impairment rating or \$2,7000.00. Plaintiff was deposed on September 29, 2000. Plaintiff's brother was interviewed on February 5, 2001 and gave information indicating that plaintiff had faked his claim in order to "make easy money."
6. Quinn Chaison. Lawsuit filed July 10, 2000 in Davidson County Chancery Court. Valet runner in laundry alleges back and neck injury from pushing laundry cart on July 12, 1999. Currently in discovery stage. Plaintiff was deposed on November 28, 2000.
7. Jackie L. Cornelius. Lawsuit filed January 3, 2001 in Davidson County Chancery Court. Patrol officer alleges injury to his left leg while on patrol route on October 3, 2000. Currently in pleading stage.

8. Bonnie Gilbert. Lawsuit filed July 23, 1999 in Wilson County Criminal Court. Housekeeper alleges knee injury on November 27, 1998. Currently in discovery stage. Received settlement demand from plaintiff. Expect that the treating physician's deposition will be scheduled in the near future.
9. Karam Hanna. Lawsuit filed February 3, 2000 in Davidson County Circuit Court. Banquet department employee alleges several injuries from several separate incidents. Currently in discovery stage. Plaintiff was deposed on October 10, 2000.
10. Roy Heatley. Lawsuit filed December 21, 1998 in Davidson County Chancery Court. Gaylord filed this lawsuit against former employee Heatley in order to obtain jurisdiction for the workers compensation lawsuit in Tennessee rather than Oklahoma, where Heatley resides. Heatley has a back and knee injury from December 30, 1997. Currently in discovery stage. December 14, 2000 trial date was continued upon plaintiff's motion in order to allow plaintiff time to take a doctor's deposition. The doctor gave plaintiff an impairment rating of 5% to the back and 7% to each knee. The Court also ordered plaintiff to undergo an IME in Nashville.
11. Carolyn Kime. Lawsuit filed April 6, 2000 in Davidson County Chancery Court. Control handler in commissary alleges injury from pallet jack on November 11, 1999. Currently in discovery stage. Plaintiff was deposed on December 11, 2000.
12. Wafaa Seleem. Lawsuit filed February 2, 2001 in Davidson County Circuit Court for reconsideration of prior workers' compensation settlement. This involves a claim for injuries allegedly sustained in February or March 1997 when employee was hit by a linen cart and allegedly sustained a cervical disc herniation. The initial claim was settled on July 1, 1998 for \$7,000.00. However, the plaintiff no longer works for Gaylord and claims she is entitled to reconsideration of industrial disability that was capped by statute while she worked for Gaylord. In pleading stage.
13. Priya Tandon. Lawsuit filed May 1, 2000 in Davidson County Chancery Court. Employee alleges a broken nose sustained on May 1, 1999 as a result of a motor vehicle accident while riding on an employee bus. Currently in the discovery stage.
14. David Ulrey. Lawsuit filed August 20, 1999 in Davidson County Chancery Court. Employee alleges injury from incident on December 29, 1998. Currently in discovery stage. Case set for trial on May 23, 2001. Plaintiff has reached MMI. Will schedule benefit review conference.

## B. PERSONAL INJURY.

1. Barbara Cagle. Lawsuit filed August 28, 1998 in Davidson County Circuit Court. Visitor at hotel alleges personal injuries when she fell over a barrier in the hotel parking lot on September 27, 1997. Reserved at \$10,000. Currently in discovery stage.
2. Lisa Garrity o/b/o Brooke Adkins. Lawsuit filed January 4, 2001 in Davidson County Circuit Court. Brooke Adkins, a guest at the hotel, was allegedly injured on January 5, 2000, when a "cross-country skiing simulator" machine allegedly broke causing her to fall and sustain an injury that included, but was not limited to, a cut from her hip to her chest area.
3. Judith Hunter. Lawsuit filed December 9, 1998 in U.S. District Court in Nashville for \$75,000. New Jersey resident alleges personal injuries from trip and fall on sidewalk on January 1, 1998. Reserved at \$50,000. Currently in discovery stage. Plaintiff's attorney demanded \$60,000.00, but indicated that her client may be willing to settle for \$35,000.00.
4. Bryan Ketterman. Lawsuit filed November 19, 1999 in Davidson County Circuit Court. Plaintiff automobile driver alleges injuries suffered in automobile collision with OL vehicle on June 23, 1999. Auto liability insurance carrier presently engaged in settlement discussions with counsel.
5. Rosa Moya. Lawsuit filed September 19, 2000 in Davidson County Circuit Court. Guest attending an employee party on January 15, 2000, alleges that another guest became intoxicated and threw a bottle which struck her in the head, causing a concussion and other injuries. Currently in discovery stage.
6. Jesus Muniz. Lawsuit filed February 1, 2001 in Davidson County Circuit Court. Employee was given pain medication by co-worker. As a result of the medication, he became "seriously impaired" and was unable to "walk or stand." Other employees offered to drive plaintiff home, however, supervisory staff would not allow this and ordered plaintiff off the premises. They allegedly escorted him to his car and put the keys in the ignition because he was allegedly impaired to the point that he was not able to function. Plaintiff stopped at Security and then left the premises. He was involved in an automobile accident on the way home, subsequently incurring \$244,985.97 in medical bills. In the pleading stage.
7. Barbara Pemberton. Lawsuit filed October 23, 2000 in Davidson County Circuit Court. Hotel guest alleges that on December 21, 1999, she fell while attempting to board a "Delta Island River Flatboat" and sustained a left trimalleolar ankle fracture dislocation. Currently in discovery stage.
8. Joyce Story. Lawsuit filed December 23, 1998 in Davidson County Circuit Court for \$55,000. Hotel guest alleges personal injuries from trip and fall down unlit



stairway on December 26, 1997. Reserved at \$5,000. An order of voluntary dismissal without prejudice was entered on July 27, 2000. The plaintiff can refile within one year from the date the order was entered.

9. Janet Wiltshire. Lawsuit filed May 5, 1999 in Davidson County Circuit Court for \$100,000. Hotel guest alleges injuries resulting from slip and fall due to inadequate lighting on May 6, 1998. Reserved at \$5,000. An order of voluntary dismissal without prejudice was entered on July 10, 2000. The plaintiff can refile within one year from the date the order was entered.

C. EMPLOYMENT.

1. Beverly Lewis. Administrative charge of employment discrimination filed with Tennessee Human Rights Commission on Feb. 17, 1999. Lewis alleges she was harassed and not promoted because of her race. Position statement filed; additional information submitted in September, 1999. Tennessee Human Rights Commission is continuing investigation.
2. Lois Loritts. Administrative charge of employment discrimination filed July 7, 1999 with the Tennessee Human Rights Commission. Former banquet server alleges race discrimination with regard to promotions and working conditions. Response to charge filed in January 2000. December 11, 2000 determination from Tennessee Human Right Commission found in Gaylord's favor. Plaintiff has the right to file suit in Federal Court within 90 days of the determination.
3. Veda McKinney. II - Class action lawsuit filed in Davidson County Circuit Court on July 23, 1997. Six room service servers seek class action status and allege OLH collected and wrongfully retained service charges and delivery charges in violation of Tennessee law and in violation of their "contract" with the hotel. Reserved at \$50,000. Waiting for decision regarding motion to dismiss.
4. Veda McKinney. III - Lawsuit filed March 17, 2000, in Davidson County Circuit Court and subsequently removed to Federal Court. Plaintiff alleges denial of application for long term disability benefits. Case management conference was held February 7, 2001; plaintiff to amend Complaint.
5. Ehab Salama. Administrative charge of discrimination based on national origin filed May 3, 2000 with the Tennessee Human Rights Commission in Nashville. February 5, 2001 determination from Tennessee Human Right Commission found in Gaylord's favor. Plaintiff is allowed to file suit in State Court or appeal the decision to the Tennessee Human Rights Commission within 30 days. There is also the possibility of a suit in Federal Court.
6. William Thrower. Former employee in maintenance has filed a charge of discrimination with the EEOC alleging that the termination of his employment was motivated by his alleged disability, in violation of the Americans with

Disabilities Act. Thrower requested a right to sue letter from the EEOC before Gaylord responded to his charge. Suit filed August 24, 2000. Currently in discovery stage. Trial is set for June 11, 2002.

7. Bob Willits. Administrative charge of employment discrimination filed April 11, 2000; Federal Court lawsuit filed subsequently. Former executive steward alleges he was terminated because of age. Order from the Court extending deadlines; phone conference set for April 2, 2001 to discuss progress of case. Parties estimate the case should be ready for trial some time after November 1, 2001.

D. COMMERCIAL.

1. North American Heating, Refrigeration & Air-conditioning Wholesalers Association. Lawsuit filed August 30, 1999 in U.S. District for the Middle District of Tennessee. Hotel alleges convention group breached February 1997 contract to hold 3,000 room night convention in December of 1999 at Opryland. Cross motions for summary judgment filed in December, 2000.
2. Professional Picture Framers Assoc. Lawsuit filed March 23, 1999 in Davidson County Chancery Court. Opryland seeks payment of approximately \$92,000 in cancellation fees due to cancellation of convention scheduled for May 1998. Agreed judgment filed in Tennessee; attempts to collect in Richmond, Virginia underway.
3. Promus Hotels. Lawsuit filed June 8, 1999 in Davidson County Chancery Court. Opryland seeks payment of \$312,340 in Promus' failure to pick up reserved rooms at 1998 convention. Trial took place on January 19 and 20, 2001. Awaiting final decision.

CORPORATE

4. Thomas Nelson. There are two lawsuits. The first was filed by Thomas Nelson in September 1997 in Davidson County Chancery Court. Plaintiff, seller of Word to Gaylord, seeks Court to declare that Gaylord is not entitled to submit various assumed audit liabilities to a third-party arbitrator pursuant to post closing adjustment procedure set forth in sales contract. Thomas Nelson does not seek money damages but only a judicial ruling on that procedural point. Currently that lawsuit has been continued indefinitely and the parties are obligated to periodically report to the Court. The second lawsuit was filed by Gaylord on September 8, 1998, seeking approximately \$3.2 million from Thomas Nelson, by virtue of Nelson's alleged mishandling of the accounting relating to the purchase price of Word. This case was tried November 13 - 16, 2000. The Court found against Gaylord. Gaylord filed an appeal on January 5, 2001.

## SCHEDULE 4.14

## EMPLOYEE BENEFIT PLANS

Gaylord Entertainment Company Employees' Group Health Plan	Medical, Dental, Pharmacy Plan Year 2000 - \$250 PPO, \$600 PPO, HMO Plan Year 2001 - \$600 PPO, POS, HMO Stop Loss coverage
Gaylord Entertainment Company Retirees' Group Health Plan	Medical, Pharmacy Plan Year 2000 - \$250 PPO Plan Year 2001 - \$250 PPO
Basic Life Insurance	1 times annual base pay; max \$300,000 (active) (Coverage for executives and retirees also)
Supplemental Life Insurance (employee)	1, 2, or 3 times annual base pay; max \$300,000
Dependent Life Insurance	Spouse and children \$2,000, \$5,000, or \$10,000
Basic Accidental Death & Dismemberment Insurance	1 times annual base pay; max \$300,000
Supplemental Accidental Death & Dismemberment Insurance (employee and family)	1 to 10 times annual base pay; max \$300,000
Gaylord Entertainment Company Flexible Benefits Plan	- Health Care Reimbursement Program - Dependent/Child Care Program
Short Term Disability (self-funded)	Benefits paid up to 26 weeks, based on length of service
Long Term Disability (fully insured)	Benefits begin after 180-day waiting period, combined with other income to provide 60% of pay
The Gaylord Entertainment Company 401(k) Savings Plan	1-20% contribution 50% employer match on first 6% 8 investment options
Supplemental Deferred Compensation Plan	1-20% contribution 50% employer match on first 6% (combined with 401k - max match 3%) 7 investment options
The Retirement Plan for Employees of Gaylord Entertainment Company	Cash Balance Format Employer contributions only

----- Gaylord Entertainment Company Retirement Benefit Restoration Plan	Cash Balance Format Employer contributions only
----- Gaylord Entertainment Company Mid-Career Supplemental Executive Retirement Plan	SERP - one executive Employer contributions only
----- Employee Stock Purchase Plan Section 123	Discounted employee stock purchase plan
----- Adoption Assistance Program	Up to \$5,000 reimbursement, or \$6,000 for special needs child
----- EyeMed Discount Vision Care Program	Discounts on eye exams, frames, lenses, etc.
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Schedule 4.14

SCHEDULE 4.20

INSURANCE

Schedule 4.20

## MATERIAL AGREEMENTS

PARTIES	NAME OF AGREEMENT	PAYMENT TERMS
Newmarket Software Systems, Inc. and Opryland Hospitality & Attractions	Amended & Restated Computer Software End-User License Agreement	Various Fees relating to software licenses, training, installation, travel.
SFX Family Entertainment, Inc. and Opryland Hospitality Group	Exhibition Agreement	Unclear if over \$500,000 - based on percentage revenues
Freeman Decorating	Move in and Move-out services for convention groups	Over a million dollars;
OLH G.P. d/b/a Opryland Hotel and Restaurant Environmental Services	Vendor Agreement	\$44,316.72/month [not sure if still in effect]
OLH, G.P. d/b/a Opryland Hotel and Spectra Entertainment	Agreement for Show Fountains and Services	\$850,000 for designing, developing and producing show fountains for Opryland
BellSouth Master Agreement between BellSouth Telecommunications System; BellSouth Communications Systems and Opryland Hotel Nashville, LLC and Gaylord Entertainment Company	Dial-Tone; equipment and Maintenance Agreement with various Sponsorship Elements	BellSouth provides \$1,000,000 to various Gaylord entities, including, Opryland Hotel Nashville, LLC for sponsorship activities.
OLH, G.P. d/b/a Opryland and AVW Audio Visual, Inc.	Agreement for audio visual services to guests	AVW to pay \$525,000 upon execution of Agreement; AVW shall pay a percentage commission; \$1,500,000
Town Park, Ltd. and OLH, G.P.	Parking Service Management Agreement for valet and self-parking services	\$1,500,000
OLH, G.P. and Department of Water and Sewerage Services of the Metropolitan Government of Nashville and Davidson Counties	Compromise Settlement and Release Agreement	\$866,667 on December 20, 2001 and \$866,667 on December 20, 2002

## SCHEDULE 6.4

## REQUIRED REPAIRS

Required Repairs under Section 6.4 shall include the following work (as more particularly set forth in the physical assessment report of the Property, dated February 8, 2001 (the "Law Report"), prepared by Law Engineering and Environmental Servicers, Inc.):

2001

ADA Compliance as noted in Law Report for roll-in showers, elevator at the Conservatory Atrium, ramp to the upper walkway of the Conservatory Atrium, exterior ADA signage.

2002

Governor's Ballroom Outside Loading Ramp Upgrade  
Magnolia Sidewalk Replacement  
Meeting Room Ceiling Tile Replacement  
Electrical Circuit Board Upgrades - Main Hotel Buildings  
Cascades Skylight Expansion Joints  
Presidential Ballroom Roof Replacement

Schedule 6.4

## SCHEDULE 6.5

## REQUIRED CAPITAL IMPROVEMENTS

## CAPITAL IMPROVEMENTS PLAN

2001	Magnolia Lobby Renovation	\$1,500,000
	Wayfinding Phase II	\$5,325,000
	Renovate 236 Guestrooms Magnolia Building	\$6,396,000
	Magnolia Building Elevator Cab Upgrade	\$ 100,000
	TOTAL 2001	\$13,321,000
2002	Wayfinding Phase III	\$2,000,000
	Renovate 141 Guestrooms - Magnolia	\$3,804,000
	TOTAL 2002	\$5,804,000
	GRAND TOTAL	\$19,125,000

Schedule 6.5



## SCHEDULE 6.6

## FF&amp;E RESERVE &amp; CAPITAL IMPROVEMENT RESERVE FUNDING CONDITIONS

1. Borrower shall have submitted to Lender a written request for disbursement at least ten (10) days prior to the Payment Date on which Borrower requests such disbursement be made, specifying the specific Replacements or Capital Improvements for which the disbursement is requested and such other information (such as the price of materials and the cost of contracted labor or other services) as Lender may reasonably require, which request must be on a form specified or approved by Lender;

2. On the date such request is received by Lender and on the Payment Date such payment is to be made, no Event of Default shall exist and remain uncured;

3. Lender shall have received a certificate from Borrower stating that all Replacements or Capital Improvements at the Property to be funded by the requested disbursement have been completed in a good and workmanlike manner and in accordance with any plans and specifications approved by Lender and all legal requirements of any Governmental Authority having jurisdiction over the Property, such certificate to be accompanied, in either case, by a copy of any license, permit or other approval by any Governmental Authority required to commence (only for the first advance with respect to each distinct item of work) and/or complete (only for the final advance with respect to each distinct item of work) such Replacements or Capital Improvements;

4. Lender shall have received a certificate from Borrower stating that each Person that supplied materials or labor in connection with the Replacements to be funded by the requested disbursement has been paid in full or will be paid in full upon such disbursement, such certificate to be accompanied by copies of invoices for all items or materials purchased and all contracted labor or services provided;

5. Lender shall have received appropriate lien waivers from each contractor, supplier, materialman, mechanic or subcontractor who receives payment in an amount equal to or greater than \$100,000 for completion of its work or delivery of its materials, which lien waivers shall conform to the requirements of applicable law and shall cover all work performed and materials supplied (including equipment and fixtures) for the Property by that contractor, supplier, subcontractor, mechanic or materialman through the date covered by the current disbursement request; and

6. At Lender's option, Lender shall have received a title search for the Property effective to the date of the disbursement, which search shows that no mechanic's or materialmen's liens or other Liens of any nature have been placed against the Property since the date of recordation of the Deed of Trust and that title to the Property is free and clear of all Liens (other than the Permitted Encumbrances).

MEZZANINE LOAN AGREEMENT

Dated as of March 27, 2001

by and between

OHN HOLDINGS, LLC

as Mezzanine Borrower

and

MERRILL LYNCH MORTGAGE CAPITAL INC.,

as Mezzanine Lender

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## MEZZANINE LOAN AGREEMENT

THIS MEZZANINE LOAN AGREEMENT dated as of March 27, 2001, is by and between MERRILL LYNCH MORTGAGE CAPITAL INC., a Delaware corporation, having an address at Four World Financial Center, New York, New York 10080, Attention: Mr. Steven Glassman ("Merrill Lynch"), and OHN HOLDINGS, LLC, a Delaware limited liability company, having an address c/o 535 Marriott Drive, Suite 600, Highland Ridge Tower, Nashville, Tennessee 37214, Attention: Glenn Malone ("Mezzanine Borrower").

## RECITALS

WHEREAS, Mezzanine Borrower desires to obtain a loan (the "Mezzanine Loan") from Mezzanine Lender (as hereinafter defined) in the original principal amount of ONE HUNDRED MILLION AND NO/00 DOLLARS (\$100,000,000.00) (the "Mezzanine Loan Amount");

WHEREAS, Mezzanine Lender is willing to make the Mezzanine Loan on the condition that Mezzanine Borrower joins in the execution and delivery of this Agreement which shall establish the terms and conditions of the Mezzanine Loan;

NOW, THEREFORE, in consideration of the making of the Mezzanine Loan by Mezzanine Lender, and the covenants, agreements, representations and warranties set forth in this Agreement, the parties hereby covenant, agree, represent and warrant as follows:

## ARTICLE I

## CERTAIN DEFINITIONS

Section 1.1. Definitions. For all purposes of this Agreement:

(a) the capitalized terms defined in this Article I have the meanings assigned to them in this Article I, and include the plural as well as the singular;

(b) all accounting terms have the meanings assigned to them in accordance with GAAP;

(c) the words "herein", "hereof", and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, or other subdivision; and

(d) the following terms have the following meanings:

"Accounts" has the meaning set forth in Section 3.5.

"Account Property" means, collectively, all cash, Permitted Investments and other Investment Property on deposit in or credited to the Deposit Account.

"Affiliate" of any specified Person means any Person controlling, controlled by or under common control with such specified Person. For the purposes of this Agreement, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities or other beneficial interests, by contract or otherwise; and the terms "controls", "controlling" and "controlled" have the meanings correlative to the foregoing.

"Agent" has the meaning set forth in Section 8.35.

"Agreement" means this Mezzanine Loan Agreement, as the same may from time to time hereafter be modified, supplemented or amended.

"Approved FF&E Budget" has the meaning set forth in Section 5.1(j).

"Approved Operating Budget" has the meaning set forth in Section 5.1(j).

"Assignee" has the meaning set forth in Section 8.34.

"Assignment and Acceptance" means an assignment and acceptance entered into by Mezzanine Lender and an assignee and accepted by the Agent, in the form of Exhibit E annexed hereto and made a part hereof, or any other form approved by the Agent.

"Awards" has the meaning set forth in Section 5.4.

"Breach Period" means, with respect to any Payment Breach, the period of time after the Payment Date on which the Payment Breach occurred during which such Payment Breach continues.

"Business Day" means any day other than (i) a Saturday or a Sunday, and (ii) a day on which federally insured depository institutions in New York are authorized or obligated by law, regulation, governmental decree or executive order to be closed.

"Capital Improvement Plan" means Mezzanine Borrower's current plan and budget for certain ongoing multi-phased capital improvements to the Property, including the renovation and improvement of certain guest rooms, the main hotel lobby and other common areas, and elevators, escalators and other building systems, which "Required Repairs" component has been approved by Mezzanine Lender and a copy of which is attached as Exhibit F.

"Cash Sweep Event" has the meaning set forth in Section 2.12.

"Cash Sweep Event Notice" has the meaning set forth in Section 2.12.

"Cash Sweep Event Reserve Account" has the meaning set forth in Section 3.3(c).

"Certificates" means the securities or participation interests issued in respect of the First Mortgage Loan or a pool of mortgage loans which includes the First Mortgage Loan.

"Chief Financial Officer" means the chief financial officer of the Mezzanine Borrower.

"Claim" has the meaning set forth in Section 8.29.

"Closing Date" means the date of this Agreement.

"Code" means the Internal Revenue Code of 1986, as amended, and as it may be further amended from time to time, any successor statutes thereto, together with applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

"Collateral" means, collectively, all property of any kind whatsoever of Mezzanine Borrower, including, without limitation, the collateral granted to Mezzanine Lender pursuant to the Equity Pledge Agreements, the Accounts, and any collateral described in any Mezzanine Loan Document, and all Proceeds and products of any of the foregoing, all whether now owned or hereafter acquired, and all other property in which Mezzanine Borrower may now or hereafter have an interest, excluding the Property.

"Collateral Security Instrument" means any right, document or instrument given as security for the Mezzanine Loan, including, without limitation, the Equity Pledge Agreements, in each case as the same may hereafter from time to time be supplemented, amended, extended or modified by one or more written agreements supplemental thereto.

"Combined Monthly Payment Amount" has the meaning provided in Section 3.3(d).

"Contest" has the meaning set forth in Section 8.15.

"Contingent Obligation" means any obligation of Mezzanine Borrower guaranteeing any indebtedness, leases, dividends or other obligations ("primary obligations") of any other Person (the "primary obligor") in any manner, whether directly or indirectly, including, without limitation, any obligation of Mezzanine Borrower, whether or not contingent; (i) to purchase any such primary obligation, or any property constituting direct or indirect security therefor; (ii) to advance or supply funds (x) for the purchase or payment of any such primary obligation or (y) to maintain working capital or equity capital of the primary obligor; (iii) to purchase property, securities or services primarily for the purpose of assuring the owner or obligee under any such primary obligation of the ability of the primary obligor to make payment of such primary obligation; or (iv) otherwise to assure or hold harmless the owner or obligee under such primary obligation against loss in respect thereof. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum anticipated liability in respect thereof (assuming that Mezzanine Borrower is required to perform thereunder) as determined by Mezzanine Lender in good faith.

"Control Entity" means the corporation or other Person acting as the managing general partner of any limited partnership or as the managing member or non-member manager of any limited liability company, as applicable. The Control Entity of Mezzanine Borrower is

OHN Holdings Management, Inc. and the Control Entity of the First Mortgage Loan Borrower is OHN Management, Inc.

"De minimis Lease" means any Lease of space in the Property with a Person that is not an Affiliate of Mezzanine Borrower, which provides for annual rent or other payments in an amount less than \$5,000 and which is otherwise on arms-length terms and conditions.

"Debt" means, at any given time, the Principal Indebtedness, together with all accrued and unpaid interest thereon and all other obligations and liabilities due or to become due to Mezzanine Lender pursuant hereto, under the Mezzanine Note or in accordance with any of the other Mezzanine Loan Documents, and all other amounts, sums and expenses including without limitation any Prepayment Fees paid by or payable to Mezzanine Lender which Mezzanine Borrower is obligated to pay hereunder or pursuant to the Mezzanine Note or any of the other Mezzanine Loan Documents.

"Debt Service" means, for any period, the principal, interest payment, Default Rate interest and Late Charges that accrue or are due and payable in accordance with the Mezzanine Loan Documents during such period.

"Debt Service Coverage Ratio" or "DSCR" means, for any period, the ratio, expressed in decimals, obtained by dividing Pro Forma Net Operating Income by the Pro Forma Debt Service.

"Debt Yield" means, for any period, the Pro Forma Net Operating Income divided by the sum of the outstanding principal balances of the First Mortgage Loan and Mezzanine Loan.

"Default" means the occurrence of any event which, but for the giving of notice or the passage of time, or both, would be an Event of Default.

"Default Rate" means the per annum interest rate equal to the lesser of (i) the Maximum Amount or (ii) the Interest Rate plus four percent (4%).

"Deposit Account" has the meaning set forth in Section 3.3.

"Deposit Bank" has the meaning set forth in Section 3.3.

"Determination Date" means with respect to any Interest Accrual Period, the date which is two (2) Eurodollar Business Days before the commencement of such Interest Accrual Period.

"Documentation" has the meaning set forth in Section 3.4.

"Eligible Account" means (i) an account or accounts maintained with a federal or state-chartered depository institution or trust company which complies with the definition of Eligible Institution, (ii) a segregated trust account or accounts maintained with the corporate trust department of a federal depository institution or state-chartered depository institution subject to regulations regarding fiduciary funds on deposit similar to Title 12 of the Code of Federal



Regulations Section 9.10(b) which, in either case, has corporate trust powers, acting in its fiduciary capacity or (iii) an account approved by the applicable Rating Agencies rating the Certificates.

"Eligible Institution" with respect to Wells Fargo Bank, National Association, shall mean that (i) the short-term unsecured debt obligations of such Person are rated at least "A-1" by S&P, "P-1" by Moody's and "F-1" by Fitch, if deposits are held by such Person for a period of less than one month, or (ii) the long-term unsecured debt obligations of such Person are rated at least "AA-" by S&P (or "A" if the short-term unsecured debt obligations of such Person are rated at least "A-1"), "Aa3" by Moody's and "A" by Fitch, if deposits are held by such Person for a period of one month or more; and with respect to any other Person, shall mean that (i) the short-term unsecured debt obligations of such Person are rated at least "A-1" by S&P, "P-1" by Moody's and "F-1+" by Fitch, if deposits are held by such Person for a period of less than one month, or (ii) the long-term unsecured debt obligations of such Person are rated at least "AA-" by S&P, "Aa2" by Moody's and "AA" by Fitch, if deposits are held by such Person for a period of one month or more.

"Engineering Report" means that certain (i) Report of Property Condition Survey - Law Project #70224-0-0182-01-600 dated May 1, 2000 and (ii) Report of Property Condition Survey - Law Project #70224-0-0182-01-600/70224-1-0027-01-600 dated February 8, 2001, prepared for First Mortgage Loan Borrower and Mezzanine Lender, by LawGibb Group.

"Entitlement Holder" has the meaning set forth in Section 8-102(a)(7) of the UCC.

"Entitlement Order" has the meaning set forth in Section 8-102(a)(8) of the UCC.

"Entity" means, with respect to any Person, (i) a corporation, if such person is described as a corporation in this Agreement, (ii) limited partnership, if such Person is described as a limited partnership in this Agreement or (iii) limited liability company, if such Person is described as a limited liability company in this Agreement.

"Environmental Indemnity" means that certain Environmental Indemnity, Certification and Remediation Agreement dated as of the Closing Date made by Mezzanine Borrower and Guarantor in favor of the Mezzanine Lender.

"Environmental Report" means that certain (i) Phase I Environmental Site Assessment-Law Project #70224-1-0182-02-916 dated May 1, 2000, (ii) Addendum to Phase I ESA - Law Project #70224-1-0027-02-916 dated February 9, 2001 and (iii) Addendum to Phase I ESA - Law Project #70224-1-0027-02-916 dated February 16, 2001, prepared by LawGibb for First Mortgage Loan Borrower and Mezzanine Lender.

"Equipment" means any furniture, fixtures, equipment or other personal property located on the Property and owned by Mezzanine Borrower, First Mortgage Loan Borrower, or any affiliate of either of them.

"Equity Pledge Agreements" means, collectively, the Membership Interest Pledge Agreement and the Stock Pledge Agreement.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated thereunder. Section references to ERISA are to ERISA, as in effect at the date of this Agreement and, as of the relevant date, any subsequent provisions of ERISA, amendatory thereof, supplemental thereto or substituted therefor.

"ERISA Affiliate" means any corporation or trade or business that is a member of any group of organizations (i) described in Section 414(b) or (c) of the Code, of which Mezzanine Borrower is a member, and (ii) solely for purposes of potential liability under Section 302(c)(1) of ERISA and Section 412(c)(1) of the Code and the lien created under Section 302(f) of ERISA and Section 412(n) of the Code, described in Section 414(m) or (o) of the Code, of which Mezzanine Borrower is a member.

"Eurodollar Business Day" means a Business Day on which banks in the City of London, England are open for interbank or foreign exchange transactions.

"Event of Default" has the meaning set forth in Section 7.1.

"Excess Cash Flow" means, for any period, the excess (if any)

of

(1) the total of all Receipts for such period;

over

(2) the total of the following for such period (calculated without duplication):

(a) all First Mortgage Debt Service payable during such period (including all sums required under the First Mortgage Loan Documents to be deposited into reserve accounts); plus

(b) all Expenses paid during such period, other than (i) expenses paid from funds in the reserve accounts under the First Mortgage Loan Documents or Mezzanine Loan Documents and (ii) Management Fees paid during such period under the Management Agreement approved by Mezzanine Lender; plus

(c) all Debt Service payable during such period; plus

(d) all payments permitted to be made during such period on account of capital expenses including capital expenditures pursuant to the Capital Improvement Plan incurred in accordance with the Mezzanine Loan Document and not paid using funds from reserve accounts under the First Mortgage Loan Documents or Mezzanine Loan Documents; plus

(e) all Management Fees payable during such period under the Management Agreement; plus

(f) all deposits (if any) required to be made during such period into the Tax and Insurance Account and other Accounts maintained under the Mezzanine Loan Documents; plus

(g) all FF&E Expenses paid during such period other than from funds in the reserve accounts under the First Mortgage Loan Documents; plus

(h) provided no Cash Sweep Event has occurred and is continuing, Extraordinary Expenses to the extent not otherwise paid from reserves which Mezzanine Lender has approved in writing.

"Expenses" means, with respect to the Property for any given period, all expenses paid, accrued, or payable, as determined in accordance with GAAP by Mezzanine Borrower or First Mortgage Loan Borrower, as the case may be, during that period in connection with the operation of the Property, in each case to be determined without duplication, including, without limitation:

1. expenses for cleaning, repair, maintenance, decoration and painting of the Property (including, without limitation, parking lots and roadways and including all "costs and expenses" by the USAH), net of any insurance proceeds in respect of any of the foregoing;

2. wages (including overtime payments), benefits, payroll taxes, Gratuities and all other related expenses for on-site personnel, up to and including (but not above) the level of the on-site property manager, engaged in the repair, operation and maintenance of the Property and service to tenants and on-site personnel engaged in audit and accounting functions performed by Mezzanine Borrower or First Mortgage Loan Borrower;

3. Management Fees and other costs required to be reimbursed to Manager pursuant to the Management Agreement approved by the Mezzanine Lender;

4. the cost of all electricity, oil, gas, water, steam, heat, ventilation, air conditioning and any other energy, utility or similar item and the cost of building and cleaning supplies;

5. rent, liability, casualty, fidelity, errors and omissions, workmen's compensation and other required insurance premiums;

6. legal, accounting and other professional fees and expenses;

7. the cost (including leasing and financing) of all Equipment to be used in the ordinary course of business, which is not capitalized in accordance with GAAP;

8. real estate, personal property and other taxes;

9. advertising and other marketing costs and expenses;

10. casualty losses to the extent not reimbursed by an independent third party;

11. any payments pursuant to any contractual agreement which provides for the servicing, maintenance, normal replacement or repair (as opposed to capital replacement or capital repair) of the Property.

Notwithstanding the foregoing, Expenses shall not include (i) depreciation or amortization; (ii) interest, principal and fees under, and costs and expense reimbursements of the Mezzanine Lender or the First Mortgage Lender in administering, the Mezzanine Loan and the First Mortgage Loan; (iii) any expenditure (including leasing and financing costs, leasing commissions, tenant concessions and improvements, and replacement reserves) which is properly treatable as a capital item under GAAP; or (iv) any expenditure that would otherwise constitute an Expense to the extent such item is funded from any reserve maintained under the First Mortgage Loan Documents or the Mezzanine Loan Documents.

"Extension Fee" has the meaning set forth in Section 2.13.

"Extraordinary Expenses Subaccount" has the meaning set forth in Section 3.3(c).

"Extraordinary Expense" shall mean any extraordinary operating expense or capital expenditure not set forth in the Approved Operating Budget or Approved FF&E Budget or in excess of the amount set forth therefor in the Approved Operating Budget or Approved FF&E Budget then in effect for the Property with respect to which the failure to perform would allow a tenant under a Lease to withhold rent or which is required to perform emergency repairs or alterations or to correct any unhealthy or unsafe condition at the Property.

"Financial Assets" has the meaning assigned to such term in Section 8-102(a)(9) of the UCC.

"Financial Statements" means statements of operations and retained earnings, statements of cash flow and balance sheets.

"Financial Covenant Breach" has the meaning set forth in Section 2.12(a).

"First Mortgage" means that certain Amended and Restated Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated March 27, 2001, given by First Mortgage Loan Borrower to First Mortgage Lender in the principal amount of \$275,000,000, encumbering the Property, as the same may be amended, modified or supplemented from time to time.

"First Mortgage Borrower Remainder Funds" has the meaning set forth in Section 3.3(d).

"First Mortgage Debt Service" means for any period, principal, interest and all other sums that accrue or become due and payable under the First Mortgage Loan Documents with respect to such period.

"First Mortgage Lender" shall mean Merrill Lynch Mortgage Lending, Inc. and its successors and assigns.

"First Mortgage Loan" means the loan in the original principal amount of \$275,000,000, funded by First Mortgage Lender to First Mortgage Loan Borrower on or prior to the Closing Date.

"First Mortgage Loan Agreement" means that certain Amended and Restated Loan Agreement dated March 27, 2001 between First Mortgage Loan Borrower and First Mortgage Lender, as the same may be amended, modified or supplemented from time to time.

"First Mortgage Loan Borrower" means Opryland Hotel Nashville, LLC, a Delaware limited liability company, the borrower under the First Mortgage Loan Documents.

"First Mortgage Loan Cash Management Agreement" has the meaning set forth in Section 3.3(d).

"First Mortgage Loan Documents" means, collectively, the Loan Documents (as defined in the First Mortgage Loan Agreement), as such documents may be amended, modified or supplemented from time to time.

"First Mortgage Loan Monthly Payment Amount" means the aggregate payment due and payable under the First Mortgage Loan Documents on an applicable First Mortgage Loan Payment Date, including all required funding of reserve accounts.

"First Mortgage Loan Payment Date" means the last day of each calendar month occurring during the term of the First Mortgage Loan (or if such last day is not a Business Day, the last day of such calendar month which is a Business Day).

"Fiscal Year" means the 12-month period ending on December 31 of each year.

"FF&E" means all machinery, furniture, furnishings, equipment, fixtures (including, without limitation, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures), inventory and articles of personal property and accessions, renewals and replacements thereof and substitutions therefor (including, without limitation, beds, bureaus, chiffonniers, chests, chairs, desks, lamps, mirrors, bookcases, tables, rugs, carpeting, drapes, draperies, venetian blinds, screens, paintings, hangings, pictures, divans, couches, luggage carts, luggage racks, stools, sofas, chinaware, linens, pillows, blankets, glassware, foodcarts, cookware, dry cleaning facilities, dining room wagons, tools, keys or other entry systems, bars, bar fixtures, liquor and drink dispensers, ice makers, radios, clock radios, television sets, intercom and paging equipment, electric and electronic equipment, dictating equipment, private telephone systems, medical equipment, potted plants, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air-conditioning systems, elevators, escalators, fittings, plants, apparatus, stoves, ranges, refrigerators, laundry machines, tools, machinery, engines, dynamos, motors, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, call systems, brackets, electrical signs, bulbs, bells, fuel, conveyors, cabinets, lockers, shelving, spotlighting equipment, dishwashers, garbage disposals, washer and dryers), other customary hotel equipment and other tangible property of every kind and nature whatsoever owned by Mezzanine Borrower or First Mortgage Loan Borrower, or in which Mezzanine Borrower or First Mortgage Loan Borrower has or shall have an interest, now or hereafter located at the Property, or appurtenant thereto, and useable in

connection with the present or future operation and occupancy of the Property and all building equipment, material and supplies of any nature whatsoever owned by Mezzanine Borrower or First Mortgage Loan Borrower, or in which Mezzanine Borrower or First Mortgage Loan Borrower has or shall have an interest, now or hereafter located at the Property, or appurtenant thereto, and useable in connection with the present or future operation, enjoyment and occupancy of the Property.

"FF&E Expenses" means the expenditures for such capital repairs, maintenance, improvements and replacements of FF&E and other expenditures for FF&E (consistent with the Approved FF&E Budget), covering the planned FF&E expenditures for the period covered thereby.

"FF&E Reserve" has the meaning set forth in the Mezzanine Deposit Account Agreement.

"Franchise Agreement" means any license or franchise agreement concerning the operation of hotel/licenses or franchises at the Property between First Mortgage Loan Borrower and any nationally recognized hotel franchisor reasonably acceptable to Mezzanine Lender provided, however, that an Acceptable Franchisor (as defined in the First Mortgage Loan Documents) shall be an acceptable franchisor to Mezzanine Lender.

"GAAP" means generally accepted accounting principles consistently applied in the United States of America as of the date of the applicable financial report.

"Governmental Authority" means any national, federal, state, regional or local government, or any other political subdivision of any of the foregoing, in each case with jurisdiction over Mezzanine Lender, Mezzanine Borrower, First Mortgage Borrower, Manager, the Collateral or the Property or any Person with jurisdiction over Mezzanine Borrower, First Mortgage Borrower, Manager, the Collateral or the Property exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"Gratuities" means those tips and gratuities paid to employees and staff of the Property.

"Guarantor" means Gaylord Entertainment Company, a Delaware corporation.

"Guaranty" means that certain Guaranty of Recourse Obligations dated as of the Closing Date, made by Guarantor, as guarantor, in favor of Mezzanine Lender.

"Impositions" means all taxes (including, without limitation, all real estate, ad valorem, sales (including those imposed on lease rentals), use, single business, gross receipts, value added, intangible transaction privilege, privilege, license or similar taxes), assessments, ground rents, water, sewer or other rents and charges, excises, levies, fees (including, without limitation, license, permit, inspection, authorization and similar fees), and all other governmental charges, in each case whether general or special, ordinary or extraordinary, foreseen or unforeseen, of every character in respect of Mezzanine Borrower, First Mortgage Loan Borrower, the Collateral, or the Property (including all interest and penalties thereon), which at any time prior to, during or in respect of the term hereof may be assessed or imposed on or in

respect of or be a lien upon (i) Mezzanine Borrower or First Mortgage Loan Borrower, (including, without limitation, all income, franchise, single business or other taxes imposed on Mezzanine Borrower or First Mortgage Borrower, for the privilege of doing business in any jurisdiction) or Mezzanine Lender or (ii) the Property or any of the Collateral or any part thereof. Nothing contained in this Agreement shall be construed to require Mezzanine Borrower to pay (and Impositions shall not include) any tax, assessment, levy or charge imposed on Mezzanine Lender in the nature of a franchise, capital levy, estate, inheritance, succession, income or net revenue tax.

"Improvements" means all buildings, structures, fixtures, additions, enlargements, extensions, modification, repairs, replacements and improvements of every kind and nature now or hereafter located on the Property.

"Indebtedness" of a Person, at a particular date, means the sum (without duplication) at such date of (a) indebtedness or liability for borrowed money, (b) obligations evidenced by bonds, debentures, notes or other similar instruments, (c) obligations for the deferred purchase price of property or services (including trade obligations), (d) obligations under letters of credit, (e) obligations under acceptance facilities, (f) all guaranties, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds to invest in any Person, or otherwise to assure a creditor against loss, (g) obligations secured by any Liens, whether or not the obligations have been assumed (h) obligations under any lease which have been or should be capitalized under GAAP and (i) any other obligations or liabilities of any nature, whether absolute, accrued, contingent, liquidated, or otherwise and whether due or to be due, asserted or unasserted, known or unknown.

"Indemnified Party" shall have the meaning set forth in Section 8.29.

"Independent" means, when used with respect to any Person, a Person who: (i) does not have any direct financial interest or any material indirect financial interest in Mezzanine Borrower, First Mortgage Loan Borrower or Manager or in any Affiliate of Mezzanine Borrower, First Mortgage Loan Borrower or Manager, (ii) is not connected with Mezzanine Borrower, First Mortgage Loan Borrower or Manager or any Affiliate of Mezzanine Borrower, First Mortgage Loan Borrower or Manager, as an officer, employee, promoter, underwriter, trustee, partner, member, manager, creditor, director or person performing similar functions, and (iii) is not a member of the immediate family of a Person defined in (i) or (ii) above.

"Independent Director" means, with respect to a corporation, a duly appointed member of the board of directors of such corporation, reasonably satisfactory to Mezzanine Lender, who shall not have been at the time of such individual's appointment, and may not have been at any time during the preceding five (5) years, and shall not be at any time while serving as Independent Director: (i) a direct or indirect legal or beneficial owner of, or an officer, director, attorney, counsel, partner, member or employee of, such corporation (other than an Independent Director thereof) or any Affiliate thereof, (ii) a customer or creditor of, or supplier or contractor to, or other person who derives more than ten percent (10%) of its purchases or revenues from its activities with such corporation or any Affiliate thereof, (iii) a person or other entity controlling, controlled by or under common control with any such direct or indirect legal or beneficial owner,

officer, director, attorney, counsel, partner, member, employee, customer, creditor, contractor supplier or other Person, or (iv) a member of the immediate family of any such direct or indirect legal or beneficial owner, officer, director, attorney, counsel, partner, member, employee, customer, creditor, contractor, supplier or other person. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or activities of a person or entity, whether through ownership of voting securities or other beneficial interest, by contract or otherwise and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Institutional Investor" means (i) a commercial bank organized under the laws of the United States, or any State thereof, and having (x) total assets in excess of \$1,000,000,000 and (y) a combined capital and surplus of at least \$250,000,000; (ii) a commercial bank organized under the laws of any other country which is a member of the Organization of Economic Cooperation and Development ("OECD"), or a political subdivision of any such country, and having (x) total assets in excess of \$1,000,000,000 and (y) a combined capital and surplus of at least \$250,000,000, provided that such bank is acting through a branch or agency located in the country in which it is organized or another country which is also a member of OECD; (iii) an insurance company organized under the laws of any State of the United States, or organized under the laws of any country and licensed as an insurer by any State within the United States and having admitted assets of at least \$1,000,000,000; (iv) a nationally recognized investment banking company, or an affiliate thereof (other than any Person which is directly or indirectly an Affiliate of Mezzanine Borrower or Guarantor, or of any member or partner of Mezzanine Borrower or Guarantor) organized under the laws of any State of the United States, and licensed or qualified to conduct such business under the laws of any such State and having (1) total assets of at least \$1,000,000,000 and (2) a net worth of at least \$250,000,000; (v) a private corporate or public pension or profit-sharing plan (or similar plan) or an endowment fund for a college, university or private charitable foundation having total assets in excess of \$1,000,000,000; or (vi) any entity which is engaged in the business of or organized for the purpose of acquiring ownership and other interests in real estate or hotel assets (including, without limitation, direct and beneficial ownership interests) or any entity that is itself, or is controlled by or under common control with an entity which is a so-called "opportunity fund", "hedge fund" or other similar investment fund and having total assets in excess of \$1,000,000,000 and being reasonably acceptable to the Mezzanine Lender.

"Instructions" has the meaning set forth in Section 3.9(a).

"Instruments" means all instruments, chattel paper, documents or other writings obtained by Mezzanine Borrower evidencing a right to payment, including, without limitation, all notes, drafts, acceptances, documents of title, and policies and certificates of insurance, including but not limited to, liability, hazard, rental and credit insurance, guarantees and securities, now or hereafter received by Mezzanine Borrower or in which Mezzanine Borrower has or acquires an interest pertaining to the foregoing. In addition to the foregoing, "Instruments" shall include the meaning given such term in the UCC.

"Insurance" has the meaning set forth in Section 5.3.



"Interest Accrual Period" means each period during which interest at the Interest Rate shall be applicable to the Principal Indebtedness. Each such period shall commence on and include a Payment Date and end on and include the last day immediately preceding the next Payment Date. If the Closing Date shall occur on a date other than a Payment Date, the first Interest Accrual Period shall commence on and include the Closing Date and end on and include the last day before the initial Payment Date. If the Closing Date shall occur on the last day before the initial Payment Date, the first Interest Accrual Period shall consist of a one (1) day period consisting of the Closing Date.

"Interest Rate" means a per annum interest rate equal to LIBOR plus the LIBOR Spread, adjusted on the first (1st) day of each Interest Accrual Period.

"Interest Rate Cap Agreement" has the meaning set forth in Section 5.1(s).

"Investor" has the meaning provided in Section 8.27.

"Investment Property" has the meaning assigned to such term in Section 9-115(1)(f) of the UCC.

"Knowledge" whenever in this Mezzanine Loan Agreement or any of the Mezzanine Loan Documents, or in any document or certificate executed on behalf of Mezzanine Borrower pursuant to this Agreement or any of the Mezzanine Loan Documents, reference is made to the knowledge of Mezzanine Borrower, First Mortgage Loan Borrower, Guarantor or any Control Entity (whether by use of the words "knowledge" or "known", or other words of similar meaning, and whether or not the same are capitalized), such shall be deemed to refer to the knowledge of (i) the Chief Executive Officer of Guarantor, the Chief Financial Officer of Guarantor, the President of Opryland Hospitality Group, the Chief Financial Officer of Opryland Hospitality Group and the General Manager of the hotel located at the Property; (ii) the individuals employed by any such party with whom the persons mentioned in clause (i) above would reasonably be expected to consult for information on the subject matter; and (iii) also to the knowledge of the person signing such document or certificate.

"Late Charge" means the lesser of (i) five percent (5%) of any delinquent amount and (ii) the maximum late charge permitted to be charged under the laws of the State of New York.

"Leases" means any lease, tenancy, license, sublease, assignment and/or other rental or occupancy agreement or other agreement or arrangement (including, without limitation, any and all guaranties of any of the foregoing) heretofore or hereafter entered into affecting the use, enjoyment or occupancy of, or the conduct of any activity upon or in, the Property or any portion thereof, including any extensions, renewals, modifications or amendments thereof.

"Leasing Costs" means the costs incurred by First Mortgage Loan Borrower with respect to tenant improvement costs and leasing commissions payable in connection with Leases at the Property approved by Mezzanine Lender (or deemed approved by Mezzanine Lender in accordance with the terms hereof) and entered into after the Closing Date.

"Legal Requirements" means all statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting First Mortgage Loan Borrower, Mezzanine Borrower, the Mezzanine Loan Documents, the Collateral or any part thereof, enacted or entered and in force as of the relevant date, and all Permits and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Mezzanine Borrower at any time in force affecting the Collateral or any part thereof.

"Liabilities" has the meaning set forth in Section 8.34.

"LIBOR" means with respect to each Interest Accrual Period, the rate for deposits in U.S. dollars for a one-month period that appears on Telerate Page 3750 (or the successor thereto) as of 11:00 a.m., London, England time, on the related Determination Date. If such rate does not appear on Telerate Page 3750 as of 11:00 a.m., London, England time, on such Determination Date, LIBOR shall be the arithmetic mean of the offered rates (expressed as a percentage per annum) for deposits in U.S. dollars for a one-month period that appear on the Reuters Screen LIBO Page as of 11:00 a.m., London, England time, on such Determination Date, if at least two (2) such offered rates so appear. If fewer than two such offered rates appear on the Reuters Screen LIBO Page as of 11:00 a.m., London, England time, on such Determination Date, Mezzanine Lender shall request the principal London, England office of any four (4) major reference banks in the London interbank market selected by Mezzanine Lender to provide such bank's offered quotation (expressed as a percentage per annum) to prime banks in the London interbank market for deposits in U. S. Dollars for a one-month period as of 11:00 a.m., London, England time, on such Determination Date. If at least two (2) such offered quotations are so provided, LIBOR shall be the arithmetic mean of such quotations. If fewer than two such quotations are so provided, Mezzanine Lender shall request any three major banks in New York City selected by Mezzanine Lender to provide such bank's rate (expressed as a percentage per annum) for loans in U.S. Dollars to leading European banks for a one month period as of approximately 11:00 a.m., New York City time on the applicable Determination Date. If at least two (2) such rates are so provided, LIBOR shall be the arithmetic mean of such rates. If fewer than two (2) rates are so provided, then LIBOR for the applicable Interest Accrual Period shall be LIBOR that was in effect for the next preceding Interest Accrual Period. LIBOR for any Interest Accrual Period shall be adjusted from time to time, by increasing the rate thereof to compensate Mezzanine Lender for any aggregate reserve requirements (including, without limitation, all basic, supplemental, marginal and other reserve requirements and taking into account any transitional adjustments or other scheduled changes in reserve requirements during any Interest Accrual Period) which are required to be maintained by Mezzanine Lender with respect to "Eurocurrency liabilities" (as presently defined in Regulation D of the Board of Governors of the Federal Reserve System) of the same term under Regulation D, or any other regulations of a Governmental Authority having jurisdiction over Mezzanine Lender of similar effect, provided, such additional aggregate reserve requirements are applied in a non-discriminatory manner to all borrowers of Mezzanine Lender and Mezzanine Lender has used commercially reasonable efforts to avoid or mitigate the imposition of such additional aggregate reserve requirements. LIBOR shall be determined by Mezzanine Lender or its agent in accordance with this definition.

"LIBOR Spread" means 6.00% (600 basis points).

"Lien" means any mortgage, deed of trust, deed to secure debt, lien (statutory or other), pledge, easement, restrictive covenant, lis pendens, hypothecation, assignment, preference, priority, security interest, or any other encumbrance or charge on or affecting the Property or any portion thereof or any of the Collateral or Mezzanine Borrower or First Mortgage Loan Borrower, or any interest in any of the foregoing, including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement or similar instrument under the UCC or comparable law of any other jurisdiction, domestic or foreign, and mechanic's, materialmen's and other similar liens and encumbrances.

"Liquidation Event" means (i) any sale, transfer or other disposition or liquidation of any property or asset of Mezzanine Borrower or First Mortgage Loan Borrower of any kind or any portion thereof, (other than dispositions of obsolete property or equipment, unless such property is replaced or discarded and not replaced, in either instance, in the ordinary course of First Mortgage Loan Borrower's business), (ii) any sale, transfer or other disposition or liquidation of the Property or any portion thereof (including any foreclosure sale) or interest therein, (iii) any casualty to the Property or any property or asset of any kind or any portion thereof, (iv) any condemnation of the Property or any property or asset of any kind or any portion thereof or (v) any refinancing of the Property or any property or asset of Mezzanine Borrower or First Mortgage Loan Borrower of any kind or any refinancing or defeasance of the First Mortgage Loan approved by Mezzanine Lender.

"Management Agreement" shall mean that certain Amended and Restated Hotel Management Agreement dated as of March 27, 2001, between First Mortgage Loan Borrower, as owner, and Manager, as manager, and any other property management agreement approved by Mezzanine Lender in accordance with the terms hereof.

"Management Fees" means the management fees payable to Manager for the management of the Property, not to exceed in any fiscal year three percent (3.0%) of the Receipts (excluding service charges) of the Property for such fiscal year provided, that if Manager is an Affiliate of Mezzanine Borrower then upon a Cash Sweep Event all Management Fees in excess of 2.0% shall be deferred until the Cash Sweep Event has been terminated and which deferred fees may thereafter be paid from funds available to Mezzanine Borrower under Section 2.2(a)(viii) of the Mezzanine Deposit Account Agreement.

"Manager" means Opryland Hospitality, LLC or any successor manager of the Property approved by Mezzanine Lender.

"Material Adverse Condition" means a condition or circumstance that results in or causes a material adverse effect upon (i) the business or the financial condition or results of operation of Mezzanine Borrower or First Mortgage Loan Borrower, (ii) the ability of Mezzanine Borrower or Guarantor to make any payment under or to perform any or all of its obligations under this Agreement or any of the other Mezzanine Loan Documents, (iii) the legality, validity or enforceability of any of the Mezzanine Loan Documents or Mezzanine Lender's ability to enforce any of its rights under the Mezzanine Loan Documents, or (iv) the Lien and security interest of Mezzanine Lender or the value of the Collateral or the Property (but only to the extent

such decrease in value is specifically related to the Property and not to conditions in the economy in general).

"Material Lease" means any Lease of space in the Property which (a) either provides for annual rent or other payments in an amount equal to or greater than \$500,000 or has a term (including all extensions and renewals which are unilaterally exercisable by the tenant thereunder) of more than five (5) years, and (b) may not be cancelled by either party thereto on thirty (30) days' notice without payment of a termination fee, penalty or other cancellation fee.

"Maturity Date" means the earliest to occur of (i) April 1, 2004, as may be extended pursuant to Section 2.13, (ii) the maturity date or earlier termination or acceleration of the First Mortgage Loan, (iii) the date of prepayment of the First Mortgage Loan, or (iv) such earlier date resulting from acceleration of the Debt by Mezzanine Lender.

"Maximum Amount" means the maximum rate of interest designated by applicable laws relating to payment of interest and usury.

"Membership Interest Pledge Agreement" means that certain Pledge of Limited Liability Company Membership Interest dated as of the Closing Date, between Mezzanine Borrower, as pledgor, and Mezzanine Lender, as pledgee, with respect to the membership interest held by Mezzanine Borrower in First Mortgage Loan Borrower, as the same may be hereafter modified, amended or supplemented from time to time.

"Mezzanine Borrower" has the meaning provided in the preamble to this Agreement.

"Mezzanine Borrower's Certificate" means a certificate executed by a senior executive officer of the Control Entity of Mezzanine Borrower in form and substance satisfactory to Mezzanine Lender in Mezzanine Lender's discretion dated as of the Closing Date.

"Mezzanine Deposit Account Agreement" means that certain deposit account agreement entered into among Mezzanine Lender, Mezzanine Borrower and Deposit Bank, as the same may be amended, modified or supplemented from time to time.

"Mezzanine Lender" means, collectively, Merrill Lynch, together with any other Person that shall have become a party hereto pursuant to an Assignment and Acceptance, but excluding any such Person that ceases to be a party hereunder pursuant to Section 8.34.2. If there shall be more than one (1) Person who shall be deemed a "Mezzanine Lender" hereunder, the Agent shall be considered the "Mezzanine Lender" for purposes of taking (or not taking) action under this Agreement or under any other Mezzanine Loan Documents, and Mezzanine Borrower shall be entitled to rely on such action by Agent and each Mezzanine Lender shall be bound by such action of the Agent.

"Mezzanine Loan" has the meaning provided in the Recitals hereto.

"Mezzanine Loan Amount" has the meaning provided in the Recitals hereto.

"Mezzanine Loan Documents" means, collectively, this Agreement, the Mezzanine Note, the Equity Pledge Agreements, the Guaranty, the Environmental Indemnity, the Mezzanine Deposit Account Agreement, the Assignment of Interest Rate Cap Agreement and all other agreements, instruments, certificates and documents executed or delivered by or on behalf of Mezzanine Borrower or any other Person to evidence or secure the Mezzanine Loan or otherwise in satisfaction of the requirements of this Agreement, or the other documents listed above, as each such agreement, instrument, certificate or document may be amended, replaced, restated, split, consolidated, supplemented or modified from time to time.

"Mezzanine Note" means the promissory note(s), dated the Closing Date, substantially in the form of Exhibit D annexed hereto and made a part hereof, in the original aggregate principal amount of One Hundred Million Dollars (\$100,000,000), made by Mezzanine Borrower to Mezzanine Lender pursuant to this Agreement, as such promissory note(s) may be modified, amended, supplemented, extended, split or consolidated in writing, and any note(s) issued in substitution or exchange therefor or in replacement thereof.

"Money" means all moneys, cash, rights to deposit or savings accounts, credit card receipts, rents or other items of legal tender.

"Monthly Payment Amount" means, with respect to any Interest Accrual Period, an amount equal to all accrued and unpaid interest calculated at the Interest Rate on the daily balance of the Principal Indebtedness during that Interest Accrual Period plus any scheduled amortization of principal required under the Mezzanine Note; provided, however, that if Mezzanine Lender accelerates the Debt in connection with any Payment Breach, then Mezzanine Borrower's obligation to pay Excess Cash Flow on each Payment Date shall not terminate until the Debt is paid in full. Monthly amortization payments shall equal the amount, if any, by which \$667,000.00 exceeds the amount of monthly amortization paid under the First Mortgage Loan.

"Monthly Tax and Insurance Amount" has the meaning provided in Section 3.4.

"Multiemployer Plan" means a Multiemployer plan defined as such in Section 3(37) of ERISA to which contributions have been made by Mezzanine Borrower or any ERISA Affiliate and which is covered by Title IV of ERISA.

"Net Liquidation Proceeds" means (x) with respect to any Liquidation Event relating to the Property, all amounts paid to or received by or on behalf of First Mortgage Loan Borrower or Mezzanine Borrower in connection with such Liquidation Event, including, without limitation, proceeds of any sale, refinancing or other disposition or liquidation, the amount of any award or payment in connection with any condemnation or taking by eminent domain, and the amount of any insurance proceeds paid in connection with any casualty loss, as applicable, other than, in the case of a casualty loss or condemnation award, amounts applied to the restoration or repair of the Property or amounts required by the terms of any of the First Mortgage Loan Documents to be applied to the repayment of the First Mortgage Loan, less (i) in the case of a sale, other than a foreclosure sale or deed in lieu of foreclosure pursuant to the First Mortgage Loan, such reasonable and customary costs and expenses of sale (including reasonable attorneys' fees and costs and brokerage commissions) as such costs shall be approved by Mezzanine Lender pursuant to the terms hereof (if the sale is of all or substantially all of the

Property or Collateral and the amount of the Net Liquidation Proceeds will not be sufficient to repay the entire Debt), and the amount necessary to pay to First Mortgage Lender to obtain the release of the First Mortgage, (ii) in the case of a foreclosure sale, such costs and expenses incurred by the First Mortgage Lender under any of the First Mortgage Loan Documents as First Mortgage Lender shall be entitled to receive reimbursement for under the terms of First Mortgage Loan Documents or under applicable law, (iii) in the case of a casualty loss or condemnation, such costs and expenses of collection of the related insurance proceeds or condemnation award as such costs shall be approved by First Mortgage Lender pursuant to the terms of any of the First Mortgage Loan Documents, or if the First Mortgage Loan has been paid in full, by Mezzanine Lender pursuant to the terms of the Mezzanine Loan Agreement, and (iv) in the case of a refinancing of the First Mortgage Loan, or the Property, amounts required to be paid to First Mortgage Lender to obtain the release of the First Mortgage and the reasonable costs and expenses of such refinancing as shall be approved by Mezzanine Lender (if the amount of the Net Liquidation Proceeds will not be sufficient to repay the entire Debt), and (y) with respect to any Liquidation Event relating to any property other than the Property, including, without limitation, any Collateral, all amounts paid to or received by Mezzanine Borrower in connection with such Liquidation Event, less the reasonable costs and expenses incurred by Mezzanine Borrower in connection with such Liquidation Event as shall be approved by Mezzanine Lender (if the amount of the Net Liquidation Proceeds will not be sufficient to repay the entire Debt).

"Net Liquidation Proceeds After Debt Service" means, (i) with respect to any Liquidation Event relating to the Property, the Net Liquidation Proceeds with respect thereto other than any portion thereof applied to the payment of the amounts owed to First Mortgage Lender under the terms of any of the First Mortgage Loan Documents; and (ii) with respect to any Liquidation Event relating to properties or assets of any kind other than the Property, including, without limitation, any Collateral, the Net Liquidation Proceeds with respect thereto.

"Net Operating Income" means, for any 12-month period, calculated on a trailing basis, the amount, determined by Mezzanine Lender and calculated in all events in accordance with GAAP, equal to the excess of (a) Receipts for such period minus (b) Expenses for such period.

"Officers' Certificate" means a certificate delivered to Mezzanine Lender by Mezzanine Borrower which is signed by a senior executive officer of its Control Entity.

"Operating Agreement" means the Amended and Restated Limited Liability Company Operating Agreement dated March 27, 2001, with respect to the First Mortgage Loan Borrower, as the same may be amended or modified from time to time, subject to the required consents under the First Mortgage Loan Documents and Mezzanine Loan Documents.

"Other Fees" has the meaning set forth in Section 2.10.

"Parent Pledgor" means Gaylord Entertainment Company, a Delaware corporation, which is the sole owner of all outstanding stock issued by the Control Entity of First Mortgage Loan Borrower.

"Payment Breach" means the failure of Mezzanine Borrower to pay to Mezzanine Lender on any Payment Date all amounts due and owing on such Payment Date pursuant to Section 3.3(d) of this Agreement.

"Payment Date" means the first (1st) day of each calendar month, or if such day is not a Business Day, the next Business Day, commencing on May 1, 2001.

"PBGC" means the Pension Benefit Guaranty Corporation established under ERISA, or any successor thereto.

"Permitted Indebtedness" means (A) with respect to the First Mortgage Loan Borrower and the Property: (1) the First Mortgage Loan; (2) trade payables, operating contracts and equipment leases for the Property entered into in the ordinary course of business which are consistent with the Approved Operating Budget and which are not more than thirty (30) days past due, evidenced by a note or secured by the Property or any portion thereof, provided the aggregate outstanding amount of which does not at any one time exceed \$13,750,000 and (3) such obligations of First Mortgage Loan Borrower under that certain Settlement Agreement dated December 20, 2000 by and among Parent Pledgor, First Mortgage Loan Borrower, and the Department of Water and Sewerage Services of the Metropolitan Government of Nashville and Davidson Counties ("Water and Sewerage Settlement Award") and (B) with respect to Mezzanine Borrower means the Debt and such immaterial Indebtedness incurred in the ordinary course of business which is not more than (30) days past due and which does not exceed \$50,000 outstanding at any one time for ordinary accounting services and professional fees unless otherwise approved in writing by the Mezzanine Lender in its sole discretion.

"Permitted Investments" shall have the meaning ascribed to such term in the Mezzanine Deposit Account Agreement.

"Permitted Transfers" provided no Default or Event of Default shall then exist shall mean (i) disposal by First Mortgage Loan Borrower of obsolete or otherwise replaceable personal property, provided such property is replaced (or discarded and not replaced) by First Mortgage Loan Borrower in the ordinary course of business, (ii) distribution of partnership earnings by First Mortgage Loan Borrower to Mezzanine Borrower and, after payment of all amounts then due and payable hereunder (including all funding of all reserves required to be maintained hereunder), distributions of earnings of Mezzanine Borrower to its members (so long as no Event of Default or Cash Sweep Event is outstanding), (iii) utility easements which do not materially adversely affect the Property and have been approved by Mezzanine Lender in its reasonable discretion, (iv) any Lease at the Property in writing entered into in accordance with the express provisions of Section 5.2(c) or as otherwise approved by Mezzanine Lender in writing in accordance with the express terms hereof and (v) transfers, directly or indirectly, of ownership interests in First Mortgage Loan Borrower and Mezzanine Borrower, other than interests held by, or in, their respective Control Entity, (x) for estate and tax planning to any spouse, sibling, parent, child or grandchild or to a trust for the benefit of such person or spouse, sibling, parent, child or grandchild provided there is no change of control of First Mortgage Loan Borrower, Mezzanine Borrower or their respective Control Entity or (y) to any Institutional Investor or other Persons approved in advance by Mezzanine Lender, such approval not to be unreasonably withheld, provided that (i) no Event of Default then exists, (ii) in each case,

Mezzanine Borrower shall give Mezzanine Lender written notice of such transfer together with copies of all instruments effecting such transfer not less than ten (10) Business Days prior to the date of such transfer; (iii) in each case, such transfer does not and will not result in the termination or dissolution of Mezzanine Borrower, by operation of law or otherwise; (iv) Guarantor, or one or more wholly owned subsidiaries of Guarantor, shall continue to together hold at least fifty-one percent (51%) of the outstanding ownership interests in the partner(s) or member(s) of Mezzanine Borrower, and Guarantor continues to directly or indirectly control the business and affairs of Mezzanine Borrower; (v) such transfer shall not result in a change of control of Mezzanine Borrower or a change of the Manager without Mezzanine Lender's consent; and (vi) in each case, the single purpose nature and bankruptcy remoteness of Mezzanine Borrower after such transfer is satisfactory to Lender and in accordance with the standards of the Rating Agencies. As used in this definition, the term "control" shall have the meaning set forth in the definition of "Affiliate" in Section 1.1 and a "change of control" of any Person shall include the transfer of legal or equitable ownership interests in such Person which after giving effect to such transfer results in any transferee or pledgee of such interests holding more than a 49% ownership interest or security interest in such Person. No Permitted Transfer or other Transfer permitted by Mezzanine Lender shall release any rights to the Collateral or any liability of the Mezzanine Borrower, the Control Entity of Mezzanine Borrower, Guarantor or Parent Pledgor under the Mezzanine Loan Documents, without the prior written consent of Mezzanine Lender. Notwithstanding anything to the contrary contained herein, the provisions restricting transfer shall not be applicable to transfer of publicly traded stock in Guarantor.

"Person" means any individual, corporation, limited liability company, partnership, joint venture, estate, trust, unincorporated association, or any other entity, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

"Plan" means an employee benefit or other plan established or maintained by Mezzanine Borrower or any ERISA Affiliate and that is covered by Title IV of ERISA, other than a Multiemployer Plan.

"Prepayment Fee" means an amount equal to the Principal Indebtedness being prepaid on the date of prepayment multiplied by (x) two percent (2.0%) during the period up to and including the first anniversary of the Closing Date and (y) one percent (1.0%) during the subsequent period up to and including the second anniversary of the Closing Date. No Prepayment Fee shall be payable after the second anniversary of the Closing Date.

"Principal Indebtedness" means the principal amount of the entire Mezzanine Loan outstanding from time to time as the same may be increased or decreased, as a result of prepayment or otherwise.

"Proceeds" means all of Mezzanine Borrower's "proceeds," as such term is defined in the UCC, and, to the extent not included in such definition, all proceeds whether cash or non-cash, movable or immovable, tangible or intangible (including Insurance proceeds, condemnation proceeds and proceeds of proceeds), from the Collateral, including, without limitation, those from the sale, exchange, transfer, collection, loss, damage, disposition,



substitution or replacement of any of the Collateral and all income, gain, credit, distributions and similar items from or with respect to the Collateral.

"Pro Forma Debt Service" means the sum of the debt service on the Mezzanine Loan and First Mortgage Loan as projected over the immediately succeeding twelve (12) month period assuming both accrue at a rate equal to the applicable LIBOR Spread or Applicable Spread (as defined in the First Mortgage Loan Agreement) for the Mezzanine Loan and First Mortgage Loan, respectively, plus the greater of (x) the then current LIBOR and (y) the then current yield on 10 Year U.S. Treasury Obligations.

"Pro Forma Net Operating Income" means the Net Operating Income adjusted to reflect (x) the greater of (i) the actual management fees under the Management Agreement and (ii) 3.0% of Receipts (excluding service charges) for such trailing twelve (12) month period provided, however, if the Manager is an Affiliate of the Mezzanine Borrower or First Mortgage Loan Borrower for purposes of calculating Pro Forma Net Operating Income, Management Fees shall be deemed to be 2.5% of Receipts (excluding service charges) and (y) a reserve for FF&E equal to 4.0% of Receipts (excluding service charges) for such trailing twelve month period.

"Property" means the real property and all improvements located thereon commonly known as Opryland Hotel and Convention Center, Nashville, Tennessee, as more particularly described in the First Mortgage.

"Rating Agencies" means Fitch, Inc. ("Fitch"), Moody's Investors Service, Inc. ("Moody's") and Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc. ("S&P") or any successor thereto, and any other nationally recognized statistical rating organization to the extent that any of the foregoing have been or will be engaged by First Mortgage Lender or its designees in connection with or in anticipation of a Securitization of the First Mortgage Loan or by Mezzanine Lender in connection with a Securitization of the Mezzanine Loan, as applicable (each individually, a "Rating Agency").

"Rating Confirmation Letter" means a letter issued by each applicable Rating Agency which confirms that the taking of action referenced therein will not result in any qualification, withdrawal or downgrading of any existing ratings of securities, certificates or bonds arising from the securitization of the First Mortgage Loan or Mezzanine Loan, as applicable.

"Receipts" shall mean, without duplication with respect to the applicable periods set forth in this Agreement, all gross receipts, rents, revenues, income, fees, payments and consideration actually collected by or on behalf of First Mortgage Loan Borrower, Manager (excluding Management Fees paid in accordance with this Agreement), Mezzanine Borrower and their respective Affiliates from any and all sources in any way, manner or respect relating to and/or arising from the Property in accordance with GAAP, including, without limitation, (a) gross fixed, minimum and guaranteed rentals or other sums paid by Tenants or other occupants, licensees, concessionaires or users of the Property to or for the account or benefit of First Mortgage Loan

Borrower or any of its Affiliates, relating to the occupancy of the Property, (b) percentage, overage, additional and similar rentals paid by Tenants or other occupants, licensees or users of the Property to or for the account or benefit of First Mortgage Loan Borrower or any of its Affiliates, relating to the occupancy of the Property, (c) amounts paid by Tenants or other occupants, licensees or users of the Property to or for the account or benefit of First Mortgage Loan Borrower or any of its Affiliates, including, without limitation, common area maintenance charges, pursuant to escalation provisions in Leases or other agreements or on account of maintenance, operating and tax expenses for the Property or utility reimbursements or merchant association dues or advertising fund payments, (d) fees or charges for (i) heating, ventilation, air conditioning and other utility services, including condenser water, (ii) freight elevator service, (iii) lobby directory service, (iv) extra rubbish removal, (v) repairs and (vi) other non-standard services, (e) late charges and interest paid to or for the account or benefit of First Mortgage Loan Borrower or any of its Affiliates, pursuant to Leases and amounts paid to or for the account or benefit of First Mortgage Loan Borrower or any of its Affiliates, as a result of provisions in Leases permitting the landlord thereunder to receive or share in receipt from the subleasing of space demised under, or the assignment of, Leases, (f) payments made by any Tenant in consideration of, or with respect to, a Lease termination, modification and/or consent, (g) automobile parking fees and rentals, if any, other fees, charges or payments, whether or not denominated as rental, but paid to or for the account or benefit of First Mortgage Loan Borrower or any of its Affiliates for or in connection with the rental or occupancy of any portion of the Property, (h) proceeds of any Insurance (for business interruption or loss of rents) or Awards (for a temporary taking to the extent compensation for lost rent) received by or for the account or benefit of First Mortgage Loan Borrower or any of its Affiliates, relating to the Property, (i) Tenants' security deposits to the extent they have been applied to payment of Tenants' obligations, (j) net proceeds (after deducting amounts paid or payable to Tenants) from refunds obtained as a result of pursuing available legal remedies in contesting the validity of any Imposition or as a result of a reduction of assessed valuation of the Property, (k) damages or settlement payments paid by third parties in connection with the Property (other than in respect of personal injury claims), (l) income, rentals and receipts derived by First Mortgage Loan Borrower from any ancillary businesses, licenses and concessions at the Property, (m) refunds of insurance premiums or any other item which would constitute an Expense if paid by First Mortgage Loan Borrower (unless otherwise credited to an expense account), (n) any sums paid to Mezzanine Borrower by the counterparty to the Interest Rate Cap Agreement or similar hedging agreement which may be entered into by Mezzanine Borrower in connection with the Mezzanine Loan, (o) all revenues and credit card receipts (including, without limitation, service charges) collected from guest rooms, restaurants, bars, meeting rooms, banquet rooms and recreational facilities, parking charges, all revenues and receipts now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property, or rendering of services by owner or any operator or manager of the hotel or the commercial space located in the Improvements or acquired from others (including, without limitation, from the rental of any office space, retail space, guest rooms or other space, halls, stores, and offices, and deposits securing reservations of such space), license, lease, sublease and concession fees and rentals, health club membership fees, food and beverage wholesale and retail sales, service charges and vending machine sales and all other items of revenue which would be included as income, rents or profits under the USAH and (p) all other amounts payable to Mezzanine Borrower or First Mortgage Loan Borrower during such period in respect of items which, in accordance with GAAP, would be included in such Person's Financial Statements for such period or any other period as revenue of the Property.

Notwithstanding the foregoing clauses (a) through (p), Receipts shall not include (i) any proceeds resulting from the Transfer of all or any part of the Property (other than rents paid under Leases), (ii) rentals under Leases paid more than one (1) month in advance, (iii) security or other refundable deposits paid by Tenants, except to the extent applied to the payment of Tenants' obligations, (iv) payments made by a Tenant to First Mortgage Loan Borrower for tenant improvements to be paid for by the Tenant to the extent that Mezzanine Borrower or First Mortgage Loan Borrower transmits such payment to the contractor installing such tenant improvements except for management fees or administrative fees related thereto, (v) promotional and similar receipts collected by First Mortgage Loan Borrower, to the extent remitted to merchants' associations and the like and (vi) revenues and other receipts of Affiliates of First Mortgage Loan Borrower and Mezzanine Borrower that are derived from the sale of goods and services by such Persons at or from the Property, as opposed to rents paid by such entities for their use and occupancy of their respective premises.

"Recourse Obligations" has the meaning set forth in Section 8.15.

"Related Party" has the meaning set forth in Section 8.15.

"Required Debt Service Payment" means, on any Payment Date, the Debt Service then due and payable by Mezzanine Borrower.

"Reuters Screen LIBO Page" means the display designated as page "LIBO" on the Reuters Monitor Money Rates Service (or such other page as may replace that page on the service for the purpose of displaying interbank rates from London in U.S. Dollars).

"Securities" has the meaning set forth in Section 8.34.

"Securities Account" has the meaning assigned to such term in Section 8-501 of the UCC.

"Securities Intermediary" has the meaning assigned to such term in Section 8-102(14) of the UCC.

"Securitization" has the meaning set forth in Section 8.34.

"Servicer" means a servicer selected by First Mortgage Lender from time to time in its sole discretion to service the First Mortgage Loan.

"Special Purpose Bankruptcy Remote Entity" has the meaning set forth in Section 5.1(p).

"Stock Pledge Agreement" means that certain Stock Pledge Agreement dated as of the Closing Date, between Parent Pledgor, as pledgor, and Mezzanine Lender, as pledgee, with respect to the outstanding stock of the Control Entity of First Mortgage Loan Borrower, as the same may be hereafter modified, amended or supplemented from time to time.

"Subsidiary" of any Person means any corporation, partnership, limited liability company or other entity in which such Person holds an equity interest constituting more than ten percent (10%) of the equity classes issued by such entity.

"Tax and Insurance Account" has the meaning set forth in Section 3.4.

"Telerate Page 3750" means the display designated as Page 3750 on the Dow Jones Telerate Service (or such other page as may replace Page 3750 on that service or such other service as may be nominated by the British Banker's Association as the information vendor for the purpose of displaying British Bankers' Association Interest Settlement Rates for the U.S. Dollar deposits).

"Tenant" means any permitted occupant, tenant, subtenant or licensee of the Property.

"Term" means the period from and after the Closing Date to and including the first to occur of the Maturity Date or the date the Debt is paid in full.

"Three Year Business Plan" means that certain Three Year Business Plan prepared by Opryland Hospitality Group.

"Title Insurer" means Chicago Title Insurance Company, as sole insurer or, in the case of co-insurance, as lead insurer.

"Title Policy" means an owner's title insurance policy, issued or co-insured by the Title Insurer, on ALTA form 1970 (with 1984 changes).

"Transaction Costs" means all reasonable fees, costs, expenses and disbursements paid or payable by Mezzanine Borrower relating to the Transactions, including, without limitation, all fees, costs, expenses and disbursements described in Section 8.24.

"Transactions" means the transactions contemplated by the Mezzanine Loan Documents.

"Transfer" means any conveyance, assignment, disposition, alienation, transfer (including, without limitation, any transfer of any direct or indirect legal or beneficial interest, including, without limitation, any profits interest, in Mezzanine Borrower or First Mortgage Loan Borrower), sale, contract to sell, Lease (including, without limitation, any amendment, extension, modification, waiver or renewal thereof), or Lien, whether voluntarily, by law or otherwise, of, on, in or affecting any Collateral, Mezzanine Borrower, First Mortgage Loan Borrower, Manager or the Property.

"UCC" means, with respect to any Collateral, the Uniform Commercial Code in effect in the State of New York from time to time or the state in which any Accounts or Collateral is located.

"USAH" means the most current edition of the Uniform System of Accounts for Hotels (or the Lodging Industry) promulgated by the American Hotel and Motel Association as in effect from time to time.

## ARTICLE II

### GENERAL TERMS

Section 2.1. Amount of the Mezzanine Loan. Mezzanine Lender shall lend to Mezzanine Borrower an amount equal to the Mezzanine Loan Amount, which Mezzanine Lender shall disburse to Mezzanine Borrower on the Closing Date. No amount repaid in respect of the Mezzanine Loan may be reborrowed.

Section 2.2. Use of Proceeds. Proceeds of the Mezzanine Loan shall be used for capital investment in First Mortgage Loan Borrower and general purposes of Mezzanine Borrower including distributions to the Parent Pledgor.

Section 2.3. Security for the Mezzanine Loan. The Mezzanine Note and Mezzanine Borrower's obligations hereunder and under the other Mezzanine Loan Documents shall be secured by the Collateral.

Section 2.4. Mezzanine Note. Mezzanine Borrower's obligation to pay the principal of and interest on the Mezzanine Loan (including Late Charges and Default Rate interest), shall be evidenced by this Agreement and by the Mezzanine Note, duly executed and delivered by Mezzanine Borrower. The Mezzanine Note shall be payable as to principal, interest, Late Charges and Default Rate interest, as specified in this Agreement, with a final maturity on the Maturity Date. Mezzanine Borrower shall pay all outstanding Debt on the Maturity Date.

#### Section 2.5. Principal and Interest Payments.

(a) Accrual of Interest. Interest shall accrue on the outstanding principal balance of the Mezzanine Note and all other amounts due to Mezzanine Lender under the Mezzanine Loan Documents at the Interest Rate.

(b) Payment of Interest and Principal. On the Closing Date, Mezzanine Borrower shall pay to Mezzanine Lender interest for the first (1st) Interest Accrual Period with respect to the Mezzanine Loan. On each Payment Date commencing with the Payment Date immediately after the end of the second (2nd) Interest Accrual Period through and including the Maturity Date, Mezzanine Borrower shall pay to the Mezzanine Lender, in accordance with Section 3.3(d), the Combined Monthly Payment Amount. Interest shall be payable in arrears. The principal required to be repaid on any Payment Date prior to the Maturity Date shall equal the amount, if any, by which \$667,000.00 exceeds the amount of monthly amortization paid under the First Mortgage Loan and such other amounts required under Section 2.5(c), Section 2.12, Section 5.3 and Section 5.4 herein.

(c) Payment of Liquidation Proceeds. Upon the receipt of any Net Liquidation Proceeds by Mezzanine Borrower or any of its Affiliates, Mezzanine Borrower shall

be required, on the date of such receipt, to apply the related Net Liquidation Proceeds After Debt Service to the prepayment of principal on the Mezzanine Note, together with accrued and unpaid interest and any breakage costs under Section 2.6, up to and including the date on which such prepayment occurs, and all other amounts then due and payable on the Mezzanine Note (including, without limitation, the Prepayment Fee, if applicable).

(d) Calculation of Interest. Interest shall accrue on the outstanding Principal Indebtedness and all other amounts due to Mezzanine Lender under the Mezzanine Loan Documents commencing upon the Closing Date. Interest shall be computed on the actual number of days elapsed in each year over a 360-day year.

(e) Default Rate Interest. After the occurrence and during the continuation of an Event of Default, the entire unpaid amount outstanding hereunder and under the Mezzanine Note will bear interest at the Default Rate; provided, however, if Mezzanine Lender shall have accelerated the Debt, the Mezzanine Note shall continue to bear interest at the Default Rate until paid in full.

(f) Late Charge. If Mezzanine Borrower fails to make any payment of any sums due under the Mezzanine Loan Documents within five (5) days after receipt of written notice that the same is due, (which written notice shall not be given more than twice per calendar year) in addition to Mezzanine Lender's rights hereunder, Mezzanine Borrower shall pay a Late Charge; provided, however, that if Mezzanine Borrower shall fail to pay the Monthly Payment Amount on the date same becomes due and payable, without notice the Late Charge shall be immediately due and payable and the aforesaid five (5) day period shall not apply with respect to such delinquent payment.

(g) Maturity Date. On the Maturity Date, Mezzanine Borrower shall pay to Mezzanine Lender the Debt and all other amounts then due under the Mezzanine Loan Documents, including, without limitation, any applicable Prepayment Fee, Late Charges and Default Rate interest.

Section 2.6. Voluntary Prepayment. Mezzanine Borrower shall have the right, on any Payment Date, to prepay the Mezzanine Loan, in whole or in part, upon at least five (5) Business Days' irrevocable notice to Mezzanine Lender, specifying the amount and the date of prepayment, provided that on the date of such prepayment Mezzanine Borrower shall pay to Mezzanine Lender the Prepayment Fee on the Principal Indebtedness so prepaid, if applicable. Any partial prepayments of the Mezzanine Loan (other than repayments permitted under clauses (x) and (y) below) shall be in the amount of at least \$1,000,000. Upon the receipt of any prepayment, Mezzanine Lender shall apply the amount of prepayment in accordance with Section 2.7. If any prepayment is received by Mezzanine Lender on a Business Day other than a Payment Date, then Mezzanine Borrower shall also pay interest on the Mezzanine Loan to the following Payment Date together with an amount necessary to reimburse Mezzanine Lender for any costs, losses or expenses incurred in connection with breaking any LIBOR contracts or redeploying funds as a consequence of such prepayment. Notwithstanding anything to the contrary set forth herein, no Prepayment Fee shall be due and payable in connection with a prepayment (x) arising as a result of the application of Net Liquidation Proceeds relating to a casualty or condemnation event of the Property or any portion thereof or (y) constituting a

principal curtailment payment of the Mezzanine Loan made by Mezzanine Borrower in order to prevent the occurrence of a Financial Covenant Breach as reasonably determined by Mezzanine Lender or during a Cash Sweep Event Cure Period to cure a Financial Covenant Breach provided in the latter case that any funds in the Cash Sweep Event Reserve Account shall be applied in accordance with the provisions of Section 2.12(a) hereof.

Section 2.7. Application of Payments. Provided no Event of Default has occurred and is continuing, all proceeds of any repayment, including prepayments, of the Mezzanine Loan shall be applied to pay: first, any costs and expenses of Mezzanine Lender required to be reimbursed under the terms of the Mezzanine Loan Documents, including, without limitation, the Mezzanine Lender's reasonable attorneys' fees and disbursements (i) arising as a result of such repayment or (ii) expended by Mezzanine Lender to protect, preserve, foreclose, or realize upon, or take any other action with respect to the Collateral; second, to accrued and unpaid interest at the Interest Rate, third, to the Prepayment Fee, if any; fourth, to the Principal Indebtedness; and fifth, any other amounts then due and owing under the Mezzanine Loan Documents. After the occurrence of an Event of Default, all proceeds of repayment, including any payment or recovery on the Collateral shall be applied first, to the Prepayment Fee, if any, and second, in such order and in such manner as Mezzanine Lender shall elect in Mezzanine Lender's discretion.

Section 2.8. Payment of Debt Service, Method and Place of Payment.

(a) Except as otherwise specifically provided herein, all payments and prepayments under this Agreement and the Mezzanine Note shall be made to Mezzanine Lender not later than 1:00 P.M., New York time, on the date when due, and shall be made in lawful money of the United States of America in federal or other immediately available funds to an account specified to Mezzanine Borrower by Mezzanine Lender in writing, and any funds received by Mezzanine Lender after such time, for all purposes hereof, shall be deemed to have been paid on the next succeeding Business Day.

(b) All payments made by Mezzanine Borrower hereunder or under the other Mezzanine Loan Documents, shall be made irrespective of, and without any deduction for, any set-offs or counterclaims.

Section 2.9. Taxes. All payments made by Mezzanine Borrower under this Agreement and under the other Mezzanine Loan Documents shall be made free and clear of, and without deduction or withholding for or on account of, any present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority.

Section 2.10. Servicing Fee and Other Fees. From and after the Closing Date until the Maturity Date and full repayment of the Debt, Mezzanine Borrower shall pay to the Mezzanine Lender a fee equal to (i) the actual third party credit administration and servicing fee incurred by Mezzanine Lender (the "Servicing Fee"), (ii) the actual third party custodial fees incurred by Mezzanine Lender, (iii) the actual third party Deposit Bank fees incurred by Mezzanine Lender and (iv) the actual third party Trustee fees incurred by Mezzanine Lender in connection with the Mezzanine Loan (items (ii), (iii) and (iv) shall collectively be referred to as

the "Other Fees"). The Servicing Fee and the Other Fees are not included in the LIBOR Spread, shall be payable monthly in arrears on each Payment Date and shall be at competitive market rates for similar transactions.

Section 2.11. Limitation of Interest. It is expressly stipulated and agreed to be the intent of Mezzanine Borrower and Mezzanine Lender at all times to comply with applicable state law or applicable United States federal law (to the extent that it permits Mezzanine Borrower and Mezzanine Lender to contract for, charge, take, reserve, or receive a greater amount of interest than under state law) and that this Section shall control every other covenant and agreement in this Agreement, the Mezzanine Note and the other Mezzanine Loan Documents. If the applicable law (state or federal) is ever judicially interpreted so as to render usurious or otherwise in contravention of applicable laws, any amount called for under this Agreement, the Mezzanine Note or under any of the other Mezzanine Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the Mezzanine Loan, or if Mezzanine Lender's exercise of the option to accelerate the Maturity Date, or if any prepayment by Mezzanine Borrower results in Mezzanine Borrower having paid any interest in excess of that permitted by applicable law, then it is Mezzanine Lender's express intent that all excess amounts collected by Mezzanine Lender shall be credited to the principal balance of the Mezzanine Note (or if paid in full, then refunded to the Mezzanine Borrower), and the provisions of this Agreement, the Mezzanine Note and the other Mezzanine Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Mezzanine Lender for the use, forbearance, or detention of the Mezzanine Loan shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Mezzanine Loan so that the rate or amount of interest on account of the Mezzanine Loan does not exceed the maximum lawful rate from time to time in effect and applicable to the Mezzanine Loan for so long as the Mezzanine Loan is outstanding. Notwithstanding anything to the contrary contained in this Agreement, the Mezzanine Note or the other Mezzanine Loan Documents, it is not the intention of Mezzanine Lender to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

Section 2.12. Mandatory Prepayments; Cash Sweep Events.

(a) If, at any time prior to the repayment of the Debt, any of the following events occur (each, a "Cash Sweep Event") (i) an Event of Default occurs and is continuing, (ii) as of a Quarterly Test Date (as such term is hereinafter defined) the DSCR is less than 1.15 for a trailing twelve (12) month period or (iii) as of a Quarterly Test Date the Debt Yield is less than 13.5% for a trailing twelve (12) month period (each of (ii) and (iii), a "Financial Covenant Breach") then, from and after the occurrence of such Cash Sweep Event and for so long as such Cash Sweep Event continues to exist, all Excess Cash Flow otherwise available to the Mezzanine Borrower under the Mezzanine Deposit Account Agreement shall be deposited into the Cash Sweep Event Reserve Account. Notwithstanding any provision herein to the contrary, if an Event of Default has occurred and is continuing, all funds on deposit in the Cash Sweep Event Reserve Account and any subsequent Excess Cash Flow deposited into the Cash Sweep Event Reserve Account while such Event of Default is continuing, may be applied by Mezzanine



Lender to reduce the Principal Indebtedness in accordance with Section 2.7. With respect to any Cash Sweep Event that is a Financial Covenant Breach, the Mezzanine Borrower shall have three (3) months from delivery of the Cash Sweep Event Notice (as hereinafter defined) to remedy such Financial Covenant Breach ("Cash Sweep Event Cure Period"), including the right to direct a principal curtailment payment of the First Mortgage Loan (or if the First Mortgage Loan has been repaid in full to the Mezzanine Loan without any Prepayment Fee). Provided no Event of Default exists, Mezzanine Borrower may, at its sole election during the Cash Sweep Event Cure Period, direct Mezzanine Lender to apply the funds in the Cash Sweep Event Reserve Account to a principal curtailment payment of the First Mortgage Loan (or if the First Mortgage Loan has been repaid in full to the Mezzanine Loan without any Prepayment Fee) regardless of whether such amounts are sufficient to cure such Financial Covenant Breach provided the funds in the Cash Sweep Event Reserve Account are so applied before any supplemental payments necessary to cure such Financial Covenant Breach are made by the Mezzanine Borrower. Any Financial Covenant Breach will be measured during the Cash Sweep Event Cure Period on a monthly basis on each Monthly Test Date (as such term is hereinafter defined). If no Event of Default exists and if the Mezzanine Borrower fails to remedy a Financial Covenant Breach during a Cash Sweep Event Cure Period, the Mezzanine Lender will direct all funds held in the Cash Sweep Event Reserve Account on the next Payment Date after the Cash Sweep Event Cure Period to a prepayment of principal of the First Mortgage Loan (or if the First Mortgage Loan has been repaid in full to the Mezzanine Loan without any Prepayment Fee). Mezzanine Borrower agrees and acknowledges that such sums shall be applied to the First Mortgage Loan and shall not be deemed a payment under the Mezzanine Loan Documents and the Mezzanine Loan shall not be reduced or discharged in whole or part, due to such payments. If a Financial Covenant Breach is remedied or otherwise satisfied on a Monthly Test Date, the Excess Cash Flow available following such Monthly Test Date to the earlier of the next Monthly Test Date or Quarterly Test Date shall be distributed to the Mezzanine Borrower pursuant to the terms of the Mezzanine Deposit Account Agreement but all funds on deposit in the Cash Sweep Event Reserve Account shall continue to be additional Collateral until the Financial Covenant Breach has been remedied for two (2) consecutive months, at which time such funds shall be released to the Mezzanine Borrower, or until applied as set forth below on the next Quarterly Test Date. If on the next Quarterly Test Date (x) Mezzanine Lender determines that no new Cash Sweep Event exists, the funds in the Cash Sweep Event Reserve Account shall be released to Mezzanine Borrower; or (y) the Mezzanine Lender determines that a new Cash Sweep Event then exists, Mezzanine Lender shall apply the funds in the Cash Sweep Event Reserve Account to prepayment of the First Mortgage Loan, (or if the First Mortgage Loan has been repaid in full to the Mezzanine Loan) deliver to Mezzanine Borrower a new Cash Sweep Event Notice and direct that while such Cash Sweep Event continues to exist all Excess Cash Flow be deposited into the Cash Sweep Event Reserve Account.

For purposes of this Section 2.12, the following defined terms shall apply:

"Quarterly Test Date" means the date upon which the Mezzanine Lender, based on the financial statements of the Mezzanine Borrower for the most recent calendar quarter, determines whether a Cash Sweep Event exists.

"Monthly Test Date" means the date, other than a Quarterly Test Date, during a Cash Sweep Event Cure Period upon which the Mezzanine Lender, based on the financial

statements of the Mezzanine Borrower for the most recent month, determines whether a Financial Covenant Breach has been remedied or otherwise satisfied.

(b) The existence of a Cash Sweep Event shall be determined solely, but reasonably and in good faith, by the Mezzanine Lender which shall be conclusive absent manifest error. If Mezzanine Lender makes a determination that a Cash Sweep Event has occurred, Mezzanine Lender shall send to Servicer, Mezzanine Deposit Bank and Mezzanine Borrower a written notice ("Cash Sweep Event Notice"), together with adequate information to allow Mezzanine Borrower to verify such determination.

Section 2.13. Extension of Loan. Provided no Event of Default has occurred and is continuing, the Mezzanine Borrower shall have the option to exercise two twelve (12) month extensions to the Maturity Date subject to the following conditions: (a) Mezzanine Lender receives written notice of Mezzanine Borrower's election to extend the Term not less than ninety (90) days prior to the Maturity Date ("Extension Notice"); (b) concurrently with the Extension Notice, Mezzanine Lender is paid a nonrefundable extension fee in the amount of 0.375% of the Principal Indebtedness with respect to the first extension and 0.50% of the Principal Indebtedness with respect to the second extension ("Extension Fee"); (c) Mezzanine Lender receives an Officer's Certificate stating that (i) no Default currently exists under the Mezzanine Loan Documents, (ii) no Material Adverse Condition currently exists, (iii) the DSCR on a trailing twelve (12) month basis based on the last monthly financial statements is at least 1.15, (iv) the Debt Yield based on the last monthly financial statements is at least 13.5%, (v) Mezzanine Borrower pays all costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Mezzanine Lender in connection with such extension and (vi) Mezzanine Borrower shall have entered into an Interest Rate Cap Agreement with a counterparty acceptable to Mezzanine Lender, providing Mezzanine Borrower with an initial cap on LIBOR at a maximum of 7.50% which may be replaced or renewed with a cap of a maximum of 8.25% per annum.

### ARTICLE III

#### CONDITIONS PRECEDENT; AND THE ACCOUNTS

Section 3.1. Conditions Precedent to the Making of the Mezzanine Loan.

(a) As a condition precedent to the making of the Mezzanine Loan, Mezzanine Borrower shall have satisfied the following conditions (unless waived by Mezzanine Lender in accordance with Section 8.4) on or before the Closing Date:

(1) Commitment Conditions.

(A) Mezzanine Borrower shall have paid to Mezzanine Lender (or shall pay to Mezzanine Lender out of the proceeds of the Mezzanine Loan) the origination fee and other fees referred to in the commitment letter.

(B) Mezzanine Lender shall have received appraisals of the Property satisfactory in form and substance to, and performed on the basis of assumptions acceptable to,

Mezzanine Lender. Such appraisals shall be performed by an independent MAI appraiser acceptable to Mezzanine Lender in its sole discretion.

(C) Mezzanine Lender shall have received the Environmental Report acceptable to Mezzanine Lender in its sole discretion.

(D) Mezzanine Lender shall have received the Three Year Business Plan acceptable to Mezzanine Lender in its sole discretion.

(E) The form and substance of the First Mortgage Loan Documents shall be satisfactory to Mezzanine Lender in all respects and the First Mortgage Loan shall have been closed and funded in accordance with the provisions of the First Mortgage Loan Documents.

(2) Mezzanine Loan Documents.

(A) Intercreditor Agreement. The First Mortgage Lender shall have executed and delivered an intercreditor agreement in form and substance of Exhibit G attached hereto.

(B) Mezzanine Loan Agreement. Mezzanine Borrower shall have executed and delivered this Agreement to Mezzanine Lender.

(C) Mezzanine Note. Mezzanine Borrower shall have executed and delivered to Mezzanine Lender the Mezzanine Note.

(D) Equity Pledge Agreements. Mezzanine Borrower and Parent Pledgor shall have executed and delivered to Mezzanine Lender the Equity Pledge Agreements, in form and substance satisfactory to Mezzanine Lender.

(E) Guaranty and Environmental Indemnity. Mezzanine Borrower shall have caused the Guarantor to have executed and delivered to Mezzanine Lender each of the Guaranty and the Environmental Indemnity.

(F) Mezzanine Deposit Account Agreement. Mezzanine Borrower and Deposit Bank shall have executed and delivered to Mezzanine Lender the Mezzanine Deposit Account Agreement in form and substance satisfactory to Mezzanine Lender.

(G) Assignment of Interest Rate Cap Agreement. Mezzanine Borrower shall have entered into the Interest Rate Cap Agreement pursuant to Section 5.1(s) hereof and shall hereafter have executed and delivered to Mezzanine Lender the Assignment of Interest Rate Cap Agreement in form and substance satisfactory to Mezzanine Lender.

(H) Manager's Consent. Mezzanine Borrower shall have caused the Manager to have executed and delivered to Mezzanine Lender a Manager's Consent and Subordination of Management Agreement in form and substance satisfactory to Mezzanine Lender.

(I) Financing Statements. Mezzanine Borrower and Parent Pledgor shall have executed and delivered to Mezzanine Lender all financing statements required by Mezzanine Lender and such financing statements shall have been filed of record in the appropriate filing offices in each of the appropriate jurisdictions.

(3) Opinions of Counsel. Mezzanine Lender shall have received from counsel satisfactory to Mezzanine Lender, legal opinions in form and substance satisfactory to Mezzanine Lender in Mezzanine Lender's discretion regarding (A) the enforceability of the Mezzanine Loan Documents, (B) the perfection of the security interests created under the Mezzanine Loan Documents, and (C) substantive consolidation. All such legal opinions will be addressed to Mezzanine Lender, its successors and assigns, dated as of the Closing Date, and in form and substance satisfactory to Mezzanine Lender and its counsel. Mezzanine Borrower hereby instructs counsel to deliver to Mezzanine Lender such opinions addressed to Mezzanine Lender.

(4) Lien Search Reports. Mezzanine Lender shall have received satisfactory reports of UCC, federal tax lien, bankruptcy, state tax lien, judgment and pending litigation searches conducted by a search firm reasonably acceptable to Mezzanine Lender. Such searches shall have been received in relation to Mezzanine Borrower, First Mortgage Loan Borrower, Control Entity of Mezzanine Borrower, Control Entity of First Mortgage Loan Borrower, Guarantor, Parent Pledgor and Manager. Such searches shall have been conducted in each of the locations designated by Mezzanine Lender in Mezzanine Lender's reasonable discretion and shall have been dated not more than fifteen (15) days prior to the Closing Date.

(5) Certificates. Mezzanine Lender shall have received a Mezzanine Borrower's Certificate and an Officer's Certificate, in each case in form and substance satisfactory to Mezzanine Lender.

(6) Consents, Licenses, Approvals. Mezzanine Lender shall have received copies of all consents, licenses and approvals, if any, required in connection with the execution, delivery and performance by Mezzanine Borrower under, and the validity and enforceability of, the Mezzanine Loan Documents, and such consents, licenses and approvals shall be in full force and effect.

(7) Title Insurance. (A) Mezzanine Borrower shall have delivered to Mezzanine Lender (i) a so-called "Mezzanine Endorsement" (in form satisfactory to Mezzanine Lender) to an existing owner's title insurance policy issued to First Mortgage Loan Borrower which such owner's title policy shall be reasonably acceptable to Mezzanine Lender and (ii) an "Eagle 9 Policy" or similar policy insuring the Liens on the Collateral under the Mezzanine Loan Documents free and clear of all liens, charges and encumbrances.

(B) If Mezzanine Lender exercises its right to foreclose on the Collateral granted under one (1) or more of the Equity Pledge Agreements following an Event of Default, Mezzanine Borrower shall (and hereby covenants and agrees that it will) execute and deliver, and cause First Mortgage Loan Borrower to execute and deliver, such further affidavits and indemnities as may be required by the Title Insurer to issue the "Mezzanine Endorsement" to Mezzanine Lender.

(8) Additional Matters. Mezzanine Lender shall have received such other Permits, certificates, opinions, documents and instruments relating to the Mezzanine Loan as may be required by Mezzanine Lender and all other documents and all legal matters in connection with the Mezzanine Loan shall be satisfactory in form and substance to Mezzanine Lender.

(9) Representations and Warranties. The representations and warranties herein and in the other Mezzanine Loan Documents shall be true and correct.

(10) No Injunction. No law or regulation shall have been adopted, no order, judgment or decree of any Governmental Authority shall have been issued or entered, and no litigation shall be pending or threatened, which in the judgment of Mezzanine Lender would enjoin, prohibit or restrain, or impose or result in an adverse effect upon the making or repayment of the Mezzanine Loan or the consummation of the Transactions.

(11) Intentionally Omitted.

(12) Transaction Costs. Mezzanine Borrower shall have paid or caused to be paid all Transaction Costs (which Mezzanine Lender is hereby authorized to pay from the proceeds of the Mezzanine Loan).

(13) Insurance Coverage. Mezzanine Lender shall have received copies of insurance policies and certificates satisfactory to Mezzanine Lender that the insurance required under Section 5.3 has been obtained and cover the Mezzanine Lender and its successors and assigns, as their interest may appear.

(b) Mezzanine Lender shall not be obligated to make the Mezzanine Loan unless and until each of the applicable conditions precedent set forth in this Article III is satisfied. In addition, Mezzanine Lender shall not be obligated to make the Mezzanine Loan if a Material Adverse Condition shall exist.

(c) The making of the Mezzanine Loan shall constitute, without the necessity of specifically containing a written statement to such effect, a confirmation, representation and warranty by Mezzanine Borrower to Mezzanine Lender that, to the best of Mezzanine Borrower's knowledge, all of the representations and warranties of Mezzanine Borrower set forth in the Mezzanine Loan Documents are true and correct as of the date of the making of the Mezzanine Loan.

Section 3.2. Form of Mezzanine Loan Documents and Related Matters. The Mezzanine Loan Documents and all of the certificates, agreements, legal opinions and other documents and papers referred to in this Article III, unless otherwise specified, shall be delivered to Mezzanine Lender, and shall be in form and substance satisfactory to Mezzanine Lender.

Section 3.3. The Accounts.

(a) On or before the Closing Date, Agent (or Servicer, on Agent's behalf) shall establish and maintain an account (the "Deposit Account") at a financial institution designated by Mezzanine Lender and reasonably satisfactory to Mezzanine Borrower (the

"Deposit Bank"). The Deposit Account shall be an Eligible Account. The Deposit Account (i) shall not be evidenced by a certificate of deposit, passbook or other instrument, (ii) shall be one or more separate and identifiable accounts and sub-accounts separate from all other accounts held by the Deposit Bank, (iii) shall be established and maintained in the name of Mezzanine Borrower, as debtor, for the benefit of Agent, as secured party, (iv) shall be under the sole dominion and control of Agent (or Servicer, acting as Agent's agent), and (v) shall contain only the Financial Assets deposited in accordance herewith. The parties agree that the Deposit Account is a Securities Account in respect of which the Deposit Bank is the Securities Intermediary and Mezzanine Borrower is the Entitlement Holder. All Financial Assets credited to the Deposit Account shall be registered in the name of, payable to the order of, or specially indorsed to, the Deposit Bank.

(b) Mezzanine Lender shall cause Deposit Bank to agree that each item of property (whether Investment Property, cash or other property) credited to the Deposit Account shall be treated as a Financial Asset under Article 8 of the UCC. Mezzanine Lender shall cause Deposit Bank to agree to comply with all Entitlement Orders originated by the Agent without the further consent of Mezzanine Borrower.

(c) Deposit Bank shall maintain on a ledger entry basis the following subaccounts of the Deposit Account (collectively, the "Subaccounts"; and, together with the Deposit Account, collectively, the "Accounts") which shall be designated as follows: (i) subaccount entitled Tax and Insurance Account (the "Tax and Insurance Account"), (ii) subaccount entitled Mezzanine Loan Debt Service Account (the "Mezzanine Loan Debt Service Account"), (iii) subaccount entitled Cash Sweep Event Reserve Account (the "Cash Sweep Event Reserve Account"), (iv) a subaccount entitled Extraordinary Expenses Account (the "Extraordinary Expenses Subaccount") and (v) such other reserve accounts currently provided under the First Mortgage Loan Documents to the extent such reserves are no longer maintained under the First Mortgage Loan Documents.

(d) Subject to the terms and provisions of the First Mortgage Loan Documents, Mezzanine Borrower shall cause the First Mortgage Loan Borrower to irrevocably direct the First Mortgage Lender to transfer on a daily basis all funds ("First Mortgage Borrower Remainder Funds") available to First Mortgage Loan Borrower pursuant to Section 3.3(a)(x) of the Cash Management Agreement between First Mortgage Loan Borrower and First Mortgage Lender of even date herewith (the "First Mortgage Loan Cash Management Agreement") to the Deposit Account by wire transfer of immediately available federal funds. To the extent that the funds transferred to the Deposit Account by the next Payment Date is less than an amount (the "Combined Monthly Payment Amount") equal to the sum of (i) the Monthly Payment Amount, (ii) the Monthly Tax and Insurance Amount unless such amount is reserved under the First Mortgage Loan Documents and the First Mortgage Lender is obligated to use such reserve funds for the payment of Impositions and Insurance and (iii) any other amounts which may be due and payable to Mezzanine Lender under the Mezzanine Loan Documents on such date, Mezzanine Borrower shall immediately pay such shortfall to the Deposit Account by wire transfer of immediately available federal funds.

(e) Upon the deposit of funds into the Deposit Account, Deposit Bank shall allocate such funds to the Subaccounts as provided under Section 2.2 of the Mezzanine Deposit Account Agreement:

(f) Provided that Mezzanine Borrower deposits into the Deposit Account on or prior to each Payment Date a sum sufficient to fund the subaccounts described in the Mezzanine Deposit Account Agreement, Mezzanine Borrower shall be deemed to have paid such amounts on such Payment Date, and Deposit Bank is hereby authorized by Agent to direct on such Payment Date the payment to Mezzanine Lender of all funds in the Mezzanine Loan Debt Service Account, unless Deposit Bank is legally constrained from transferring such amounts in accordance with such Section by reason of any insolvency related to Mezzanine Borrower or any other event. Provided no Cash Sweep Event has occurred and is continuing, after sufficient funds are on deposit in all applicable subaccounts under the Mezzanine Deposit Account Agreement for the next Payment Date, all Excess Cash Flow shall be transferred on a daily basis by the Deposit Bank to Mezzanine Borrower or as Mezzanine Borrower may direct.

(g) To compensate the Deposit Bank for performing the herein-described services, Mezzanine Borrower agrees to pay the usual and customary fees charged by the Deposit Bank for performing such services.

#### Section 3.4. Tax and Insurance Account.

(a) At any time that tax and insurance deposits are not being collected by First Mortgage Lender, Agent shall establish and shall maintain the Tax and Insurance Account as a subaccount of the Deposit Account into which Agent hereby directs the Deposit Bank to allocate certain funds from the Deposit Account in accordance with the terms hereof.

(b) At any time that tax and insurance deposits are not being collected by First Mortgage Lender subject to the provisions of Section 3.3(d) hereof, Agent hereby directs Deposit Bank to allocate funds on Deposit in the Deposit Account into the Tax and Insurance Account on a monthly basis on each Payment Date in an amount (the "Monthly Tax and Insurance Amount") equal to (i) one-twelfth (1/12) of the Impositions that Mezzanine Lender estimates (based upon the figures set forth in the then most recent Approved Operating Budget) will be payable during the next 12 months in order to accumulate with Mezzanine Lender sufficient funds to pay of all such Imposition at least thirty (30) days prior to their respective due dates, and (ii) one-twelfth (1/12) of the Insurance premiums that Mezzanine Lender estimates will be payable for the renewal of the coverage afforded by the Policies upon the expiration thereof in order to accumulate with Mezzanine Lender sufficient funds to pay of all such Insurance premiums at least thirty (30) days prior to the expiration of the Policies. Mezzanine Borrower shall be solely responsible for paying all Impositions and Insurance premiums or causing First Mortgage Loan Borrower to pay such amounts not later than ten (10) Business Days prior to the respective due dates thereof or such shorter periods required under the First Mortgage Loan Documents. Not later than ten (10) Business Days before the due date of any such payments, Mezzanine Borrower shall deliver to Mezzanine Lender evidence satisfactory in Mezzanine Lender's reasonable discretion that such payments have been made in a timely manner. Within five (5) Business Days after receipt of such evidence, Mezzanine Lender shall direct Deposit Bank to remit to Mezzanine Borrower the amount paid under such receipted invoices or other evidence.

At least thirty (30) days prior to the date that any installment of Impositions or Insurance premiums are payable, Mezzanine Borrower shall cause a copy of any applicable tax bills, assessments, notices and invoices related to the Impositions and Insurance premiums (the "Documentation") to be delivered to Mezzanine Lender. If Mezzanine Borrower fails to provide proof of payment of Impositions or Insurance Premiums as required in this Section 3.4(b) within the time periods set forth herein, Deposit Bank shall be entitled to fund (but shall be under no obligation to fund) from funds then on deposit in the Tax and Insurance Account any amounts that are due and payable in accordance with the applicable Documentation.

Section 3.5. Contingent Reserve Accounts; Extraordinary Expenses Account. Agent has established and shall maintain with the Deposit Bank the Extraordinary Expense Account as a subaccount of the Deposit Account into which Agent shall direct the Deposit Bank to allocate certain funds from the Deposit Account in accordance with the terms hereof.

(a) To the extent the First Mortgage Lender has not under the First Mortgage Loan Documents provided for a Operating Expense Reserve, a FF&E Reserve, a Capital Expenditure Reserve, Self-Insurance Deficiency Reserve or in the event the First Mortgage Loan has been repaid, Mezzanine Lender shall direct Deposit Bank and Servicer to fund such reserves pursuant to Section 2.1 of the Mezzanine Deposit Account Agreement. Mezzanine Lender acknowledges that all of the aforementioned required reserves are currently provided for under the First Mortgage Loan Documents;

(b) In addition, if Mezzanine Borrower has submitted documentation with respect to Extraordinary Expenses which the Mezzanine Lender in its reasonable discretion has approved, in whole or in part, then the Mezzanine Lender shall direct the Deposit Bank to deposit such amounts into the Extraordinary Expenses Subaccount to be applied in accordance with such terms and conditions as the Mezzanine Lender may require. Notwithstanding anything to the contrary, Mezzanine Lender agrees that Mezzanine Borrower can use Excess Cash Flow to pay for any Extraordinary Expense without Mezzanine Lender's prior consent provided that no Cash Sweep Event exists.

#### Section 3.6. Cash Sweep Event Reserve Account.

Agent has established and shall maintain with Deposit Bank the Cash Sweep Event Reserve Account as a subaccount of the Deposit Account into which Agent hereby directs Deposit Bank to allocate certain funds from the Deposit Account in accordance with the terms hereof. From and after the occurrence (and during the continuance) of a Cash Sweep Event, all Excess Cash Flow shall be deposited in the Cash Sweep Event Reserve Account except as otherwise provided under Section 2.12. Funds in the Cash Sweep Event Reserve Account shall be applied in accordance with the provisions of Section 2.12(a) hereof. Provided no Event of Default has occurred and is continuing and no funds are available in reserves held under the First Mortgage Loan Documents for Extraordinary Expenses or the Extraordinary Expenses Account, Mezzanine Lender shall disburse funds from the Cash Sweep Event Reserve Account for payment of Extraordinary Expenses, not more often than once a month, upon submission of invoices and other documentation by Mezzanine Borrower satisfactory to Mezzanine Lender in its reasonable judgement.



### Section 3.7. Mezzanine Loan Debt Service Account.

Agent has established and shall maintain with Deposit Bank the Mezzanine Loan Debt Service Account as a subaccount of the Deposit Account into which Agent shall direct the Deposit Bank to allocate certain funds from the Deposit Account in accordance with the terms hereof. Immediately upon Deposit Bank's allocation thereof in accordance with Section 3.3(c)(ii) hereof, Agent shall be authorized to direct the Deposit Bank to disburse such amounts to Mezzanine Lender in payment of all amounts then due and payable hereunder on such Payment Date.

### Section 3.8. Investment and Control of Accounts.

(a) Funds on deposit in the Deposit Account (or its subaccounts) shall be invested by Deposit Bank in Permitted Investments in accordance with Entitlement Orders, and provided no Event of Default shall have occurred and be continuing, all interest earned on amounts deposited into the Accounts shall be held in the Accounts and shall be used or disbursed as provided herein for the benefit of Mezzanine Borrower. Deposit Bank shall not have any liability for any loss of interest on funds in any Accounts, and no such loss shall affect Mezzanine Borrower's obligation to fund any Account as required hereunder. Mezzanine Borrower hereby pledges, transfers and assigns to Agent, and grants to Agent, as additional security for the payment and performance of the Mezzanine Note and the obligations of Mezzanine Borrower under the other Mezzanine Loan Documents, a continuing perfected security interest in and to, and a general first lien upon, (i) the Deposit Account and all Subaccounts and all of Mezzanine Borrower's right, title and interest in and to all Deposit Account property held or maintained in, or credited to, the Deposit Account and all Subaccounts from time to time by or on behalf of Mezzanine Borrower in accordance with the provisions of this Agreement and (ii) any and all replacements, substitutions and Proceeds of the foregoing (the collateral described in the foregoing clauses (i) and (ii), collectively, the "Account Collateral"). Mezzanine Borrower further agrees to execute, acknowledge, deliver, file or do at its sole cost and expense, all other acts, assignments, notices, agreements or other instruments as Agent may reasonably require, including the execution and delivery of UCC financing statements, in order to effectuate, assure, convey, secure, assign, transfer and convey unto Agent any of the rights granted by this Section.

(b) Mezzanine Borrower represents and warrants to and for the benefit of Agent and Mezzanine Lender that Mezzanine Borrower is the legal and beneficial owner of the Account Collateral, free and clear of any lien, security interest, option or other charge or encumbrance, except for the interest(s) of Agent pursuant to this Agreement. Mezzanine Borrower shall not, without obtaining the prior written consent of Agent, further pledge, assign or grant any security interest in any Account, or permit any lien or encumbrance to attach thereto, or any levy to be made thereon, or any UCC-1 Financing Statements, except those naming Agent as the secured party, to be filed with respect thereto. This Agreement is, among other things, intended by the parties to be a security agreement for purposes of the Uniform Commercial Code in effect in New York and the parties agree that the Securities Intermediary jurisdiction with respect to the Account shall be the State of New York.

(c) Mezzanine Borrower may originate Entitlement Orders without the further consent of Agent until the Agent notifies the Deposit Bank that Agent (or Servicer) will exercise exclusive control over the account. Upon receipt of such notice, the Deposit Bank will cease complying with Entitlement Orders directed by Mezzanine Borrower.

(d) Agent (or Servicer, on Agent's behalf) shall have exclusive dominion and control over and sole right of withdrawal from each of the Accounts, which shall be exercised solely in accordance with the provisions of this Agreement.

Section 3.9. Mezzanine Lender's Right to Cure First Mortgage Loan Defaults.

(a) Subject to the provisions hereinafter set forth, Mezzanine Borrower, on behalf of First Mortgage Loan Borrower, hereby authorizes Mezzanine Lender to make, at its sole and absolute discretion, on behalf of First Mortgage Loan Borrower any and all payments that become due and payable under the First Mortgage Loan Documents. If three (3) Business Days prior to any First Mortgage Loan Payment Date the amount on deposit in the cash management accounts under the First Mortgage Loan Documents is less than the First Mortgage Loan Monthly Payment Amount that is due and payable on the next First Mortgage Loan Payment Date to occur, or if First Mortgage Lender is unable or unwilling to release any or all of the funds in the cash management accounts under the First Mortgage Loan Documents, Mezzanine Lender shall have the right, but shall be under no obligation, to fund any such shortfall as a protective advance under the Mezzanine Loan.

(b) Subject to the provisions hereinafter set forth, Mezzanine Borrower, on behalf of First Mortgage Loan Borrower, hereby agrees that Mezzanine Lender shall have the right to cure defaults by First Mortgage Loan Borrower under the First Mortgage Loan Documents. From and after the occurrence of a default under the First Mortgage Loan Documents, Mezzanine Borrower shall cooperate in all commercially reasonable respects with, and shall cause First Mortgage Loan Borrower to cooperate in all commercially reasonable respects with (and not to impede or interfere with in any material respect), Mezzanine Lender's efforts to cure (or cause the cure of) all monetary and non-monetary defaults under the First Mortgage Loan Documents, including, without limitation, causing the payment, removal or bonding over of all Liens, claims or judgments, or entering upon the Property (or any portion thereof) to cure (or cause the cure of) any non-monetary default under the First Mortgage Loan Documents; provided, however, that before commencing to cure any non-monetary default Mezzanine Lender shall provide written notice to Mezzanine Borrower, and if First Mortgage Loan Borrower intends to cure such non-monetary default Mezzanine Lender shall permit First Mortgage Loan Borrower to pursue such cure, pursuant to a procedure and timetable acceptable to Mezzanine Lender in its sole and absolute discretion. In addition, after the occurrence of a default under the First Mortgage Loan Documents, Mezzanine Borrower agrees that it will cause First Mortgage Loan Borrower to coordinate with Mezzanine Lender with respect to all communications (written or oral) with First Mortgage Lender (or any person or entity servicing the First Mortgage Loan).

(c) Any funds expended by or on behalf of Mezzanine Lender to effect a cure of the First Mortgage Loan as contemplated in Section 3.9(a) or Section 3.9(b) shall constitute protective advances under the Mezzanine Loan. If Mezzanine Lender so elects to cure (or

attempt to cure) any default under the First Mortgage Loan, the amount of such expenditures made by or on behalf of Mezzanine Lender shall be added to the Principal Indebtedness, shall accrue interest at the Default Rate and shall be secured by the Collateral Security Instruments.

Section 3.10. Substitute Cash Management. In the event that the lockbox and cash management arrangements under the First Mortgage Loan Documents are terminated and no substitute lock box and cash management arrangements are implemented under the First Mortgage Loan Documents while any amount of the Debt is still outstanding, Mezzanine Borrower will at the request of Mezzanine Lender cause the First Mortgage Loan Borrower to re-establish similar lockbox and reserve accounts as may be required by Mezzanine Lender.

#### ARTICLE IV

##### REPRESENTATIONS AND WARRANTIES

###### Section 4.1. Representations and Warranties of Mezzanine

Borrower.

(a) Organization. (i) Mezzanine Borrower (w) is a duly organized and validly existing limited liability company in good standing in the laws of the State of Delaware, (x) is duly qualified as a foreign limited liability company in each jurisdiction in which the nature or location of its business, its assets, the Property or any of the Collateral makes such qualification necessary or desirable, (y) has the requisite limited liability company power and authority to carry on its business as now being conducted, and (z) has the requisite limited liability company power to execute and deliver, and perform its obligations under, the Mezzanine Loan Documents to which it is a party.

(ii) Parent Pledgor (w) is a duly organized and validly existing corporation in good standing under the laws of the State of Delaware, (x) is duly qualified as a foreign corporation in each jurisdiction in which the nature or location of its business, its assets, the Property or any of the Collateral makes such qualification necessary or desirable, (y) has the requisite corporate power and authority to carry on its business as now being conducted, and (z) has the requisite corporate power to execute and deliver, and perform its obligations under, the Mezzanine Loan Documents and the Equity Pledge Agreements to which it is a party.

(iii) Manager (w) is a duly organized and validly existing limited liability company in good standing under the laws of the State of Tennessee, (x) is duly qualified as a foreign limited liability company in each jurisdiction in which the nature or location of its business, its assets, the Property or any of the Collateral makes such qualification necessary or desirable, (y) has the requisite limited liability company power and authority to carry on its business as now being conducted, and (z) has the requisite limited liability company power to execute and deliver, and perform its obligations under, the Mezzanine Loan Documents and the to which it is a party.

(iv) Control Entity of Mezzanine Borrower (w) is a duly organized and validly existing corporation in good standing under the laws of the State of Delaware, (x) is duly qualified as a foreign corporation in each jurisdiction in which the nature or location of its business or its assets, makes such qualification necessary or desirable, (y) has the requisite

corporate power and authority to carry on its business as now being conducted, and (z) has the requisite corporate power to execute and deliver, and perform its obligations under, the operating agreement of Mezzanine Borrower.

(b) Authorization. The execution and delivery by Mezzanine Borrower of the Mezzanine Loan Documents, the performance of its obligations thereunder and the creation of the security interests and Liens provided for in the Mezzanine Loan Documents (i) have been duly authorized by all requisite Entity action on the part of Mezzanine Borrower, (ii) will not violate any provision of any applicable Legal Requirements, any order, writ, decree, injunction or demand of any court or other Governmental Authority, any organizational document of Mezzanine Borrower or any indenture or agreement or other instrument to which Mezzanine Borrower is a party or by which Mezzanine Borrower is bound, (iii) will not be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under, or result in the creation or imposition of any Lien of any nature whatsoever upon any of the property or assets of Mezzanine Borrower pursuant to, any indenture or agreement or instrument, and (iv) have been duly executed and delivered by Mezzanine Borrower. Except for those obtained or filed on or prior to the Closing Date, Mezzanine Borrower is not required to obtain any consent, approval or authorization from, or to file any declaration or statement with, any Governmental Authority or other agency in connection with or as a condition to the execution, delivery or performance of the Mezzanine Loan Documents. The Mezzanine Loan Documents to which Mezzanine Borrower, First Mortgage Loan Borrower or Manager is a party have been duly authorized, executed and delivered by such parties.

(c) Entity Status. Mezzanine Borrower has been, and will continue to be, a duly formed and existing Entity in good standing in all relevant jurisdictions. Mezzanine Borrower at all times since its formation has complied, and will continue to comply, with the provisions of all of its organizational documents, and the laws of the state in which Mezzanine Borrower was formed or is doing business relating to the Entity.

(d) Litigation. Except as set forth on Schedule 4.1(d), there are no actions, suits or proceedings at law or in equity by or before any court or other Governmental Authority or other governmental agency now pending and served or, to the knowledge of Mezzanine Borrower, threatened against Mezzanine Borrower, First Mortgage Loan Borrower, Manager or the Property. No existing litigation if adversely determined is reasonably expected to cause a Material Adverse Condition.

(e) Agreements. Mezzanine Borrower is not a party to any agreement or instrument or subject to any restriction which is likely to result in a Material Adverse Condition. Mezzanine Borrower is not in default in any respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any indenture, agreement or instrument to which it is a party or by which Mezzanine Borrower or the Property is bound, which default could reasonably be expected to result in a Material Adverse Condition.

(f) No Bankruptcy Filing. Mezzanine Borrower is not contemplating either the filing of a petition by Mezzanine Borrower under any state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of Mezzanine Borrower's assets or

property, and Mezzanine Borrower has no knowledge of any Person contemplating the filing of any such petition against Mezzanine Borrower.

(g) Full and Accurate Disclosure. No statement of fact made by or on behalf of Mezzanine Borrower or First Mortgage Loan Borrower or in the Mezzanine Loan Documents or in any other material document or Officer's Certificate delivered to Mezzanine Lender by or on behalf of Mezzanine Borrower contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading. There is no fact presently known to Mezzanine Borrower which has not been disclosed to Mezzanine Lender which materially adversely affects, nor as far as Mezzanine Borrower can reasonably foresee, might materially adversely affect the business, operations or condition (financial or otherwise) of Mezzanine Borrower or First Mortgage Loan Borrower.

(h) Location of Chief Executive Offices. The location of Mezzanine Borrower's principal place of such business and the location of Mezzanine Borrower's chief executive office is the address listed in the first paragraph of this Agreement, and Mezzanine Borrower has no other places of business, except for the Property.

(i) Compliance. Mezzanine Borrower, the Property and First Mortgage Loan Borrower's use thereof and operations thereat comply with all applicable Legal Requirements and all Insurance Requirements except where the failure to be in compliance could not reasonably be expected to result in a Material Adverse Condition. Neither First Mortgage Loan Borrower nor Mezzanine Borrower is in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority.

(j) Other Debt and Obligations. Neither First Mortgage Loan Borrower nor Mezzanine Borrower has any financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Mezzanine Borrower or First Mortgage Loan Borrower is a party, or by which Mezzanine Borrower or First Mortgage Loan Borrower is bound, other than (x) with respect to First Mortgage Loan Borrower, the obligations under the First Mortgage Loan, (y) with respect to Mezzanine Borrower, the obligations under the Mezzanine Loan Documents and (z) the Permitted Indebtedness. Neither First Mortgage Loan Borrower nor Mezzanine Borrower has borrowed or received other debt financing (other than the First Mortgage Loan and Mezzanine Loan, respectively) that has not been heretofore repaid in full, and neither First Mortgage Loan Borrower nor Mezzanine Borrower has any known Contingent Obligations.

(k) ERISA. Each Plan and, to the knowledge of Mezzanine Borrower, each Multiemployer Plan, is in compliance in all material respects with, and has been administered in all material respects in compliance with, its terms and the applicable provisions of ERISA, the Code and any other federal or state law, and no event or condition has occurred as to which Mezzanine Borrower would be under an obligation to furnish a report to Mezzanine Lender under Section 5.1(k).

(l) Solvency. Mezzanine Borrower has not entered into this Mezzanine Loan Agreement or any Mezzanine Loan Document with the actual intent to hinder, delay, or defraud any creditor, and Mezzanine Borrower has received reasonably equivalent value in exchange for

its obligations under the Mezzanine Loan Documents. Giving effect to the transactions contemplated hereby, the fair saleable value of Mezzanine Borrower's assets exceeds and will, immediately following the execution and delivery of this Agreement, exceed Mezzanine Borrower's total liabilities, including, without limitation, subordinated, unliquidated, or disputed liabilities or Contingent Obligations. The fair saleable value of Mezzanine Borrower's assets is and will, immediately following the execution and delivery of this Agreement, be greater than Mezzanine Borrower's probable liabilities, including the maximum amount of its Contingent Obligations or its debts as such debts become absolute and matured. Mezzanine Borrower's assets do not and, immediately following the execution and delivery of this Agreement, will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Mezzanine Borrower does not intend to, nor does Mezzanine Borrower believe that it will, incur debts and liabilities (including, without limitation, Contingent Obligations and other commitments) beyond its ability to pay such debts as they mature (taking into account the timing and amounts to be payable on or in respect of obligations of Mezzanine Borrower).

(m) Not Foreign Person. Mezzanine Borrower is not a "foreign person" within the meaning of ss.1445(f)(3) of the Code.

(n) Investment Company Act, Public Utility Holding Company Act. Mezzanine Borrower is not (i) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended, (ii) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 1935, as amended, or (iii) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

(o) No Defaults. No Default or Event of Default exists under or with respect to any Mezzanine Loan Document.

(p) Labor Matters. Mezzanine Borrower is not a party to any collective bargaining agreements.

(q) Title to the Collateral. Mezzanine Borrower owns good, indefeasible and marketable title to the Collateral free and clear of all Liens.

(r) Use of Proceeds: Margin Regulations. Mezzanine Borrower will use the proceeds of the Mezzanine Loan for the purposes described herein. No part of the proceeds of the Mezzanine Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulation U or any other Regulations of such Board of Governors, or for any purposes prohibited by applicable Legal Requirements.

(s) Financial Information. To the best knowledge of Mezzanine Borrower, all historical financial data concerning Mezzanine Borrower, First Mortgage Loan Borrower and the Property that has been delivered by or on behalf of Mezzanine Borrower to Mezzanine Lender is true, complete and correct in all material respects. Since December 31, 2000, except as

otherwise disclosed in writing to Mezzanine Lender, there has been no material adverse change in the financial position of Mezzanine Borrower, First Mortgage Loan Borrower or the Property, or in the results of operations of Mezzanine Borrower or First Mortgage Loan Borrower. Neither First Mortgage Loan Borrower nor Mezzanine Borrower has incurred any obligation or liability, contingent or otherwise, not reflected in such financial data which might reasonably be expected to materially and adversely affect its business operations or the Property.

(t) Condemnation. No Taking has been commenced or, to Mezzanine Borrower's knowledge, is contemplated with respect to all or any portion of the Property or for the relocation of roadways providing access to the Property.

(u) Utilities and Public Access. The Property has adequate rights of access to public ways and is served by adequate water, sewer, sanitary sewer and storm drain facilities as are adequate for full utilization of the Property for its current purpose. Except as otherwise disclosed by the surveys delivered to Mezzanine Lender prior to the Closing Date, all public utilities necessary to the continued use and enjoyment of the Property as presently used and enjoyed are located in valid, enforceable easements (which are superior to any mortgages or other liens affecting the real property which they encumber) or the public right-of-way abutting the Property, and all such utilities are connected so as to serve the Property either (i) without passing over other property or, (ii) if such utilities pass over other property, pursuant to valid easements. All roads necessary for the full utilization of the Property for its current purpose have been completed and dedicated to public use and accepted by all Governmental Authorities or are the subject of access easements for the benefit of the Property.

(v) No Joint Assessment: Separate Lots. Mezzanine Borrower has not and Mezzanine Borrower shall not cause or suffer First Mortgage Loan Borrower to consent to or initiate the joint assessment of the Property (i) with any other real property constituting a separate tax lot, and (ii) with any portion of the Property which may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes which may be levied against such personal property shall be assessed or levied or charged to the Property as a single lien. The Property is comprised of one or more parcels, each of which constitutes a separate tax lot and none of which constitutes a portion of any other tax lot.

(w) Assessments. There are no pending or, to the knowledge of Mezzanine Borrower, proposed special or other assessments for public improvements or otherwise affecting the Property, nor, to the knowledge of Mezzanine Borrower, are there any contemplated improvements to the Property that may result in such special or other assessments.

(x) Enforceability. The Mezzanine Loan Documents executed by Mezzanine Borrower or any of its Affiliates in connection with the Mezzanine Loan, including, without limitation, any Equity Pledge Agreement, are the legal, valid and binding obligations of Mezzanine Borrower or such Affiliate, that is a party thereto, enforceable against Mezzanine Borrower or such Affiliate in accordance with their terms, subject only to bankruptcy, insolvency and other limitations on creditors' rights generally and to equitable principles. Such Mezzanine Loan Documents are, as of the Closing Date, not subject to any right of rescission, set-off, counterclaim or defense by Mezzanine Borrower or such Affiliate, including the defense of usury, nor will the operation of any of the terms of the Mezzanine Note, or any other Mezzanine

Loan Documents, or the exercise of any right thereunder, render the Mezzanine Loan Documents unenforceable against Mezzanine Borrower or such Affiliate, in whole or in part, or subject to any right of rescission, set-off, counterclaim or defense by Mezzanine Borrower or such Affiliate, including the defense of usury, and neither Mezzanine Borrower nor any Affiliate of Mezzanine Borrower has asserted any right of rescission, set-off, counterclaim or defense with respect thereto.

(y) No Indebtedness. Mezzanine Borrower has no Indebtedness including, without limitation, known Contingent Obligations (and including, without limitation, liabilities or obligations in tort, in contract, at law, in equity, pursuant to a statute or regulation, or otherwise) other than Indebtedness expressly permitted by this Agreement.

(z) Leases. Attached hereto as Schedule 1 is a true, correct and complete rent roll for the Property (the "Rent Roll"), which includes all Leases (except for Deminimis Leases) affecting the Property. Except as set forth in Schedule 1 (and except for Deminimis Leases), as of the date of the Rent Roll: (i) each Lease is in full force and effect; (ii) the Tenants under the Leases have accepted possession of and are in occupancy of all of their respective demised premises, have commenced the payment of rent under such Leases, and there are no offsets, claims or defenses to the enforcement thereof, (iii) all rents due and payable under the Leases have been paid, and no portion thereof has been paid for any period more than thirty (30) days in advance; (iv) the base rent payable under each Lease is the amount of fixed rent set forth in the Rent Roll, and there is no claim or, to the knowledge of Mezzanine Borrower, basis for a claim by the Tenant thereunder for an adjustment to the rent; (v) to the best knowledge of Mezzanine Lender no Tenant has made any set-off, defense or claim against the landlord under the Leases which remains outstanding; (vi) to Mezzanine Borrower's best knowledge, there is no present material default by the Tenant under any Lease; and (vii) Mezzanine Borrower or First Mortgage Loan Borrower does not hold any security deposits under the Leases. None of the Leases contains any option to purchase or right of first refusal to purchase the Property or any part thereof. Neither the Leases nor the rents have been assigned or pledged except to First Mortgage Lender and to Mezzanine Lender, and no other Person has any interest therein except the Tenants thereunder.

(aa) Flood Zone. Except as set forth on the Survey (as defined in the First Mortgage Loan Agreement), no buildings or other improvements on the Property are located in a flood hazard area as designated by the Federal Emergency Management Agency.

(bb) Physical Condition. Except as set forth in the Property Condition Report delivered to Mezzanine Lender, to the best knowledge of Mezzanine Borrower, the Property is free of material structural defects and all building systems contained therein are in good working order in all material respects subject to ordinary wear and tear.

(cc) Security Deposits. Mezzanine Borrower and First Mortgage Loan Borrower are in compliance with all applicable Legal Requirements relating to security deposits.

(dd) Conduct of Business. Mezzanine Borrower does not conduct its business "also known as", "doing business as" or under any name other than the name referred to on the first page of this Agreement.



(ee) Ownership Interests. As shown on the organizational chart attached hereto as Exhibit A, the ownership interests of First Mortgage Loan Borrower and Mezzanine Borrower are as follows:

(i) OHN Management, Inc. is the sole non-member independent manager of First Mortgage Loan Borrower. All of the interests of OHN Management, Inc. in First Mortgage Loan Borrower are owned free and clear of all Liens, warrants and options to purchase. Gaylord Entertainment Company is the sole shareholder of, and owns 100% of the outstanding stock in OHN Management, Inc. Gaylord Entertainment Company's stock in OHN Management, Inc. is owned free and clear of all Liens, warrants and options to purchase (other than Liens created by the Mezzanine Loan Documents).

(ii) Mezzanine Borrower owns a 100% membership interest in First Mortgage Loan Borrower and is the sole member in First Mortgage Loan Borrower. Mezzanine Borrower's membership interests in First Mortgage Loan Borrower are owned free and clear of all Liens, warrants and options to purchase (other than Liens created by the Mezzanine Loan Documents).

(iii) Gaylord Entertainment Company is the sole member of, and owns 100% of the outstanding membership interests in, Mezzanine Borrower free and clear of all Liens, warrants and options to purchase. OHN Holdings Management, Inc. is the sole independent non-member manager of Mezzanine Borrower.

(iv) No parties other than OHN Management, Inc. and Mezzanine Borrower own general or limited partnership interests in First Mortgage Loan Borrower. Neither OHN Management, Inc. nor Mezzanine Borrower have any obligation to any Person to purchase, repurchase or issue any ownership interest in such Person.

(ff) Management Agreement. The Management Agreement is in full force and effect. There is no default, breach or violation existing under the Management Agreement, and no event has occurred (other than payments due but not yet delinquent) that, with the passage of time or the giving of notice, or both, would constitute a default, breach or violation thereunder, by either party thereto.

(gg) Hazardous Substances. To the best of Mezzanine Borrower's knowledge, except as described in the Environmental Report, (i) the Property is not in violation of any Legal Requirement pertaining to or imposing liability or standards of conduct concerning environmental regulation, contamination or clean-up, including the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Emergency Planning and Community Right-to-Know Act of 1986, the Hazardous Substances Transportation Act, the Solid Waste Disposal Act, the Clean Water Act, the Clean Air Act, the Toxic Substance Control Act, the Safe Drinking Water Act, the Occupational Safety and Health Act, any state super-lien and environmental clean-up statutes and all amendments to and regulations in respect of the foregoing laws (collectively, "Environmental Laws"); (ii) the Property is not subject to any private or governmental Lien or judicial or administrative notice or action or inquiry, investigation or claim relating to hazardous, toxic, dangerous and/or regulated substances, wastes, materials, raw materials which include

hazardous constituents, pollutants or contaminants, including asbestos, asbestos containing materials, petroleum, tremolite, anthlophylite, actinolite, polychlorinated biphenyls and any other substances or materials which are included under or regulated by Environmental Laws (collectively, "Hazardous Substances"); (iii) no Hazardous Substances are or have been (including the period prior to First Mortgage Loan Borrower's acquisition of the Property), discharged, generated, treated, disposed of or stored on, incorporated in, or removed or transported from the Property other than in compliance with all Environmental Laws; (iv) no Hazardous Substances are present in, on or under any nearby real property which could migrate to or otherwise affect the Property; and (v) no underground storage tanks exist on the Property.

(hh) Special Purpose Bankruptcy Remote Entities. Each of First Mortgage Loan Borrower, Control Entity of First Mortgage Loan Borrower, Control Entity of Mezzanine Borrower, and Mezzanine Borrower is a Special Purpose Bankruptcy Remote Entity.

#### Section 4.2. Survival of Representations and Warranties.

Mezzanine Borrower agrees that (i) all of the representations and warranties of Mezzanine Borrower and its Affiliates set forth in this Agreement and in the other Mezzanine Loan Documents delivered on the Closing Date are made as of the Closing Date (except as expressly otherwise provided) and (ii) all representations and warranties made by Mezzanine Borrower and its Affiliates shall survive the delivery of the Mezzanine Note and continue for so long as any amount remains owing to Mezzanine Lender under this Agreement, the Mezzanine Note or any of the other Mezzanine Loan Documents. All representations, warranties, covenants and agreements made by Mezzanine Borrower in this Agreement or in the other Mezzanine Loan Documents shall be deemed to have been relied upon by Mezzanine Lender.

### ARTICLE V

#### AFFIRMATIVE COVENANTS

Section 5.1. Mezzanine Borrower Covenants. Mezzanine Borrower covenants and agrees that, from the date hereof and until payment in full of the Debt:

##### (a) Existence; Compliance with Legal Requirements, Insurance.

Mezzanine Borrower shall do or cause to be done with respect to itself and First Mortgage Loan Borrower all things necessary to preserve, renew and keep in full force and effect the Entity existence, rights, licenses, Permits and franchises necessary for the conduct of the business of such entities and comply in all respects with all applicable Legal Requirements applicable to such entities and the Collateral. Mezzanine Borrower shall notify Mezzanine Lender promptly of any written notice or order that Mezzanine Borrower receives from any Governmental Authority relating to Mezzanine Borrower's or any of its Affiliates' failure to comply with such applicable Legal Requirements which could reasonably be expected to result in a Material Adverse Condition. Mezzanine Borrower shall at all times and shall cause First Mortgage Loan Borrower at all times to maintain, preserve and protect all franchises and trade names and preserve all the remainder of their respective property necessary for the continued conduct of their respective businesses.

##### (b) Litigation. Mezzanine Borrower shall give prompt written

notice to Mezzanine Lender of any litigation or governmental proceedings pending or threatened against

either Mezzanine Borrower or First Mortgage Loan Borrower which could reasonably be expected to result in a Material Adverse Condition.

(c) Taxes and Other Charges. Mezzanine Borrower shall pay, or cause to be paid, all Impositions, and deliver to Mezzanine Lender receipts for payment or other evidence satisfactory to Mezzanine Lender that the Impositions have been so paid no later than twenty (20) Business Days before they would be delinquent if not paid or such shorter period as required under the First Mortgage Loan Agreement. Mezzanine Borrower shall not suffer and shall promptly cause to be paid and discharged any Lien (other than Permitted Indebtedness) against the Property, and shall promptly pay for all utility services provided to the Property. After prior notice to Mezzanine Lender, Mezzanine Borrower, at its own expense, may contest, or cause First Mortgage Loan Borrower to contest, by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application of any Liens or Impositions, provided that (i) no Default or Event of Default has occurred and remains uncured, (ii) such proceeding shall suspend the collection of the Impositions, (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Mezzanine Borrower or First Mortgage Loan Borrower is subject and shall not constitute a default thereunder, (iv) no part of or interest in the Property will be in danger of being sold, forfeited, terminated, canceled or lost, (v) Mezzanine Borrower or First Mortgage Loan Borrower shall have furnished such security as may be required in the proceeding, or as may be requested by Mezzanine Lender, to insure the payment of any such Impositions, together with all interest and penalties thereon, and (vi) Mezzanine Borrower or First Mortgage Loan Borrower shall promptly upon final determination thereof pay the amount of such Impositions, together with all costs, interest and penalties. Mezzanine Lender may pay over any such cash deposit or part thereof held by Mezzanine Lender to the claimant entitled thereto at any time when, in the reasonable judgment of Mezzanine Lender, the entitlement of such claimant is established and the sale or forfeiture of the Property or any Collateral is threatened. If Mezzanine Borrower or First Mortgage Loan Borrower contests the amount of validity or application of any Liens or Impositions in accordance with the provisions of the First Mortgage Loan Documents, the provisions regarding contests in this Section 5.1(c) shall be deemed satisfied.

(d) Repairs; Maintenance and Compliance. Mezzanine Borrower shall cause the Property to be maintained in a good and safe condition and repair and, except as permitted under the Approved FF&E Budget or the First Mortgage Loan Documents, shall not remove, demolish or materially alter the Improvements or Equipment without the prior written consent of Mezzanine Lender, not to be unreasonably withheld or delayed (except for normal replacement of the Equipment, repair and replacement of Improvements damaged by events of casualty or alterations required to comply with Leases approved in accordance with the terms hereof). Mezzanine Borrower shall promptly comply, and shall cause First Mortgage Loan Borrower to comply, with all Legal Requirements applicable to either of them or the Property and cure properly any violation of a Legal Requirement within sixty (60) days of delivery of notice of such violation or such lesser period required therein, provided that Mezzanine Borrower shall have the right to contest such violation, at its sole cost and expense, in which case such period shall be continued as necessary to complete any such contest, provided further that Mezzanine Borrower shall comply with the provisions regarding contests set forth in Section 5.1(c) above. Mezzanine Borrower shall or shall cause First Mortgage Loan Borrower to promptly repair,

replace or rebuild any part of the Property that becomes damaged, worn or dilapidated and shall complete and pay for any Improvements at any time in the process of construction or repair.

(e) Performance of Other Agreements. Mezzanine Borrower shall observe and perform or cause to be observed and performed each and every term to be observed or performed by Mezzanine Borrower or First Mortgage Loan Borrower pursuant to the terms of any material agreement or recorded instrument affecting or pertaining to the Property, including, without limitation, the First Mortgage Loan Documents.

(f) Notice of Default. Mezzanine Borrower shall promptly notify Mezzanine Lender in writing of any material adverse change in Mezzanine Borrower's or First Mortgage Loan Borrower's condition, financial or otherwise, or of the occurrence of any Default or Event of Default of which Mezzanine Borrower has knowledge. In addition, Mezzanine Borrower shall notify Mezzanine Lender in writing not later than one (1) Business Day after receipt of any notice from First Mortgage Lender alleging the occurrence of any event of default under the First Mortgage Loan Documents or of any event which, with the giving of notice and/or the passage of time would result in the occurrence of an event of default under the First Mortgage Loan Documents.

(g) Cooperate in Legal Proceedings. Except with respect to any claim by Mezzanine Borrower against Mezzanine Lender, Mezzanine Borrower shall cooperate with Mezzanine Lender with respect to any proceedings before any Governmental Authority which may in any way affect the rights of Mezzanine Lender hereunder or any rights obtained by Mezzanine Lender under any of the Mezzanine Loan Documents and, in connection therewith, not prohibit Mezzanine Lender, at its election, from participating in any such proceedings.

(h) Perform Mezzanine Loan Documents. Mezzanine Borrower shall observe, perform and satisfy all the terms, provisions, covenants and conditions required to be observed, performed or satisfied by it, and shall pay when due all costs, fees and expenses required to be paid by it, under the Mezzanine Loan Documents executed and delivered by Mezzanine Borrower.

(i) Further Assurances. Mezzanine Borrower shall, at Mezzanine Borrower's sole cost and expense:

(1) upon Mezzanine Lender's request therefor given from time to time after the occurrence of any Default or Event of Default pay for reports of UCC, federal tax lien, state tax lien, judgment and pending litigation searches with respect to Mezzanine Borrower, First Mortgage Loan Borrower and the Property;

(2) furnish to Mezzanine Lender all instruments, documents, certificates, and agreements required to be furnished pursuant to the terms of the Mezzanine Loan Documents;

(3) execute and deliver to Mezzanine Lender such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect the Collateral at any time securing or intended to secure the Mezzanine Loan as Mezzanine Lender may require in Mezzanine

Lender's reasonable discretion, including, without limitation, the filing of any financing or continuation statements under the UCC with respect to the Collateral, transferring the Collateral to Mezzanine Lender's possession (if a security interest in such Collateral can be perfected by possession) and endorsing to Mezzanine Lender any Collateral which may be evidenced by an instrument and executing and delivering any and all affidavits, certificates or similar documents required by any title insurance company as a condition to its issuing or continuing to maintain any insurance covering Mezzanine Lender's interest in the Property or any other Collateral, including, without limitation, a "fairway" or non-imputation endorsement; and

(4) do and execute, and cause First Mortgage Loan Borrower to the extent not prohibited under the First Mortgage Loan Documents to do and execute, all such further lawful acts, conveyances and assurances for the better and more effective carrying out of the intents and purposes of this Agreement and the other Mezzanine Loan Documents, as Mezzanine Lender shall reasonably require from time to time in its discretion.

(j) Financial Statements; Budgets, Audit Rights. Until payment in full of the Debt, Mezzanine Borrower shall cause the following financial statements and information, in form and substance satisfactory to Mezzanine Lender, to be delivered to Mezzanine Lender as and when hereinafter provided:

(1) ANNUAL REPORTING. Within ninety (90) days after the end of each calendar year, Mezzanine Borrower, Guarantor and First Mortgage Loan Borrower shall each provide true and complete copies of its Financial Statements for such year to Mezzanine Lender. All such statements shall be audited by a Big Five Accounting Firm or by other independent certified public accountants reasonably acceptable to Mezzanine Lender, and shall bear the unqualified certification of such accountants that such statements present fairly in all material respects the financial position of the subject company. The annual Financial Statements shall be accompanied by Supplemental Financial Information (as such term is defined in the First Mortgage Loan Agreement) for such calendar year. The annual Financial Statements for Mezzanine Borrower, Guarantor and First Mortgage Loan Borrower shall also be accompanied by a certification executed by the entity's chief executive officer or chief financial officer, satisfying the criteria set forth in Section 5.1(j)(8) below, and a Compliance Certificate (as defined below).

(2) QUARTERLY REPORTING - MEZZANINE BORROWER. Within forty-five (45) days after the end of the first, second and third calendar quarters of each year, Mezzanine Borrower shall provide true and complete copies of its balance sheet and the First Mortgage Loan Borrower's balance sheet as of the end of such quarter to Mezzanine Lender, together with a certification executed on behalf of Mezzanine Borrower by its chief executive officer or chief financial officer in accordance with the criteria set forth in Section 5.1(j)(8) below. If requested by Mezzanine Lender, Mezzanine Borrower shall cause the First Mortgage Loan Borrower to provide a report on variances from the Approved Operating Budget and Approved FF&E Budget with respect to the Property.

(3) QUARTERLY REPORTING - GUARANTOR. Within forty-five (45) days after the end of each first, second and third calendar quarters of each year, Guarantor shall provide true and complete copies of its Financial Statements for such quarter to Mezzanine Lender, together with a certification executed on behalf of Guarantor by its chief executive officer or chief financial officer in accordance with the criteria set forth in Section 5.1(j)(8) below and a Compliance Certificate.

(4) LEASING REPORTS. Within forty-five (45) days after each calendar quarter, Mezzanine Borrower shall provide to Mezzanine Lender a certified Rent Roll and a schedule of security deposits held under Leases (other than De minimis Leases), each in form and substance reasonably acceptable to Mezzanine Lender. Within forty-five (45) days after each calendar quarter, Mezzanine Borrower shall also provide to Mezzanine Lender (a) a schedule of any retail Leases (other than De minimis Leases) that expired during such calendar quarter and a schedule of retail Leases (other than De minimis Leases) scheduled to expire within the next twelve (12) months, (b) to the extent Mezzanine Borrower received notice thereof, a list of any retail tenants (other than De minimis Leases) that filed bankruptcy, insolvency or reorganization proceedings during such calendar quarter. Within ninety (90) days after the end of each calendar year, Mezzanine Borrower shall provide to Mezzanine Lender a statement of income and expenses for all retail space in the Property (including space leased to retail tenants and retail space operated by Mezzanine Borrower or Manager only for owned and operated retail outlets and sales report for other leased spaces) for such year.

(5) MONTHLY REPORTING. Within (30) days after the end of each calendar month (except that monthly reports for the month of December will be within forty-five (45) days), Mezzanine Borrower shall provide to Mezzanine Lender the following items determined on an accrual basis: (i) a calculation of the average daily rate, RevPAR and occupancy calculations and statistics for the Property for the subject month; (ii) Smith Travel Research "STAR" reports then available; (iii) monthly and year to date operating statements prepared for each calendar month, noting Net Operating Income and including budgeted and last year results for the same year-to-date period and other information necessary and sufficient under GAAP to fairly represent the financial position and results of operation of the Property during such calendar month, all in form satisfactory to Mezzanine Lender; (iv) a calculation reflecting the annual Net Operating Income, Debt Service Coverage Ratio and Debt Yield for the immediately preceding twelve (12) month period as of the last day of each such month; (v) an updated summary of advance bookings information (excluding customer names); and (vi) capital expenditure/FF&E reports with respect to such calendar month. Along with such statements, Mezzanine Borrower shall deliver to Mezzanine Lender a certification of Mezzanine Borrower's chief executive officer or chief financial officer satisfying the criteria set forth in Section 5.1(j)(8) below and a Compliance Certificate.

(6) ADDITIONAL REPORTING. In addition to the foregoing, Mezzanine Borrower, Guarantor and Manager shall each promptly provide to Lender such further documents and information concerning its operations, properties, ownership, and finances as Mezzanine Lender shall from time to time reasonably request. Notwithstanding anything herein to the contrary, Mezzanine Lender reserves the right to require the

Mezzanine Borrower to provide an unaudited balance sheet of Mezzanine Borrower, dated as of March 31, 2001 and deliver a certification of Mezzanine Borrower's chief executive officer or chief financial officer satisfying the criteria set forth in Section 5.1(j)(8) below.

(7) GAAP; USAH. Mezzanine Borrower and Guarantor will maintain systems of accounting established and administered in accordance with sound business practices and sufficient in all respects to permit preparation of Financial Statements in conformity with GAAP and the USAH. All Financial Statements shall be prepared in accordance with GAAP and the USAH, consistently applied; provided, however, in the event of a conflict between the USAH and GAAP, GAAP will be followed.

(8) CERTIFICATIONS OF FINANCIAL STATEMENTS AND OTHER DOCUMENTS, COMPLIANCE CERTIFICATE. Together with the Financial Statements and other documents and information provided to Mezzanine Lender by or on behalf of Mezzanine Borrower, Guarantor and First Mortgage Loan Borrower under this Section, Mezzanine Borrower and Guarantor also shall deliver to Mezzanine Lender a certification in form and substance satisfactory to Mezzanine Lender, executed on behalf of such Person by its chief executive officer or chief financial officer, stating that such Financial Statements, documents and information are true, correct, accurate and complete and fairly present the financial condition and results of operations of the applicable Person and/or the Property for the period(s) covered thereby, and do not omit to state any material information without which the same might reasonably be misleading. In addition, where this Agreement requires a "Compliance Certificate", if either Mezzanine Borrower or Guarantor are required to submit the same shall deliver a certificate duly executed on behalf of such Person by its chief executive officer or chief financial officer, in form and substance satisfactory to Mezzanine Lender, stating that there does not exist any Default or Event of Default under the Mezzanine Loan Documents (or if any exists, specifying the same in detail and the action taken or proposed to be taken with respect thereto).

(9) FISCAL YEAR. Mezzanine Borrower and Guarantor each represents that its fiscal year ends on December 31, and agrees that it shall not change its fiscal year.

(10) ACCOUNTANTS' REPORTS. Promptly upon receipt thereof, each of Mezzanine Borrower and Guarantor will deliver copies of all material reports submitted by independent public accountants in connection with each annual, interim or special audit of the Financial Statements or other business operations of Mezzanine Borrower and Guarantor made by such accountants, including the comment letter submitted by such accountants to management in connection with the annual audit.

(11) ANNUAL OPERATING, FF&E BUDGETS AND CAPITAL IMPROVEMENTS PLAN. At least forty-five (45) days prior to the expiration of each calendar year (commencing with the calendar year ended December 31, 2001), Mezzanine Borrower shall deliver to Mezzanine Lender for its review a proposed operating budget, a proposed FF&E budget, a proposed Capital Improvements Plan (in each case presented on a monthly and annual basis) for the Property for the next calendar year and, if otherwise prepared by Mezzanine Borrower, a proposed Three Year Business Plan (which, if

provided, shall be for informational purposes only). Each proposed operating budget, FF&E budget and, so long as any funds remain in the Capital Improvement Reserve or Required Capital Improvements (as such terms are defined in the First Mortgage Loan Agreement) remain to be performed, each Capital Improvements Plan shall be subject to Mezzanine Lender's approval which shall not be unreasonably withheld, conditioned or delayed. Upon completion of the Required Capital Improvements and disbursement of all funds in the Capital Improvement Reserve, Mezzanine Borrower shall be required to thereafter deliver Capital Improvements Plans to Mezzanine Lender for informational purposes only, but same shall not be subject to Lender's approval; provided, however, that the foregoing shall not affect Mezzanine Borrower's obligation to obtain Mezzanine Lender's consent to any alteration if so required under the terms of this Agreement. The proposed operating budget shall identify and set forth Mezzanine Borrower's best estimate, after due consideration, of all revenue, costs, and expenses, and shall specify operating revenues and operating expenses on a line-item basis consistent with the form of operating budget delivered to Mezzanine Lender prior to Closing. If any of said budgets or plans requiring Lender's approval is not in form and substance reasonably satisfactory to Mezzanine Lender, Mezzanine Lender may disapprove the same and specify the reasons therefor in writing, and Mezzanine Borrower shall promptly amend and resubmit for approval revised budgets or plans, as applicable, making such changes as are necessary to comply with the reasonable requirements of Mezzanine Lender. If any such budget or plan requiring Mezzanine Lender's approval is not approved by the beginning of the calendar year covered thereby, the applicable budget or plan for the previous year shall remain in effect until the new budget or plan is approved. Mezzanine Lender shall approve or disapprove any proposed budget or plan requiring Mezzanine Lender's approval within fifteen (15) days after submission thereof by Mezzanine Borrower to Mezzanine Lender together with any information reasonably requested by Mezzanine Lender in writing in order to review same.

(12) If as of the beginning of any calendar year any operating or capital budget for such year has not been agreed to as provided above, Mezzanine Borrower shall, subject to the requirements of the First Mortgage Loan Documents, cause the First Mortgage Loan Borrower to operate the Property in accordance with the Approved Operating Budget applicable during the immediately preceding year, except (x) to the extent Mezzanine Lender has approved particular Expenses in the proposed operating or capital budget, Mezzanine Borrower shall have the right to incur and pay such approved Expenses, (y) Mezzanine Borrower shall have the right to incur and pay all other budgeted Expenses from the prior year's Approved Operating Budget, including, without limitation, all regular and customary recurring Expenses that are necessary or appropriate for the continued operation of the Property in accordance with historical operations, such as maintenance costs, tenant allowances, brokerage commissions, utility charges, fuel charges, and Impositions when due, subject to Mezzanine Lender's right to reject such nondiscretionary Expenses (other than Impositions and Insurance premiums) which exceed by more than three percent (3%) the amount of such Expense in the Approved Operating Budget applicable during the immediately preceding year and (z) Mezzanine Borrower shall have the right to incur and pay all other budgeted capital expenditures from the prior year's Approved FF&E Budget, including, without limitation, all regular and customary recurring capital expenditures that are necessary or appropriate for the



continued operation of the Property in accordance with historical operations, subject to Mezzanine Lender's right to reject such nondiscretionary capital expenditures which exceed by more than three percent (3%) the amount of such capital expenditures in the Approved FF&E Budget applicable during the immediately preceding year; provided, however, if no Cash Sweep Event exists, Mezzanine Borrower shall have the right to use Excess Cash Flow to pay Expenses without Mezzanine Lender's prior consent. The Approved Operating Budget for the balance of calendar year 2001 and the Approved FF&E Budget for the balance of calendar year 2001 are attached hereto as Exhibit C and made a part hereof;

(13) contemporaneously with delivery to First Mortgage Lender, copies of all financial reporting documents required to be delivered by First Mortgage Loan Borrower under the terms of the First Mortgage Loan Documents to the extent not otherwise provided herein;

(14) contemporaneously with delivery to the members and partners of First Mortgage Loan Borrower and Mezzanine Borrower, but in no event later than thirty (30) days of it being filed without penalty, the annual consolidated federal income tax return of First Mortgage Loan Borrower and Mezzanine Borrower, with footnotes or other notation clearly denoting the separate assets and liabilities of First Mortgage Loan Borrower and Mezzanine Borrower; and

(15) promptly and in any event not later than one (1) Business Day after receipt thereof, Mezzanine Borrower shall forward to Mezzanine Lender (and Servicer) a copy of each monthly statement of payments due under the First Mortgage on the next First Mortgage Loan Payment Date to occur.

(k) ERISA. Mezzanine Borrower shall deliver to Mezzanine Lender as soon as possible, and in any event within ten (10) days after Mezzanine Borrower knows or has reason to believe that any of the events or conditions specified below with respect to any Plan or Multiemployer Plan has occurred or exists, a statement signed by a senior executive officer of Mezzanine Borrower setting forth details respecting such event or condition and the action, if any, that Mezzanine Borrower or its ERISA Affiliate proposes to take with respect thereto (and a copy of any report or notice required to be filed with or given to PBGC by Mezzanine Borrower or an ERISA Affiliate with respect to such event or condition):

(1) any reportable event, as defined in Section 4043(b) of ERISA and the regulations issued thereunder, with respect to a Plan, as to which PBGC has not by regulation waived the requirement of Section 4043(a) of ERISA that it be notified within 30 days of the occurrence of such event (provided that a failure to meet the minimum funding standard of Section 412 of the Code or Section 302 of ERISA, including, without limitation, the failure to make on or before its due date a required installment under Section 412(m) of the Code or Section 302(e) of ERISA, shall be a reportable event regardless of the issuance of any waivers in accordance with Section 412(d) of the Code); and any request for a waiver under Section 412(d) of the Code for any Plan;

(2) the distribution under Section 4041 of ERISA of a notice of intent to terminate any Plan or any action taken by Mezzanine Borrower or an ERISA Affiliate to terminate any Plan;

(3) the institution by PBGC of proceedings under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan, or the receipt by Mezzanine Borrower or any ERISA Affiliate of a notice from a Multiemployer Plan that such action has been taken by PBGC with respect to such Multiemployer Plan;

(4) the complete or partial withdrawal from a Multiemployer Plan by Mezzanine Borrower or any ERISA Affiliate that results in liability under Section 4201 or 4204 of ERISA (including the obligation to satisfy secondary liability as a result of a purchaser default) or the receipt by Mezzanine Borrower or any ERISA Affiliate of notice from a Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA or that it intends to terminate or has terminated under Section 4041A of ERISA;

(5) the institution of a proceeding by a fiduciary of any Multiemployer Plan against Mezzanine Borrower or any ERISA Affiliate to enforce Section 515 of ERISA, which proceeding is not dismissed within thirty (30) days;

(6) the adoption of an amendment to any Plan that, pursuant to Section 401(a)(29) of the Code or Section 307 of ERISA, would result in the loss of tax-exempt status of the trust of which such Plan is a part if Mezzanine Borrower or an ERISA Affiliate fails to timely provide security to the Plan in accordance with the provisions of said Sections; and

(7) the imposition of a lien or a security interest under Section 412(n) or Section 302(f)(1)(A) of ERISA in connection with a Plan.

(l) Entity Status. Mezzanine Borrower will and will cause First Mortgage Loan Borrower, to (i) continue to comply in all material respects with the provisions of all of their respective organizational documents, and the laws of the state in which each such entity was formed relating to each such Entity and (ii) enter into such amendments and modifications to such organizational documents with respect to the rights and obligations of the Mezzanine Borrower as may reasonably be required by Mezzanine Lender or any Rating Agency to facilitate a Securitization or other transaction as described in Section 8.34 hereof provided such amendments or modifications do not violate the provisions of the First Mortgage Loan Documents. All customary formalities regarding the Entity existence of Mezzanine Borrower and First Mortgage Loan Borrower will continue to be observed.

(m) Impositions and Other Claims. Mezzanine Borrower shall or shall cause First Mortgage Loan Borrower to pay and discharge or cause to be paid and discharged all Impositions, as well as all lawful claims for labor, materials and supplies or otherwise, which could become a Lien on the Property.

(n) Management of Property.

(i) The Property will be managed at all times by Manager pursuant to a Management Agreement ("Management Agreement") in form and substance reasonably satisfactory to Mezzanine Lender. The Manager will agree that the Management Agreement and all fees payable thereunder are subject and subordinate in all respects to the First Mortgage Loan and Mezzanine Loan. Subject to the rights of First Mortgage Lender under the First Mortgage Loan Documents, Mezzanine Borrower shall cause the Management Agreement to be terminated at the Mezzanine Lender's request, upon thirty (30) days' prior written notice to First Mortgage Loan Borrower and the Manager (w) upon the occurrence and during the continuance of an Event of Default, (x) if the Manager commits any act which would permit termination by First Mortgage Loan Borrower under the Management Agreement unless cured within any grace period provided therein, (y) there is directly or indirectly a transfer of more than 49% of the ownership interest in the Manager or a change in control in the management and operations of the Manager including a change of the President or CFO of the hospitality group and the failure to replace them with persons of reasonably comparable experience and expertise or (z) any Cash Sweep Event caused by a Financial Covenants Breach of both financial covenants in Section 2.12(a)(ii) and (iii) which are not remedied within the applicable ninety (90) day cure period. If the Management Agreement is terminated pursuant hereto, Mezzanine Borrower shall cause First Mortgage Loan Borrower immediately to seek to appoint a replacement manager in accordance with the terms and conditions of the First Mortgage Loan Documents acceptable to, and on terms and conditions acceptable to, Mezzanine Lender in Mezzanine Lender's reasonable discretion, and First Mortgage Loan Borrower's failure to obtain such an acceptable manager within sixty (60) days after Mezzanine Lender's request to terminate the Management Agreement shall constitute an immediate Event of Default.

(ii) Any successor manager selected hereunder by Mezzanine Lender to serve as manager shall be a reputable management company having at least seven (7) years' experience in the management of commercial properties with a similar use to the Property.

(iii) Mezzanine Borrower shall cause First Mortgage Loan Borrower to obtain and maintain in full force and effect during the Term a liquor license which permits the operation of a restaurant, bar and other service of alcoholic beverages at the Property.

(o) Liquidation Events. Mezzanine Borrower shall notify Mezzanine Lender of the occurrence of any Liquidation Event not later than one (1) Business Day following the first date on which Mezzanine Borrower has knowledge of such Liquidation Event.

(p) Special Purpose Bankruptcy Remote Entity. Mezzanine Borrower, the Control Entity of First Mortgage Loan Borrower, the Control Entity of Mezzanine Borrower and First Mortgage Loan Borrower shall each continue to be a Special Purpose Bankruptcy Remote Entity. A "Special Purpose Bankruptcy Remote Entity" means a corporation, limited partnership or limited liability company which at all pertinent times since its formation and, in any event, at all times from and after the date hereof (i) was and is organized solely for the purpose of (A) owning the Property, (B) acting as a Control Entity of the First Mortgage Loan Borrower or Mezzanine Borrower, or (C) owning all of the limited partnership or

non-managing membership interests in the First Mortgage Loan Borrower, (ii) has not engaged and will not engage in any business unrelated to (A) the ownership of the Property, (B) acting as Control Entity of the First Mortgage Loan Borrower or Mezzanine Borrower, or (C) owning all of the limited partnership or non-managing membership interests in the First Mortgage Borrower, (iii) has not had and will not have any assets other than those related to the Property or its direct or indirect ownership of the partnership or member interest in the limited partnership or limited liability company that owns the Property, as applicable, (iv) has not engaged, sought or consented to and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, asset sale, transfer of partnership or membership interests (if such entity is a Control Entity and if such transfer would otherwise affect its status as a Special Purpose Bankruptcy Remote Entity), or amendment of its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation or operating agreement as applicable (if such amendment would affect its status as a Special Purpose Bankruptcy Remote Entity), (v) if such entity is a limited partnership, has, as its only general partners, Special Purpose Bankruptcy Remote Entities, (vi) if such entity is a corporation, has at least one Independent Director, and has not caused or allowed and will not cause or allow the board of directors of such entity to take any action requiring the unanimous affirmative vote of 100% of the members of its board of directors, unless an Independent Director shall have participated in such vote, (vii) if such entity is a limited liability company, has at least one managing member or non-member manager that is a Special Purpose Bankruptcy Remote Entity that is a corporation, (viii) if such entity is a limited liability company, has articles of organization, a certificate of formation and/or an operating agreement, as applicable, providing that (A) such entity will dissolve only upon the bankruptcy of the member or upon the entry of judicial dissolution pursuant to applicable law, (B) the vote of the Control Entity is sufficient to continue the life of the limited liability company in the event of such bankruptcy of the member, and (c) if the vote of the Control Entity to continue the life of the limited liability company following the bankruptcy of the member is not obtained, the limited liability company may not liquidate the Property without the consent of the applicable Rating Agencies for so long as the First Mortgage Loan is outstanding, (ix) without the unanimous consent of all of its partners, directors, members and managers (including Independent Directors), as applicable, shall not (A) file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings with respect to itself or to any other entity in which it has a direct or indirect legal or beneficial ownership interest, (B) dissolve, liquidate, consolidate, merge, or sell all or substantially all of its assets or the assets of any other entity in which it has a direct or indirect legal or beneficial ownership interest, (C) engage in any other business activity, or amend its organizational documents, (x) is and will remain solvent and is maintaining and will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations, (xi) has not failed and will not fail to correct any known misunderstanding regarding the separate identity of such entity, (xii) has maintained and will maintain its accounts, books and records separate from any other Person and will file its own tax returns as may be required under applicable law to the extent not part of a consolidated return, (xiii) has maintained and will maintain its books, records, resolutions and agreements as official records, (xiv) has not commingled and will not commingle its funds or assets with those of any other Person, (xv) has held and will hold its assets in its own name, (xvi) has conducted and will conduct its business in its name, (xvii) has maintained and will maintain its financial statements, accounting records and other entity documents separate from any other Person, or will ensure that any consolidated statements will be annotated to indicate that the assets and credit of such entity are not available for the creditors of any entity with which its financial statements are consolidated, (xviii) has paid and will pay its own liabilities, including the salaries of its own employees, only out of its own funds and assets,

(xix) has observed and will observe all partnership, corporate or limited liability company formalities, as applicable, (xx) has maintained and will maintain an arm's-length relationship with its Affiliates, (xxi) with regard to Mezzanine Borrower, has no Indebtedness other than the Mezzanine Loan and Permitted Indebtedness, and with respect to First Mortgage Loan Borrower, has no indebtedness other than the First Mortgage Loan and Permitted Indebtedness relating to the ownership and operation of the Property; (xxii) has not and will not assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person except for the Mezzanine Loan and the First Mortgage Loan, as the case may be, and the liabilities permitted pursuant to the Mezzanine Loan Documents and the First Mortgage Loan Documents, (xxiii) has not and will not acquire obligations or securities of its partners, members or shareholders, (xxiv) has allocated and will allocate fairly and reasonably any overhead for shared office space and uses separate stationery, invoices and checks, (xxv) except in connection with the Mezzanine Loan and the First Mortgage Loan, as the case may be, has not pledged and will not pledge its assets for the benefit of any other Person, (xxvi) has held itself out and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name and not as a division or part of any other Person, (xxvii) has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person, (xxviii) has not made and will not make loans to any Person, (xxix) has not identified and will not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or part of it, (xxx) has not entered into or been a party to, and will not enter into or be a party to, any transaction with its partners, members, shareholders or Affiliates except in the ordinary course of its business and on terms which are intrinsically fair and are no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party, (xxxi) has no obligation to indemnify its partners, officers, directors or members, as the case may be, or has such an obligation that is fully subordinated to the Debt and will not constitute a claim against it in the event that cash flow in excess of the amount required to pay the Debt is insufficient to pay such obligation, and (xxxii) will consider the interests of its creditors in connection with all corporate, partnership or limited liability company actions, as applicable.

(q) Assumptions in Non-Consolidation Opinion. Mezzanine Borrower, the Control Entity of Mezzanine Borrower and First Mortgage Loan Borrower shall conduct their business so that the assumptions made in that certain substantive nonconsolidation opinion letter dated the date hereof, delivered by Mezzanine Borrower's counsel in connection with the Mezzanine Loan, shall be true and correct in all material respects.

(r) Expenses. Mezzanine Borrower shall reimburse Mezzanine Lender upon receipt of notice for all reasonable costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Mezzanine Lender in connection with (i) the preparation, negotiation, execution and delivery of the Mezzanine Loan Documents and the consummation of the transactions contemplated thereby and all reasonable costs of furnishing all opinions by counsel for Mezzanine Borrower and its Affiliates; (ii) Mezzanine Borrower's, its Affiliates' and Mezzanine Lender's ongoing performance under and compliance with the Mezzanine Loan Documents, including confirming compliance with environmental and insurance requirements; (iii) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications of or under any Mezzanine Loan Document and any

other documents or matters requested by Mezzanine Lender; (iv) filing and recording of any Mezzanine Loan Documents; (v) engineering reports, environmental reports, surveys, inspections and appraisals as expressly required in this Agreement; (vi) enforcing or preserving any rights, in response to third party claims or the prosecuting or defending of any action or proceeding or other litigation, in each case against, under or affecting Mezzanine Borrower, First Mortgage Loan Borrower, the Mezzanine Loan Documents, the Collateral, the Property, or any other security given for the Mezzanine Loan; and (vii) enforcing any obligations of or collecting any payments due from Mezzanine Borrower or First Mortgage Loan Borrower under any Mezzanine Loan Document or with respect to the Collateral, the Property or in connection with any refinancing or restructuring of the Mezzanine Loan in the nature of a "work-out", or any insolvency or bankruptcy proceedings; provided, however, that Mezzanine Borrower shall not be liable for the payment of any such costs and expenses to the extent the same arise by reason of the gross negligence, illegal acts, fraud or willful misconduct of Mezzanine Lender. The obligations and liabilities of Mezzanine Borrower under this Section shall survive the Maturity Date and the exercise by Mezzanine Lender of any of its rights or remedies under the Mezzanine Loan Documents.

(s) Interest Rate Protection. On the date hereof, Mezzanine Borrower shall have, at its sole cost and expense, entered into an interest rate protection agreement with a counterparty acceptable to Mezzanine Lender in its sole discretion and on terms reasonably satisfactory to Mezzanine Lender ("Interest Rate Cap Agreement"), providing Mezzanine Borrower with an initial cap on LIBOR at a maximum of 7.50% and a maximum of 8.25% during any extension period or for any replacement and Mezzanine Borrower shall pay all fees and costs associated with such agreement. In addition, to the extent and upon the terms required under the First Mortgage Loan Documents, Mezzanine Borrower shall obtain a "Cap Guaranty" (as such term is defined in Section 2.3 of the First Mortgage Loan Agreement) in connection with the Interest Rate Cap Agreement. All of the benefits of such Interest Rate Cap Agreement (including the Cap Guaranty) shall be collaterally assigned to Mezzanine Lender as additional Collateral for the Mezzanine Loan.

Section 5.2. Leases. Except as otherwise expressly permitted in the First Mortgage Loan Documents or this Section 5.2, Mezzanine Borrower covenants and agrees that, from the date hereof and until payment in full of the Debt:

(a) Except as permitted in this Section 5.2, Mezzanine Borrower shall not and shall not permit Manager or First Mortgage Loan Borrower to enter into, modify, amend, consent to the cancellation or surrender of (except by the Tenant under a Lease pursuant to a pre-existing right) or terminate any Material Lease, whether now existing or hereafter entered into, without the prior written consent of Mezzanine Lender, which shall be promptly granted or withheld in Mezzanine Lender's commercially reasonable discretion (and shall be deemed to have been granted if not withheld within five (5) Business Days after Mezzanine Lender's receipt of a written request therefor, provided that such approval shall under no circumstances be deemed granted, if and to the extent (i) the Tenant under such Lease is an Affiliate of Mezzanine Borrower or (ii) such Lease has not been entered into on an arm's-length basis).

(b) Except for De minimis Leases, Mezzanine Borrower will cause First Mortgage Loan Borrower to timely comply with or cause to be timely complied with all material

terms and conditions on the landlord's part to be performed under each Lease. Mezzanine Borrower shall cause First Mortgage Loan Borrower neither to do nor to neglect to do, nor to permit to be done, anything which may cause the termination of any Material Lease, other than due to the default of the Tenant(s) under such Material Lease or such Tenant's exercise of any termination rights which it holds under such Material Lease without the express prior written consent of Mezzanine Lender which shall not be unreasonably withheld or delayed. Except for security deposits and except with respect to De minimis Leases, Mezzanine Borrower shall not and shall not permit First Mortgage Loan Borrower to collect any rent or other payment under any Lease more than one (1) month in advance of the due date thereof and will use all commercially reasonable efforts to require the performance of all of the obligations of Tenants and other Persons bound by the Leases and to enforce the Leases except as herein otherwise expressly provided and shall require that all future Material Leases are subordinate to the First Mortgage Loan Documents either pursuant to its terms or pursuant to a subordination and attornment agreement.

(c) Provided that there shall not have occurred and be continuing a Default or Event of Default, Mezzanine Borrower may, without Mezzanine Lender's prior written consent, cause First Mortgage Loan Borrower to enter into and amend or modify or permit the entering into, amendment or modification of any (A) De minimis Lease, or (B) any Lease which is not a Material Lease, provided that with respect to any Lease other than a De minimis Lease (i) the net effective rent (after taking into account any free rent, construction allowances or other concessions granted by landlord) is no less than 90% of the then effective fair market rent then prevailing for similar properties and leases in the market area; (ii) such Lease, amendment or modification is otherwise on commercially reasonable terms; (iii) such Lease, amendment or modification does not contain any options to purchase or other rights with respect to the ownership of the Property; (iv) such Lease, amendment or modification does not contain any restrictions on landlord's rights to lease remaining portions of the Property, except that such Lease, amendment or modification may contain customary "exclusives" and other customary use restrictions and options to lease additional space in the Property; (v) such Lease, amendment or modification does not contain any options for the Tenant thereunder to terminate such Lease, other than in the event of a material casualty or condemnation; (vi) such Lease, amendment or modification is entered into on an arm's-length basis; (vii) such Lease, amendment or modification shall contain provisions substantially similar to each of the provisions set forth in Section 5.2(d) hereof; (viii) such amendment or modification does not release any Person from its obligations under the Lease so amended or modified or reduce the square footage demised thereunder; and (ix) such amendment or modification does not materially reduce the rent payable under the Lease so amended and modified. Mezzanine Borrower may, without the prior written consent of Mezzanine Lender, cause First Mortgage Loan Borrower to terminate any Lease which is not a Material Lease either in its good faith exercise of its remedies under such Lease, or at law or in equity, by reason of a monetary or another material default beyond any applicable notice and cure periods thereunder.

(d) Each Material Lease executed by Mezzanine Borrower or First Mortgage Loan Borrower after the Closing Date shall provide, in a manner reasonably satisfactory to Mezzanine Lender, for (i) the Tenant thereunder to give a notice to Mezzanine Lender of each material default by the landlord or licensor thereunder, simultaneously with the giving of notice of such default to such landlord or licensor, and (ii) execution and delivery (not more than (10)

days after a request therefor) of an estoppel certificate in form reasonably requested by Mezzanine Borrower, and Mezzanine Borrower hereby agrees, not later than ten (10) Business Days after receipt of Mezzanine Lender's written request therefor, to request Tenant estoppel certificates from Tenants in a form reasonably proposed by Mezzanine Lender.

(e) After the occurrence of an Event of Default, but subject to the rights of the First Mortgage Lender under the First Mortgage Loan Documents, security and other refundable deposits of Tenants, whether held in cash or any other form, shall be turned over to Mezzanine Lender (together with any undisbursed interest earned thereon) upon Mezzanine Lender's request therefor to be held by Mezzanine Lender subject to the terms of the Leases. Any letter of credit or other instrument which Mezzanine Borrower or First Mortgage Loan Borrower holds in lieu of cash security deposit shall be maintained in full force and effect in the full amount of such deposits unless replaced by cash deposits as herein-above described and shall in all respects comply with any applicable Legal Requirements and otherwise be satisfactory to Mezzanine Lender. Mezzanine Borrower shall, upon request, provide Mezzanine Lender with evidence reasonably satisfactory to Mezzanine Lender of Mezzanine Borrower's and First Mortgage Loan Borrower's compliance with the foregoing.

(f) Each of the Convention Contracts (as such term is defined in the First Mortgage Loan Agreement) in effect on the date hereof is substantially in the form of the standard form of Convention Contract previously delivered to and approved by Mezzanine Lender (with reasonable changes thereto as necessary to reflect the terms of such contract) and is otherwise on Borrower's customary terms.

Section 5.3. Insurance; Coverages. Mezzanine Borrower will maintain or cause to be maintained, with financially sound and reputable insurers, public liability, property damage, business interruption and other types of insurance with respect to its business, the business of First Mortgage Loan Borrower and the Property (including all Improvements now existing or hereafter erected thereon) in such amounts and for such periods and against all losses, hazards, casualties, liabilities and contingencies as customarily carried or maintained by Persons of established reputation engaged in similar businesses. Without limitation of the foregoing, Mezzanine Borrower shall maintain or cause to be maintained policies of insurance (collectively, "Insurance") with respect to the Property in the following amounts and covering the following risks:

5.3.1 Property damage insurance covering loss or damage to the Property caused by fire, lightning, hail, windstorm, explosion, hurricane (to the extent available), vandalism, malicious mischief, and such other losses, hazards, casualties, liabilities and contingencies as are normally and usually covered by fire policies in effect where the Property is located endorsed to include all of the extended coverage perils and other broad form perils, including the standard "all risks" clauses, with such endorsements as Mezzanine Lender may from time to time reasonably require including, without limitation, building ordinance and law (including demolition costs and increased cost of construction coverage), lightning, windstorm, civil commotion, hail, riot, strike, water damage, sprinkler leakage, collapse and malicious mischief. Such policy shall be in an amount not less than that necessary to comply with any coinsurance percentage stipulated in the policy, but not less than 100% of the full replacement cost of all Improvements (without any deduction for depreciation), and shall contain replacement



cost and agreed amount endorsements each in an amount not less than the outstanding principal amount of the Mezzanine Loan. The deductible under such policy shall not exceed \$100,000.

5.3.2 Broad form boiler and machinery insurance in an amount equal to the full replacement cost of the Improvements (without any deduction for depreciation) in which the boiler or similar vessel is located, and including coverage against loss or damage from (1) leakage or sprinkler systems and (2) damage, breakdown or explosion of steam boilers, electrical machinery and equipment, air conditioning, refrigeration, pressure vessels or similar apparatus and mechanical objects now or hereafter installed at the Property.

5.3.3 If the Property is in an area prone to geological phenomena, including, but not limited to, sinkholes, mine subsidence or earthquakes, insurance covering such risks in an amount equal to \$100,000,000 (without any deduction for depreciation), and with a maximum permissible deductible of \$100,000.

5.3.4 Flood insurance if the Property is in an area now or hereafter designated by the Federal Emergency Management Agency as a Zone "A" & "V" Special Hazard Area, or such other Special Hazard Area if Mezzanine Lender so requires in its sole discretion. Such policy shall be in an amount equal to \$50,000,000 (without any deduction for depreciation), and shall have a maximum permissible deductible of \$100,000.

5.3.5 Business interruption or rent loss insurance in an amount equal to the anticipated gross income or rentals from the Property (assuming an occupancy rate of 100%) for an indemnity period commencing on the date of the casualty and ending at least ninety (90) days after completion of the restoration, (but with no maximum limit on the overall length of such indemnity period) such amount being adjusted annually. Mezzanine Lender shall be named as loss payee under such insurance.

5.3.6 During any period of reconstruction, renovation or alteration of the Property in excess of 10% of the outstanding principal balance of the Mezzanine Loan, a completed value, "All Risks" Builders Risk form or "Course of Construction" insurance policy in non-reporting form and in an amount not less than the lesser of 100% of the full replacement cost of all Improvements and the then outstanding principal balance of the Mezzanine Loan.

5.3.7 Commercial general liability insurance against claims for personal and bodily injury (including death resulting therefrom) to one or more persons or property damage, occurring on, in or about the Property (including the adjoining streets, sidewalks and passageways) in such amounts as Mezzanine Lender may from time to time reasonably require, but not less than \$25,000,000 for each occurrence and \$50,000,000 in the aggregate. This policy or policies must include coverage for premises and operations liability, products and completed operations liability, contractual liability, hired, owned and non-owned automobile liability, innkeepers legal liability and "Dram shop" or other liquor liability if alcoholic beverages are sold from or may be consumed at the Property.

5.3.8 If required by applicable state laws, worker's compensation or employer's liability insurance in accordance with such laws.

5.3.9 Mezzanine Borrower and Manager shall maintain fidelity insurance and professional liability insurance in amounts reasonably satisfactory to Mezzanine Lender in its sole discretion in event against losses resulting from dishonest or fraudulent acts committed by Mezzanine Borrower's and Manager's personnel, employees and agents.

5.3.10 Such other insurance and endorsements, if any, as Mezzanine Lender may reasonably require from time to time, and which is then customarily required by institutional lenders for similar properties similarly situated, against other insurable hazards, including, but not limited to, malicious mischief, vandalism or windstorm, which at the time are commonly insured against and generally available in the case of properties similarly situated, due regard to be given to the size and type of the Property.

5.3.11 Each carrier providing any insurance, or portion thereof, required by this Section 5.3 shall be licensed to do business in the jurisdiction or jurisdictions in which the Property is located, and shall have a claims paying ability rating and/or financial strength rating, as applicable, by S&P of not less than "AA", by Moody's of not less than "Aa2" and by Fitch of not less than "AA" and an A.M. Best Company, Inc. rating of not less than A and financial size category of not less than XIII. Mezzanine Borrower shall cause all insurance (except general public liability and worker's compensation insurance) carried in accordance with this Section 5.3 to be payable to "Merrill Lynch Mortgage Capital Inc., a Delaware corporation, its successors, assigns and participants, as their respective interests may appear, as secured party" and not as a coinsured.

5.3.12 All insurance policies and renewals thereof (i) shall be in a form reasonably acceptable to Mezzanine Lender, (ii) shall provide for a term of not less than one year, (iii) shall provide by way of endorsement, rider or otherwise that such insurance policy shall not be canceled, endorsed, altered, or reissued to effect a change in coverage unless such insurer shall have first given Mezzanine Lender thirty (30) days prior written notice thereof, (iv) shall include a standard mortgagee clause in favor of and in form acceptable to Mezzanine Lender, (v) shall provide for claims to be made on an occurrence basis, except that boiler and machinery coverage may be made on an accident basis, and (vi) shall contain an agreed value clause updated annually (if the amount of coverage under such policy is based upon the replacement cost of the Property). All property damage insurance policies (except for flood and earthquake policies) must automatically reinstate after each loss.

5.3.13 At least ten (10) Business Days prior to the end of each insurance policy period of Mezzanine Borrower (or such shorter period as provided in the First Mortgage Loan Agreement), Mezzanine Borrower will deliver certificates, reports, and/or other information (all in form and substance satisfactory to Mezzanine Lender), (i) outlining all material insurance coverage maintained as of the date thereof by Mezzanine Borrower and all material insurance coverage planned to be maintained by Mezzanine Borrower in the subsequent insurance policy period and (ii) evidencing payment in full of the premiums for such insurance policies. If at any time Mezzanine Lender is not in receipt of written evidence that all Insurance required hereunder is in force and effect, Mezzanine Lender shall have the right to take such action as Mezzanine Lender deems necessary to protect its interest, including, without limitation, the obtaining of such insurance coverage as Mezzanine Lender in its sole discretion deems appropriate, and all expenses incurred by Mezzanine Lender in connection with such action or in obtaining such

insurance and keeping it in effect shall be paid by Mezzanine Borrower to Mezzanine Lender upon demand. Mezzanine Lender shall in no event be obligated, however, to obtain such insurance coverage for the benefit of Mezzanine Borrower.

5.3.14 Waiver of Subrogation. The Insurance, as applicable, and all renewals thereof shall contain, in form and substance reasonably acceptable to Mezzanine Lender, a standard "Waiver of Subrogation" endorsement, and an endorsement providing in general that any claim or defense the insurance company may have against Mezzanine Borrower or First Mortgage Loan Borrower to deny payment of any claim by Mezzanine Borrower or First Mortgage Loan Borrower thereunder shall not be effective against Mezzanine Lender (and affirmatively providing that the insurance company will pay the proceeds of such Insurance to Mezzanine Lender notwithstanding any claim or defense of the insurance company against Mezzanine Lender).

5.3.15 No Separate Insurance. Neither Mezzanine Borrower nor First Mortgage Loan Borrower will take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained pursuant to this Section 5.3.

5.3.16 Casualty; Proceeds of Required Insurance. Mezzanine Borrower shall give Mezzanine Lender prompt notice of any loss or damage to the Property and, subject to the rights of the First Mortgage Lender under the First Mortgage Loan Documents:

(a) In the case of any loss or damage covered by any Insurance, Mezzanine Lender is hereby authorized (i) if an Event of Default shall have occurred and is continuing or, if no Event of Default shall have occurred but Mezzanine Borrower or First Mortgage Loan Borrower fails to settle and adjust any claim within ninety (90) Business Days after such casualty has occurred, to settle and adjust any claim under such Insurance without the consent of Mezzanine Borrower or First Mortgage Loan Borrower, or (ii) if no Event of Default has occurred, to allow Mezzanine Borrower or First Mortgage Loan Borrower within ninety (90) Business Days (or such longer period as necessary as long as Mezzanine Borrower is diligently and in good faith pursuing the settlement of such claim and, in Mezzanine Lender's reasonable discretion, such additional period will not result in a Material Adverse Condition) after such casualty to settle and adjust such claim; provided, however, if any settlement may reasonably be anticipated to result in proceeds in excess of \$1,000,000, the consent of Mezzanine Lender, not to be unreasonably withheld or delayed shall be required; provided, further, that in either case following the foregoing periods Mezzanine Lender shall, and is hereby authorized to, collect and receive any such insurance proceeds, subject, however, to the rights of First Mortgage Lender under the First Mortgage Loan Documents. The reasonable expenses incurred by Mezzanine Lender in the adjustment and collection of such proceeds of Insurance shall be additional Debt of Mezzanine Borrower, and shall be reimbursed to Mezzanine Lender upon written demand or, at Mezzanine Lender's option, in the event and to the extent sufficient proceeds are available, deducted by Mezzanine Lender from such proceeds of Insurance prior to any other application thereof. Subject to the rights of the First Mortgage Lender, each insurance company which has issued Insurance is hereby authorized and directed to pay any amounts payable to Mezzanine Lender by virtue of its interest in the Insurance under the insurance policies to Mezzanine Lender alone, and shall not require an endorsement by Mezzanine Borrower. Mezzanine Borrower agrees to execute and cause First Mortgage Loan Borrower to execute all documents and make

all deliveries required in order to permit adjustment and payment of insurance proceeds as provided above.

(b) Mezzanine Lender shall, in its sole discretion (except as provided below), apply the proceeds of Insurance consequent upon any casualty either (i) to reduce the Debt, in such order or manner as Mezzanine Lender may elect; or (ii) at Mezzanine Lender's election, to reimburse Mezzanine Borrower or First Mortgage Loan Borrower for or to pay the costs of restoring, repairing, replacing or rebuilding (collectively, a "Restoration") the loss or damage caused by such casualty, in accordance with and subject to the conditions contained in the provisions of subdivision (f) hereof. Notwithstanding the foregoing, subject to the satisfaction of the conditions described in Section 5.3.16(f), Mezzanine Lender agrees to permit the proceeds of Insurance to be applied toward the cost of Restoration if (i) First Mortgage Lender is permitting such proceeds to be so applied toward Restoration in accordance with the First Mortgage Loan Documents, and (ii) the requirements of subdivision (f) below are otherwise satisfied. Any application of proceeds of Insurance pursuant to this Section 5.3.16(b) to pay the Principal Indebtedness shall not require the payment of the Prepayment Fee, if applicable.

(c) Whether or not proceeds of Insurance are made available to Mezzanine Borrower or First Mortgage Loan Borrower or such proceeds are sufficient for such purposes, Mezzanine Borrower hereby covenants to, or to cause First Mortgage Loan Borrower to, promptly after such casualty and at Mezzanine Borrower's or First Mortgage Loan Borrower's sole cost and expense, commence and thereafter diligently proceed to Restore the Improvements, to be of at least equal value and of substantially the same character as prior to such loss or damage, if allowed by law, in accordance with all Legal Requirements and plans, specifications and procedures to be first submitted to and approved by Mezzanine Lender, and Mezzanine Borrower or First Mortgage Loan Borrower shall pay all costs of such Restoration.

(d) Any portion of the proceeds of Insurance remaining after payment in full of the Debt shall be paid to Mezzanine Borrower or First Mortgage Loan Borrower or as ordered by a court of competent jurisdiction.

(e) Except as otherwise required by First Mortgage Loan Documents, if the proceeds of the Insurance exceed \$1,000,000, all proceeds of the Insurance described in Section 5.3.5 above shall be paid to the Deposit Account and shall be disbursed by Mezzanine Lender in accordance with the following: (i) if paid in monthly installments and provided that no Event of Default has occurred and is continuing, in accordance with the terms of the Mezzanine Deposit Account Agreement as if such proceeds were Receipts, (ii) if paid in a lump sum, and provided that no Event of Default has occurred and is continuing, into a segregated reserve account in the sole dominion and control of Mezzanine Lender for application in monthly installments (equal to such lump sum divided by the aggregate number of months on account of which paid) in the manner described in subdivision (b) above. If the proceeds of the insurance are less than or equal to \$1,000,000, they will be paid to Mezzanine Borrower directly to be applied to the cost of repairs and restoration.

(f) Provided that no Event of Default has occurred and is then continuing and except as otherwise provided in the First Mortgage Loan Documents, proceeds of Insurance that pursuant to the terms of Section 5.3.16(b)(ii) hereof or Section 5.3.16(g) or that

the Mezzanine Lender otherwise agrees to apply to the Restoration of the Property shall be disbursed from time to time (but not more often than monthly) upon Mezzanine Lender being furnished with (i) evidence reasonably satisfactory to Mezzanine Lender from an independent architect or other Person selected by the Mezzanine Borrower (who, in any case, is reasonably approved by Mezzanine Lender), of the estimated cost of completion of the Restoration, (ii) evidence of funds or other assets sufficient in addition to the proceeds of Insurance, to complete and fully pay for the completion of the Restoration, based on the cost estimate referenced in clause (i) above, (iii) a request from Mezzanine Borrower, dated not more than ten (10) Business Days prior to the proposed application of such payment, requesting such payment or reimbursement and setting forth the Restoration work which is in the subject of such request, the parties which performed such work, and the actual cost thereof, and certifying that such work and materials are free and clear of Liens (or will be so after disbursement of the applicable proceeds), and (iv) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, plats of survey and such other evidences of cost, payment and performance as Mezzanine Lender may reasonably require and approve. Mezzanine Lender may, in all events, require that all plans and specifications for any such Restoration be submitted to and approved by Mezzanine Lender (such approval not to be unreasonably withheld) and that all Permits required for Restoration be obtained prior to commencement of each portion of the Restoration work. Except as provided below, any cash provided in accordance with clause (iii) above shall be applied as if such cash were proceeds of Insurance. No payment made prior to the final completion of the Restoration shall exceed ninety-five percent (95%) of the value (or such other amount as Mezzanine Lender may approve in Mezzanine Lender's sole discretion) of the Restoration work performed or materials delivered, as applicable, from time to time, as such value shall be determined by Mezzanine Lender in its reasonable judgment. Funds other than proceeds of Insurance shall be disbursed prior to disbursement of such proceeds, except as may otherwise be provided herein; and at all times the undisbursed balance of such proceeds, together with cash furnished to Mezzanine Lender in accordance with clause (iii) above to pay the cost of completion of the Restoration, shall be at least sufficient in the reasonable judgment of Mezzanine Lender to pay the entire unpaid cost of the completion of the Restoration, free and clear of all Liens or claims for Lien. In addition to all other conditions contained in this Section 5.3.16(f), final payment of all proceeds of Insurance remaining with Mezzanine Lender shall be made upon receipt by Mezzanine Lender of a certification by an independent architect or contractor reasonably approved by Mezzanine Lender as to the completion of the Restoration substantially in accordance with the submitted plans and specifications, and the filing of a notice of completion (if such filing is required by applicable Legal Requirements). Any surplus which may remain out of proceeds of Insurance (or cash provided pursuant to clause (iii) above) held by Mezzanine Lender after payment of such costs of Restoration shall be applied by Mezzanine Lender in accordance with the terms of the First Mortgage Loan Documents or shall be deposited into the Deposit Account and held or disbursed in accordance with the terms of the Mezzanine Deposit Account Agreement. If there shall have occurred an Event of Default while Mezzanine Lender is holding funds for Restoration (including for these purposes any cash deposited pursuant to clause (ii) above), Mezzanine Lender may at its sole option (but subject to the rights of First Mortgage Lender) apply such funds against the Indebtedness in such order or manner as Mezzanine Lender may elect. Mezzanine Borrower shall pay, from time to time, within five (5) Business Days after demand therefor, the reasonable fees and expenses of any consultant hired by Mezzanine Lender to review the progress of the Restoration and inspect the work of

Restoration, which consultant's approval shall be required for any disbursement to be made. Mezzanine Lender shall not be obligated to see to the proper application of funds disbursed to Mezzanine Borrower pursuant hereto, whether pursuant to the above conditions or upon waiver thereof.

(g) Notwithstanding anything herein to the contrary, the proceeds of insurance shall be used for Restoration of the Property if the requirements set forth in Section 5.5(c) of the First Mortgage Loan Agreement are satisfied.

5.3.17 Mezzanine Borrower may maintain a portion of the commercial general liability insurance required under Section 5.3.7 above in an amount not to exceed \$1,000,000 per occurrence and a portion of the worker's compensation insurance required under Section 5.3.8 in an amount not to exceed \$300,000 per occurrence by means of a self-insurance program, the terms and conditions of which shall be acceptable to Mezzanine Lender. Mezzanine Borrower shall at all times maintain cash reserves in the Self-Insurance Reserve Account in accordance with the provisions of Section 6.7 of First Mortgage Loan Agreement and the Cash Management Agreement (as such terms are defined in the First Mortgage Loan Agreement). Promptly after Mezzanine Lender's written request therefor, Mezzanine Borrower shall provide Mezzanine Lender with any and all information reasonably requested by Mezzanine Lender with respect to such self-insurance program including, without limitation, information regarding the balance of and activity in the Self-Insurance Reserve Account, claims paid during any period and pending and threatened claims. If the Self-Insurance Reserve Account is not being maintained under the First Mortgage Loan Agreement, Mezzanine Lender shall have the right to establish and Mezzanine Borrower shall have the obligation to maintain, a self-insurance reserve account.

5.3.18 Notwithstanding anything herein to the contrary, in the case of any conflict or inconsistency between the requirements for insurance hereunder and under the First Mortgage Loan Documents, the provisions of the First Mortgage Loan Documents shall control and compliance therewith shall be deemed to be compliance with this Agreement.

#### Section 5.4. Condemnation and Eminent Domain.

Subject to the prior rights of First Mortgage Lender under the First Mortgage Loan Documents, any and all awards, including any portion of such awards paid to First Mortgage Loan Borrower on account of "interest" (the "Awards") heretofore or hereafter made or to be made by any Governmental Authority for the taking by condemnation or eminent domain, of all or any part of the Property (including any award from the United States government at any time after the allowance of a claim thereof), or the proceeds from a transfer in lieu of such condemnation or eminent domain, are hereby assigned by Mezzanine Borrower and First Mortgage Loan Borrower to Mezzanine Lender, which Awards Mezzanine Lender is hereby authorized to collect and receive from the condemnation authorities. Mezzanine Lender is hereby authorized to give appropriate receipts and acquittances therefor, and Mezzanine Borrower and First Mortgage Loan Borrower hereby irrevocably appoint Mezzanine Lender Mezzanine Borrower's and First Mortgage Loan Borrower's attorney-in-fact, coupled with an interest, to collect such Awards; provided that such power of attorney shall not be exercised unless an Event of Default has occurred and is continuing at the time in question. Mezzanine Borrower shall give Mezzanine Lender prompt notice of the actual or threatened commencement

of any condemnation of eminent domain proceeds affecting all or any part of the Property and shall deliver to Mezzanine Lender copies of any and all papers served in connection with any such proceedings. Mezzanine Borrower further agrees to make, execute and deliver to Mezzanine Lender, at any time upon request, any and all further assignments and other instruments deemed reasonably necessary by Mezzanine Lender for the purpose of validly and sufficiently assigning all Awards and other compensation heretofore and hereafter made to Mezzanine Borrower or First Mortgage Loan Borrower upon any taking, either permanent or temporary, under any such proceeding and all proceeds paid from a sale in lieu of such taking, and to facilitate Mezzanine Lender's collection and receipt of the same. If, notwithstanding the foregoing provisions, any Award or other compensation described above is nonetheless paid to Mezzanine Borrower, Mezzanine Borrower shall hold or cause first Mortgage Loan Borrower to hold such monies in trust for the benefit of Mezzanine Lender or First Mortgage Loan Borrower, and Mezzanine Borrower and First Mortgage Loan Borrower shall immediately pay the same to Mezzanine Lender, unless otherwise required by First Mortgage Lender. The expenses incurred by Mezzanine Lender in the collection and administration of any Award, including reasonable attorneys' fees and disbursements, shall be additional Debt, and shall be reimbursed to Mezzanine Lender upon demand or, at Mezzanine Lender's option, in the event and to the extent sufficient proceeds are available, shall be deducted by Mezzanine Lender from said proceeds prior to any other application hereof. If the amount of the Award is reasonably expected to exceed \$1,000,000, Mezzanine Borrower may not and shall not cause or suffer First Mortgage Loan Borrower to settle or compromise any claim for or right to receive any Award or its rights under any proceeding with respect thereto without the prior written consent of Mezzanine Lender, which consent shall not be unreasonably withheld or delayed. Notwithstanding any taking, Mezzanine Borrower shall continue to pay the Mezzanine Loan with interest thereon at the time and in the manner provided for in the Mezzanine Note and the other Mezzanine Loan Documents and the Debt shall not be reduced by reason of such taking (or transfer in lieu thereof) unless and until any Award shall have been actually received and applied by Mezzanine Lender to such Debt and then only to such extent. Mezzanine Lender shall not be limited to any interest paid on the Award by the condemning authority but shall be entitled to receive out of the Award interest at the rates set forth herein and in the Mezzanine Note. Any application of the proceeds of any such Award to pay the Principal Indebtedness shall not require the payment of the Prepayment Fee, if applicable, except as otherwise expressly provided in this Agreement to the contrary. Notwithstanding anything herein to the contrary, Mezzanine Lender agrees to permit the net Award to be applied toward Restoration if (a) First Mortgage Lender is permitting such Award to be so applied to Restoration in accordance with the First Mortgage Loan Documents and (b) no Event of Default has occurred and is continuing and (c) the conditions set forth in Section 5.3.14(f) are satisfied.

Section 5.5. O&M Plan. Mezzanine Borrower has caused to be prepared and delivered to Mezzanine Lender an operations and maintenance program with respect to suspected asbestos and asbestos-containing materials (the "O&M Plan") located in the Property as set forth in the Environmental Report. Mezzanine Borrower shall at all times implement and carry out the O&M Plan in accordance with its terms. Mezzanine Lender's requirement that Borrower develop and comply with the O&M Plan shall not be deemed to constitute a waiver or modification of any covenants or agreements of Mezzanine Borrower or Guarantor with respect to Hazardous Substances or Environmental Laws as set forth herein or in the Environmental Indemnity.

## ARTICLE VI

## NEGATIVE COVENANTS

Section 6.1. Mezzanine Borrower Negative Covenants. Mezzanine Borrower covenants and agrees that, until payment in full of the Debt, it will not do, directly or indirectly, nor will Mezzanine Borrower permit First Mortgage Loan Borrower to do, directly or indirectly, any of the following unless Mezzanine Lender consents thereto in writing:

(a) Special Purpose Existence and Separateness of Entities. (x): (i) take any actions in violation of Mezzanine Borrower's or its Control Entity's organizational documents or First Mortgage Loan Borrower's or its Control Entity's organizational documents that would reasonably be expected to have material adverse effect on any of such entities' bankruptcy remote status or the assumptions set forth in the non-consolidation opinion delivered to Mezzanine Lender or take any other action that would otherwise materially and adversely affect the existence of Mezzanine Borrower, Control Entity of Mezzanine Borrower, First Mortgage Loan Borrower or Control Entity of First Mortgage Loan Borrower as a Special Purpose Bankruptcy Remote Entity, (ii) without the prior written consent of Mezzanine Lender, which shall not be unreasonably withheld or delayed, if same has been approved by First Mortgage Lender, consent to the amendment, modification, waiver or termination of any First Mortgage Loan Documents or the First Mortgage Loan Borrower's organizational documents or (iii) without the prior written consent of Mezzanine Lender, amend, modify, waive or terminate Mezzanine Borrower's, or its Control Entity's organizational documents.

(y) (i) dissolve or liquidate, in whole or in part, or take any action that could have the effect of causing a dissolution or liquidation of any Subsidiary, (ii) consolidate or merge with or into any other entity, (iii) make an assignment for the benefit of creditors, file a petition in bankruptcy, petition or apply to any tribunal for the appointment of a custodian, receiver, trustee or other similar official for it, or for a substantial part of its property, commence any proceeding under any bankruptcy, reorganization, arrangement, readjustment or debt or liquidation law, or admit its inability to pay its debts generally as they become due (iv) cause or permit the Collateral or other assets or property of Mezzanine Borrower or First Mortgage Loan Borrower to be subject to any Lien other than as provided for in the Mezzanine Loan Documents or securing the First Mortgage Loan, (v) Transfer, in one transaction or a series of transactions, all, or substantially all, of its assets (vii) make any material changes in Mezzanine Borrower's present method of conducting business, or (viii) lend money to any Person.

(z) (i) undertake the incurrence or assumption on behalf of Mezzanine Borrower directly or indirectly, of any Indebtedness other than the Mezzanine Loan and the Permitted Indebtedness, or (ii) grant a security interest of any nature whatsoever in Mezzanine Borrower's assets other than as set forth in the Mezzanine Loan Documents.

(b) Liens on the Collateral. Incur, create, assume, become or be liable in any manner with respect to, or permit to exist, any Lien with respect to any Collateral, except (i) Liens in favor of Mezzanine Lender and (ii) Liens being contested by Mezzanine Borrower in accordance with Section 5.1(c) or Liens which will be extinguished within thirty (30) days of the



creation thereof. Mezzanine Borrower will not and will not permit First Mortgage Loan Borrower to take any action that would have a material adverse effect on the Liens created under the Mezzanine Loan Documents.

(c) Transfer. Except for a Permitted Transfer or as otherwise approved by Mezzanine Lender in writing, allow any Transfer to occur.

(d) Other Indebtedness. Incur, create, assume, become or be liable in any manner with respect to Indebtedness other than the Debt, Permitted Indebtedness and Transaction Costs.

(e) Change In Business. Make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business.

(f) Debt Cancellation. Cancel or otherwise forgive or release any material claim or debt owed to Mezzanine Borrower by any Person.

(g) Affiliate Transactions. Enter into, or be a party to, any transaction with an Affiliate of Mezzanine Borrower, except in the ordinary course of business and on terms which are no less favorable to Mezzanine Borrower than would be obtained in a comparable arm's length transaction with an unrelated third party, and, if the amount to be paid to the Affiliate pursuant to the transaction or series of related transactions is greater than (\$50,000.00) (determined annually on an aggregate basis) fully disclosed to Mezzanine Lender in advance. Mezzanine Lender acknowledges that Mezzanine Borrower has entered into the Management Agreement and those two (2) certain Services Agreements each dated January 4, 2001 between Mezzanine Borrower and Guarantor, which Mezzanine Lender agrees do not violate the provisions of this covenant.

(h) Certain Restrictions. Enter into any agreement which expressly restricts the ability of Mezzanine Borrower or First Mortgage Loan Borrower to enter into amendments, modifications or waivers of any of the Mezzanine Loan Documents.

(i) Issuance of Equity Interests. Issue or allow to be created any stocks or shares or shareholder, partnership or membership interests, as applicable, or other ownership interests other than those issued on the date hereof with respect to, Mezzanine Borrower, the Control Entity of Mezzanine Borrower, First Mortgage Loan Borrower or the Control Entity of First Mortgage Loan Borrower except in accordance with a Permitted Transfer.

(j) Limitations on Distributions. Mezzanine Borrower shall not accept any distribution from First Mortgage Loan Borrower in property other than cash. Following the occurrence and during the continuance of an Event of Default, Mezzanine Borrower shall not make any distributions to its partners, shareholders or members. Mezzanine Borrower shall not distribute any proceeds from Liquidation Event to its partners, shareholders or members until the First Mortgage Loan and Mezzanine Loan have been repaid in full.

(k) Place of Business. Provided Mezzanine Borrower has executed and delivered such financing statements and other documents requested by Mezzanine Lender to

continue perfected security interests in the Collateral, upon written notice to Mezzanine Lender, change its name, chief executive office, principal place of business or place where its books and records are kept.

(l) Identity. Change its identity or organizational structure in any manner which would reasonably be expected to make any financing or continuation statement filed in connection herewith seriously misleading within the meaning of Section 9-402(7) of the UCC (or any other applicable provision of the UCC).

(m) Subsidiaries. Create any Subsidiaries or otherwise acquire equity interests in any entity without the prior written consent of Mezzanine Lender.

(n) Other Limitations. Notwithstanding any provisions in the Mezzanine Loan Documents or First Mortgage Loan Documents to the contrary, Mezzanine Borrower shall not and shall not permit First Mortgage Loan Borrower to, without the prior written consent of Mezzanine Lender, which consent may be withheld, delayed or conditioned in the sole discretion of Mezzanine Lender, give its consent or approval or agree to any of the following:

(i) (A) any refinancing or defeasance of the First Mortgage Loan, except for any extension rights expressly provided under Section 2.5 of the First Mortgage Loan Agreement unless the Debt is repaid in full upon the consummation of such refinancing or defeasance, (B) any prepayment or defeasance in full of the First Mortgage Loan, unless the Debt is repaid in full simultaneously with such prepayment, (C) any Transfer of any Collateral or the Property or any portion thereof or interest therein in violation of this Agreement, or (D) any action in connection with or in furtherance of the foregoing;

(ii) placing or permitting to attach any additional Liens on the Property or any of the Collateral; provided, however, that the consent of Mezzanine Lender shall not be required with respect to "Permitted Encumbrances" (as defined in the First Mortgage);

(iii) any material modification, amendment, consolidation, spread, restatement or waiver of any provision of the First Mortgage Loan Documents except as expressly provided under Article X of the First Mortgage Loan Agreement;

(iv) except in accordance with Section 5.1(j)(11) approve the terms of any operating budget or capital budget;

(v) enter into or cancel, terminate, abridge or otherwise modify the material terms of any Material Lease or accept a surrender thereof or consent to any assignment or sublet not in accordance with the terms of such lease and that effects the release of the tenant or guarantor thereunder;

(vi) settle any claim against Mezzanine Borrower, First Mortgage Loan Borrower or the Property, other than an insured third party claim, in any amount greater than \$1,000,000 (singularly or in the aggregate with respect to the same claim) such consent to be given or withheld in the discretion of the Mezzanine Lender;

(vii) except as may be required under the First Mortgage Loan Documents, terminate or replace the Manager or amend or modify the Management Agreement in any material respect;

(viii) enter into any Franchise Agreement with respect to the Property except as provided under the First Mortgage Loan Documents or, if same are no longer in effect, with the prior written consent of Mezzanine Lender which shall be in its sole discretion; or

(ix) seek or agree to the partition of the Property.

(o) Contractual Obligations. Other than the Mezzanine Loan Documents, Mezzanine Borrower shall not enter into any agreement, instrument or undertaking by which it or its assets are bound, except for Permitted Indebtedness.

## ARTICLE VII

### DEFAULTS

Section 7.1. Event of Default. The occurrence of one or more of the following events shall be an "Event of Default" hereunder:

(i) if Mezzanine Borrower fails to pay the outstanding Debt on the Maturity Date;

(ii) the occurrence of a Payment Breach, and such failure is not cured within one (1) Business Day after written notice thereof from Mezzanine Lender except that no notice is required with respect to any payment of interest under the Mezzanine Note;

(iii) the occurrence of the events identified elsewhere in the Mezzanine Loan Documents or the First Mortgage Loan Documents as constituting an "Event of Default" hereunder or thereunder;

(iv) any Transfer, other than a Permitted Transfer, unless Mezzanine Borrower has obtained the prior written consent of Mezzanine Lender (which consent may be withheld in Mezzanine Lender's sole and absolute discretion);

(v) if Mezzanine Borrower fails to pay any other amount payable pursuant to this Agreement or any other Mezzanine Loan Document when due and payable in accordance with the provisions hereof or thereof, as the case may be, and such failure is not cured within five (5) Business Days after written notice thereof from Mezzanine Lender;

(vi) if any representation or warranty made by Mezzanine Borrower, First Mortgage Loan Borrower or Manager herein or in any other Mezzanine Loan Document, or in any material report, Officer's Certificate, financial statement or other Instrument, agreement or document furnished by or on behalf of Mezzanine Borrower in

connection with this Agreement, the Mezzanine Note or any other Mezzanine Loan Documents executed and delivered by Mezzanine Borrower, shall be false in any material respect as of the date such representation or warranty was made or remade;

(vii) any violation of the covenants set forth in Section 5.1(p), 6.1(a), 6.1(b), 6.1(l) or 6.1(n) of this Agreement;

(viii) if Mezzanine Borrower or Guarantor makes an assignment for the benefit of creditors;

(ix) if a receiver, liquidator or trustee shall be appointed for Mezzanine Borrower, Guarantor or First Mortgage Loan Borrower, or if Mezzanine Borrower, Guarantor or First Mortgage Loan Borrower shall be adjudicated as bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by Mezzanine Borrower, Guarantor or First Mortgage Loan Borrower, or if any proceeding for the dissolution or liquidation of Mezzanine Borrower, Guarantor or First Mortgage Loan Borrower shall be instituted, or if Guarantor or Mezzanine Borrower shall generally not be paying its debts as they become due;

(x) if Mezzanine Borrower delegates its obligations or assigns its rights under this Agreement, any of the other Mezzanine Loan Documents or any interest herein or therein;

(xi) if any provision of any organizational document of Mezzanine Borrower or First Mortgage Loan Borrower is amended or modified in any material respect, without the prior written consent of Mezzanine Lender, or if Mezzanine Borrower or First Mortgage Loan Borrower, as applicable, fails to perform or enforce the provisions of such organizational documents in any material respect or attempts to dissolve Mezzanine Borrower or First Mortgage Loan Borrower;

(xii) if an Event of Default exists under the First Mortgage Loan Documents or if Mezzanine Borrower fails to notify Mezzanine Lender of the occurrence of a Default under any of the First Mortgage Loan Documents within one (1) Business Day after the day on which Mezzanine Borrower first has knowledge of such Default;

(xiii) if an event or condition specified in Section 5.1(k) shall occur or exist with respect to any Plan or Multiemployer Plan and, as a result of such event or condition, together with all other such events or conditions, Mezzanine Borrower or any ERISA Affiliate shall incur or in the opinion of Mezzanine Lender shall be reasonably likely to incur a liability to a Plan, a Multiemployer Plan or PBGC (or any combination of the foregoing) which would result in or constitute, in the reasonable determination of Mezzanine Lender, a Material Adverse Condition;

(xiv) if any financial statement, report or information contained in an Officer's Certificate provided to Mezzanine Lender by or on behalf of Mezzanine Borrower concerning the Mezzanine Borrower, First Mortgage Loan Borrower or the Property proves to be inaccurate or misleading in any material respect;

(xv) if any material alteration, modification or removal of any Improvement or Equipment at the Property occurs, except as expressly permitted under the terms of the First Mortgage Loan Documents or this Agreement;

(xvi) if a judgment is entered against Mezzanine Borrower or First Mortgage Loan Borrower that materially and adversely affects Mezzanine Borrower's ability to perform its obligations under the Mezzanine Loan Documents, unless such judgment is paid in full or enforcement of such judgment against the Property or the Collateral is stayed or bonded over within thirty (30) days after the date of such judgment;

(xvii) if Mezzanine Borrower or First Mortgage Loan Borrower or any other Person shall fail to perform any of the other obligations, agreements, undertakings, terms, covenants, provisions or conditions of this Agreement, the Mezzanine Note, or the other Mezzanine Loan Documents, not otherwise referred to in this Section 7.1., for twenty (20) Business Days after written notice to Mezzanine Borrower from Mezzanine Lender or its successors or assigns; provided that if such default cannot reasonably be cured within such twenty (20) Business Day period and the Mezzanine Borrower shall have commenced to cure such default within such twenty (20) day period and thereafter diligently and expeditiously proceeds to cure the same, such twenty (20) Business Day period shall be extended for so long as it shall require Mezzanine Borrower in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of sixty (60) days or shall extend beyond the date upon which such default causes an Event of Default to occur under the First Mortgage Loan Documents; or

(xviii) if, for any calendar quarter, the DSCR is less than 1.05 or the Debt Yield is less than 12.5% based in each case on a trailing twelve (12) month period.

Section 7.2. Remedies. Upon the occurrence of an Event of Default, all or any one or more of the rights, powers and other remedies available to Mezzanine Lender against Mezzanine Borrower or its Affiliates under this Agreement, the Mezzanine Note, or any of the other Mezzanine Loan Documents, or at law or in equity may be exercised by Mezzanine Lender at any time and from time to time (including, without limitation, the right to accelerate and declare the outstanding principal amount, unpaid interest, Default Rate interest, Late Charges, and any other amounts owing by Mezzanine Borrower to be immediately due and payable), without notice or demand, whether or not all or any portion of the Debt shall be declared due and payable, and whether or not Mezzanine Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Mezzanine Loan Documents with respect to all or any portion of the Collateral. Any such actions taken by Mezzanine Lender shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as Mezzanine Lender may determine in its discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Mezzanine Lender permitted by law, equity or contract or as set forth herein or in the other Mezzanine Loan Documents. Notwithstanding anything contained to the contrary herein, the outstanding principal amount, unpaid interest, Default Rate interest, Late Charges, and any other amounts owing by Mezzanine

Borrower shall be accelerated and immediately due and payable, without any election by Mezzanine Lender upon the occurrence of an Event of Default described in Section 7.1(viii) or Section 7.1(ix).

Section 7.3. Remedies Cumulative. The rights, powers and remedies of Mezzanine Lender under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Mezzanine Lender may have against Mezzanine Borrower pursuant to this Agreement or the other Mezzanine Loan Documents executed by or with respect to Mezzanine Borrower, or existing at law or in equity or otherwise. Mezzanine Lender's rights, powers and remedies may be pursued singly, concurrently or otherwise, at such time and in such order as Mezzanine Lender may determine in Mezzanine Lender's discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of any Default or Event of Default shall not be construed to be a waiver of any subsequent Default or Event of Default or to impair any remedy, right or power consequent thereon. Any and all of Mezzanine Lender's rights with respect to the Collateral shall continue unimpaired, and Mezzanine Borrower shall be and remain obligated in accordance with the terms hereof, notwithstanding (a) the release or substitution of Collateral at any time, or of any rights or interest therein or (b) any delay, extension of time, renewal, compromise or other indulgence granted by Mezzanine Lender in the event of any Default or Event of Default with respect to the Collateral or otherwise hereunder.

Section 7.4. Mezzanine Lender's Right to Perform. If Mezzanine Borrower fails to perform any covenant or obligation contained herein and such failure shall continue for a period of (5) five Business Days after Mezzanine Borrower's receipt of written notice thereof from Mezzanine Lender, without in any way limiting Section 7.1 hereof, Mezzanine Lender may, but shall have no obligation to, itself perform, or cause performance of, such covenant or obligation, and the reasonable expenses of Mezzanine Lender incurred in connection therewith shall be payable by Mezzanine Borrower to Mezzanine Lender upon demand. Notwithstanding the foregoing, Mezzanine Lender shall have no obligation to send notice to Mezzanine Borrower of any such failure.

#### ARTICLE VIII

#### MISCELLANEOUS

Section 8.1. Survival. Subject to Section 4.2, this Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the execution and delivery of this Agreement and the execution and delivery by Mezzanine Borrower to Mezzanine Lender of the Mezzanine Note, and shall continue in full force and effect so long as any portion of the Debt is outstanding and unpaid. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party. All covenants, promises and agreements in this Agreement contained, by or on behalf of Mezzanine Borrower, shall inure to the benefit of the respective successors and assigns of Mezzanine Lender. Nothing in this Agreement or in any other Mezzanine Loan Document, express or implied, shall give to any Person other than the parties

and the holder(s) of the Mezzanine Note (or any interest therein), and the other Mezzanine Loan Documents, and their legal representatives, successors and assigns, any benefit or any legal or equitable right, remedy or claim hereunder.

Section 8.2. Mezzanine Lender's Discretion. Whenever pursuant to this Agreement or any other Mezzanine Loan Document, Mezzanine Lender exercises any right, option or election given to Mezzanine Lender to approve or disapprove, or consent or withhold consent, or any arrangement or term is to be satisfactory to Mezzanine Lender or is to be in Mezzanine Lender's discretion, the decision of Mezzanine Lender to approve or disapprove, consent or withhold consent, or to decide whether arrangements or terms are satisfactory or not satisfactory or acceptable or not acceptable to Mezzanine Lender in Mezzanine Lender's discretion, shall (except as is otherwise specifically herein provided) be in the sole and absolute discretion of Mezzanine Lender.

Section 8.3. Governing Law. (a) This Agreement and the obligations arising hereunder shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts made and intended to be performed in such State, without giving effect to principles of conflicts of laws, and any applicable law of the United States of America. To the fullest extent permitted by law, Mezzanine Borrower hereby unconditionally and irrevocably waives any claim to assert that the law of any other jurisdiction governs this Agreement and the Mezzanine Note, and this Agreement and the Mezzanine Note shall be governed by and construed in accordance with the internal laws of the State of New York, without giving effect to principles of conflicts of laws.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST MEZZANINE BORROWER ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN NEW YORK OR IN ANY FEDERAL OR STATE COURT IN ANY JURISDICTION IN WHICH ANY COLLATERAL IS LOCATED, AND MEZZANINE BORROWER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND MEZZANINE BORROWER HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. MEZZANINE BORROWER DOES HEREBY DESIGNATE AND APPOINT CORPORATION SERVICE COMPANY, WHOSE ADDRESS IS 2 WORLD TRADE CENTER, SUITE 8746, NEW YORK, NEW YORK 10048 AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS (OR AT SUCH OTHER OFFICE AS MAY BE DESIGNATED BY MEZZANINE BORROWER FROM TIME TO TIME IN ACCORDANCE WITH THE TERMS HEREOF) WITH A COPY TO SUCH APPLICABLE MEZZANINE BORROWER AT 535 MARRIOTT DRIVE, SUITE 600, NASHVILLE, TENNESSEE 37214 ATTENTION: CHIEF FINANCIAL OFFICER, AND WRITTEN NOTICE OF SAID SERVICE OF MEZZANINE BORROWER MAILED OR DELIVERED TO MEZZANINE BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON MEZZANINE

BORROWER, IN ANY SUCH SUIT, ACTION OR PROCEEDING. MEZZANINE BORROWER (I) SHALL GIVE PROMPT NOTICE TO MEZZANINE LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT (WHICH OFFICE SHALL BE DESIGNATED AS THE ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

Section 8.4. Modification, Waiver in Writing. No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, the Mezzanine Note or any other Mezzanine Loan Document, or consent to any departure by Mezzanine Borrower or any of its Affiliates therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to or demand on Mezzanine Borrower shall entitle Mezzanine Borrower to any other or future notice or demand in the same, similar or other circumstances.

Section 8.5. Delay Not a Waiver. Neither any failure nor any delay on the part of Mezzanine Lender in insisting upon strict performance of any term, condition, covenant or agreement, or exercising any right, power, remedy or privilege hereunder, or under the Mezzanine Note, or of any other Mezzanine Loan Document, shall operate as or constitute a waiver thereof (except as expressly provided herein to the contrary), nor shall a single or partial exercise thereof preclude any other future exercise, or the exercise of any other right, power, remedy or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, the Mezzanine Note or any other Mezzanine Loan Document, Mezzanine Lender shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Mezzanine Note or the other Mezzanine Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount.

Section 8.6. Notices. All notices, consents, approvals and requests required or permitted hereunder or under any other Mezzanine Loan Document shall be given in writing and shall be effective for all purposes if hand delivered or sent by (a) hand delivery, with proof of attempted delivery, (b) certified or registered United States mail, postage prepaid, (c) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, or (d) by telecopier (with answer back acknowledged) provided that such telecopied notice must also be delivered by one of the means set forth in (a), (b) or (c) above, addressed if to Mezzanine Lender at its address set forth on the first page hereof, and if to Mezzanine Borrower at its designated address set forth on the first page hereof, with a copy to Sherrard & Roe, LLC, 424 Church Street, Suite 2000, Nashville, Tennessee 37219, Attention: Kim Brown, Esq., or at any other address and Person as shall be designated from time to time by any party hereto, as the case may be, in a written notice to the other parties hereto in the manner provided for in this Section 8.6. A copy of all notices, consents, approvals and requests directed to Mezzanine Lender shall be delivered concurrently to each of the following: Merrill Lynch Mortgage Capital Inc., Four World Financial Center, Tenth Floor, New York, New York 10080,



Attention: Steven Glassman and Sidley & Austin, 875 Third Avenue, New York, New York 10022, Attention: Alan S. Weil, Esq. A notice shall be deemed to have been given: (a) in the case of hand delivery, at the time of delivery; (b) in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; (c) in the case of expedited prepaid delivery upon the first attempted delivery on a Business Day; or (d) in the case of telecopier, upon receipt of answer back confirmation, provided that such telecopied notice was also delivered as required in this Section 8.6. A party receiving a notice which does not comply with the technical requirements for notice under this Section 8.6 may elect to waive any deficiencies and treat the notice as having been properly given. If a party refuses delivery, such party shall be deemed to have received notice on the date of attempted delivery, as evidenced by courier's or post office proof of attempted delivery.

Section 8.7. TRIAL BY JURY. MEZZANINE BORROWER AND MEZZANINE LENDER, TO THE FULLEST EXTENT THAT THEY MAY LAWFULLY DO SO, EACH HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING, INCLUDING, WITHOUT LIMITATION, ANY TORT ACTION, BROUGHT BY ANY PARTY HERETO WITH RESPECT TO THIS AGREEMENT, THE MEZZANINE NOTE OR THE OTHER MEZZANINE LOAN DOCUMENTS.

Section 8.8. Headings. The Article and Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 8.9. Assignment. Mezzanine Lender shall, at its sole cost and expense, have the right to assign in whole or in part this Agreement and/or any of the other Mezzanine Loan Documents and the obligations hereunder or thereunder to any Person and to sell or otherwise transfer participation interests in all or any portion of the Mezzanine Loan evidenced hereby.

Section 8.10. Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Section 8.11. Preferences. Mezzanine Lender shall have no obligation to marshal any assets in favor of Mezzanine Borrower or any other party or against or in payment of any or all of the obligations of Mezzanine Borrower pursuant to this Agreement, the Mezzanine Note or any other Mezzanine Loan Document. Mezzanine Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by Mezzanine Borrower to any portion of the obligations of Mezzanine Borrower hereunder. To the extent Mezzanine Borrower makes a payment or payments to Mezzanine Lender for Mezzanine Borrower's benefit, which payment or receipt of proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the obligations hereunder or part

thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by Mezzanine Lender.

Section 8.12. Waiver of Notice. Neither Mezzanine Borrower nor any of its Affiliates shall be entitled to any notices of any nature whatsoever from Mezzanine Lender except with respect to matters for which this Agreement or the other Mezzanine Loan Documents specifically and expressly provide for the giving of notice by Mezzanine Lender to Mezzanine Borrower or an Affiliate thereof and except with respect to matters for which Mezzanine Borrower and any applicable Affiliate are not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice. Mezzanine Borrower hereby expressly waives the right to receive any notice from Mezzanine Lender with respect to any matter for which this Agreement or the other Mezzanine Loan Documents does not specifically and expressly provide for the giving of notice by Mezzanine Lender to Mezzanine Borrower.

Section 8.13. Remedies of Mezzanine Borrower. In the event that a claim or adjudication is made that Mezzanine Lender or its agents have acted unreasonably or unreasonably delayed acting in any case where by law or under this Agreement, the Mezzanine Note, or the other Mezzanine Loan Documents, Mezzanine Lender or such agent, as the case may be, has an obligation to act reasonably or promptly, then in such event Mezzanine Borrower's sole remedy shall be to commence an action seeking injunctive relief or declaratory judgment.

Section 8.14. Joint and Several Liability. Subject to Section 8.15, if at any time Mezzanine Borrower is comprised of more than one (1) Person, the Mezzanine Loan and Mezzanine Borrower's obligations thereunder shall be the joint and several obligation of each of such Persons comprising Mezzanine Borrower.

Section 8.15. Limited Recourse; Additional Indemnity  
Obligation.

(a) Anything contained in this Agreement or in the Mezzanine Note or the other Mezzanine Loan Documents to the contrary notwithstanding, except as set forth in clauses (b) and (c) of this Section 8.15, Mezzanine Lender's recourse for the satisfaction of the indebtedness due under the Mezzanine Note and for the payment and performance of all of the obligations and liabilities of Mezzanine Borrower under this Agreement, the Mezzanine Note and the other Mezzanine Loan Documents shall be limited solely to Mezzanine Borrower's interest in the Collateral, and, subject to clauses (b) and (c) of this Section 8.15, none of Mezzanine Borrower or any direct or indirect partner, member, shareholder, principal, Affiliate, employee, officer, director, agent or representative of Mezzanine Borrower (each, a "Related Party") shall have any personal liability in any other respect for (i) the payment of the principal of or interest or premium, if any, on the Mezzanine Note, (ii) the payment of any other amount due under the Mezzanine Note, this Agreement or any of the other Mezzanine Loan Documents, or (iii) for damages for the breach of, or any costs or expenses associated with the performance of or failure to perform, any of the covenants, obligations, representations and warranties or indemnifications contained herein or in the Mezzanine Note or any of the other Mezzanine Loan Documents. The provisions of this Section 8.15 shall not, however, (i) impair the validity of the obligations of Mezzanine Borrower or in any way affect or impair any Lien or the right of Mezzanine Lender to enforce any and all rights and remedies under and by virtue of the

Mezzanine Note, this Agreement, or any other Mezzanine Loan Document including, without limitation, naming Mezzanine Borrower as a party defendant in any action, or limit Mezzanine Lender from pursuing or seeking to enforce the rights of Mezzanine Lender against any third parties, including any guarantor, indemnitor or surety under any guaranty or indemnity delivered in connection with this Agreement, the Mezzanine Note, or otherwise in connection with the Mezzanine Loan, (ii) constitute a waiver, release or impairment of any obligation evidenced or secured by this Agreement, the Mezzanine Note or any of the other Mezzanine Loan Documents, (iii) impair the enforcement against the Collateral of the (a) security interests in respect of the Accounts, or (b) security interests and rights and remedies of Mezzanine Lender described in the Equity Pledge Agreements against the pledgors thereunder or (iv) constitute a waiver of any right that Mezzanine Lender may have under Sections 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Mezzanine Loan or to require that all Collateral shall continue to secure all of the Mezzanine Loan owing to Mezzanine Lender.

(b) Notwithstanding the limitations on liability set forth in Section 8.15(a), Mezzanine Borrower shall be fully and personally liable for any liabilities, costs, losses (including, without limitation, any reduction in value of the Property or any other Collateral or the loss of any such Collateral or Mezzanine Lender's security interest therein), damages, expenses (including, without limitation, reasonable attorneys' fees and disbursements, and court costs, if any), or claims (such liabilities, costs, losses, damages, expenses and claims, collectively, the "Recourse Obligations") suffered or incurred by Mezzanine Lender (or any Indemnified Party) by reason of or in connection with (1) any fraud or breach of trust, or any material misrepresentation contained in any Mezzanine Loan Document or any report furnished pursuant to any Mezzanine Loan Document, by Mezzanine Borrower or any Related Party, (2) the misappropriation of any proceeds of Insurance or Awards by Mezzanine Borrower or any Related Party, (3) the misapplication by Mezzanine Borrower or any Related Party (or at any such Person's direction) of funds held in or paid out from any Account (including any reserve or escrow) maintained under this Agreement, or any of the other Mezzanine Loan Documents, (4) any and all Security Deposits held by Mezzanine Borrower or any Related Party not being properly applied, returned to Tenants when due or delivered to Mezzanine Lender, any receiver or any Person purchasing the Property or any part thereof at a foreclosure sale upon the taking of possession of the Property or any part thereof by Mezzanine Lender, such receiver or other Person as provided herein, (5) wrongful removal or destruction of property constituting the Property or any intentional waste of the Property by Mezzanine Borrower or any Related Party, (6) any Legal Requirement mandating the forfeiture by Mezzanine Borrower or any Related Party of the Property, or any portion thereof or of any interest in Mezzanine Borrower, or any part thereof because of the conduct or purported conduct of criminal activity by Mezzanine Borrower or any Related Party in connection therewith, (7) any damage or destruction of the Property or any part thereof due to fire or other casualty to the extent not covered by required Insurance, but only to the extent the same would have been covered by insurance if Mezzanine Borrower had obtained and maintained the required Insurance, (8) except for Liens expressly permitted under the terms of this Agreement, the amount of any Lien voluntarily placed on the Property by Mezzanine Borrower (or any predecessor-owner which is an Affiliate of Mezzanine Borrower) including, without limitation, those arising from the failure to pay any valid taxes or assessments with respect to the Property when cash or proceeds are available to pay such taxes or assessments other than Permitted Indebtedness or any Indebtedness incurred by Mezzanine

Borrower in contravention of the provisions of Section 6.1(b) of this Agreement, (9) the breach of any of the representations and warranties contained in Section 4.1(gg) with respect to Hazardous Substances, (10) the cost of enforcement of any of Mezzanine Lender's rights or remedies hereunder or under any of the other Mezzanine Loan Documents, or costs incurred in any bankruptcy or similar proceeding which may be brought by Mezzanine Borrower or any Related Party, (11) Mezzanine Borrower's or First Mortgage Loan Borrower's failure to furnish upon Mezzanine Lender's or Title Insurer's request any of the affidavits and indemnities required under Section 3.1(a)(7), (12) any failure to deposit Excess Cash Flow into the Deposit Account due to a Cash Sweep Event in accordance with Section 2.12(a) hereof, and (13) Mezzanine Borrower's or First Mortgage Loan Borrower's failure to pay the Water and Sewerage Settlement Amount to the extent that such amount is not in a reserve held by Mezzanine Lender.

(c) In addition, the Debt shall be fully recourse to Mezzanine Borrower, if: (A) Mezzanine Borrower or First Mortgage Loan Borrower filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; or (B) any Related Party controlled, directly or indirectly, by Mezzanine Borrower, or by an Affiliate which controls, directly or indirectly, Mezzanine Borrower, filing, or joining in the filing of, an involuntary petition against Mezzanine Borrower or First Mortgage Loan Borrower under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition against Mezzanine Borrower or First Mortgage Loan Borrower from any Person; or (C) Mezzanine Borrower or First Mortgage Loan Borrower filing an answer consenting to or joining in any involuntary petition filed against it or against Mezzanine Borrower or First Mortgage Loan Borrower or any Related Party controlled by Mezzanine Borrower or controlling Mezzanine Borrower, or any of them, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited from any Person petitioning creditors for any involuntary petition against First Mortgage Loan Borrower, Mezzanine Borrower or any Related Party controlled by Mezzanine Borrower or controlling Mezzanine Borrower, or any of their respective Affiliates; or (D) any Related Party controlled, directly or indirectly, by Mezzanine Borrower or First Mortgage Loan Borrower or by any Affiliate which controls, directly or indirectly, Mezzanine Borrower or First Mortgage Loan Borrower consenting to or joining in an application for the appointment of a custodian, receiver, trustee or examiner for Mezzanine Borrower or First Mortgage Loan Borrower or any portion of the Collateral (unless such action is at the request of Mezzanine Lender or First Mortgage Lender) or any such Related Party voting adversely to Mezzanine Lender's interest in any proceeding under the Bankruptcy Code or any other state or federal bankruptcy or insolvency law which involves Mezzanine Borrower, First Mortgage Loan Borrower, the Collateral or the Property; or (E) Mezzanine Borrower or First Mortgage Loan Borrower making an assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due; or (F) Mezzanine Borrower or any Related Party controlled by Mezzanine Borrower or controlling Mezzanine Borrower contesting or in any material way interfering with, directly or indirectly (collectively, a "Contest"), any foreclosure action, Uniform Commercial Code sale or other material remedy commenced by Mezzanine Lender under the Equity Pledge Agreements or this Agreement (whether by making any motion, bringing any counterclaim, claiming any defense, seeking any injunction or other restraint, commencing any action, or otherwise), provided that if any such Related Party obtains a non-appealable order successfully

asserting a Contest, such Related Party shall have no liability under this clause (F); or (G) any of the representations and warranties contained in Sections 5.1(l), (p) and (q) of this Agreement are breached, and if, as a result thereof, the assets of Mezzanine Borrower are consolidated with the assets of any of its constituent members (or its members' constituent partners or members), or (H) any Transfer occurs in violation of Section 6.1(c) of this Agreement; or (I) if any monetary Lien in excess of \$100,000 is voluntarily placed on the Property or the Collateral or any portion of either; or (J) if the First Mortgage Loan Documents are modified or amended in any material respect or consolidated, spread, restated or waived by the action of First Mortgage Loan Borrower or any Related Party without obtaining the prior written consent of Mezzanine Lender; or (K) if First Mortgage Loan Borrower refinances the First Mortgage Loan and any proceeds of such financing in excess of the amount necessary to repay the First Mortgage Loan are not paid to Mezzanine Lender to repay the Debt.

Section 8.16. Exhibits Incorporated. The information set forth on the cover, heading and recitals hereof, and the Exhibits and Schedules attached hereto, are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body hereof.

Section 8.17. Offsets, Counterclaims and Defenses. Any assignee of Mezzanine Lender's interest in and to this Agreement, the Mezzanine Note, and the other Mezzanine Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which are unrelated to the Mezzanine Loan, this Agreement, the Mezzanine Note, and the other Mezzanine Loan Documents which Mezzanine Borrower or any of its Affiliates may otherwise have against any assignor, and no such unrelated counterclaim or defense shall be interposed or asserted by Mezzanine Borrower or any of its Affiliates in any action or proceeding brought by any such assignee upon this Agreement, the Mezzanine Note, and other Mezzanine Loan Documents and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Mezzanine Borrower and First Mortgage Loan Borrower.

Section 8.18. No Joint Venture or Partnership. Mezzanine Borrower and Mezzanine Lender intend that the relationship created hereunder be solely that of borrower and lender. Nothing herein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between Mezzanine Borrower and Mezzanine Lender.

Section 8.19. Waiver of Marshaling of Assets Defense. To the fullest extent that Mezzanine Borrower may legally do so, Mezzanine Borrower waives all rights to a marshaling of the assets of Mezzanine Borrower, and others with interests in Mezzanine Borrower, and of the Collateral, or to a sale in inverse order of alienation in the event of foreclosure of the interests hereby created, and agrees not to assert any right under any laws pertaining to the marshaling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Mezzanine Lender under the Mezzanine Loan Documents to a sale of the Collateral for the collection of the Indebtedness without any prior or different resort for collection, or the right of Mezzanine Lender to the payment of the Indebtedness in preference to every other claimant whatsoever.

Section 8.20. Waiver of Counterclaim. Each of Mezzanine Borrower and First Mortgage Loan Borrower hereby waives the right to assert a counterclaim, other than compulsory counterclaim, in any action or proceeding brought against Mezzanine Borrower or First Mortgage Loan Borrower by Mezzanine Lender or Mezzanine Lender's agents.

Section 8.21. Conflict; Construction of Documents. In the event of any conflict between the provisions of this Agreement and the provisions of the Mezzanine Note, or any of the other Mezzanine Loan Documents, the provisions of this Agreement shall prevail. The parties hereto acknowledge that they were represented by independent counsel in connection with the negotiation and drafting of the Mezzanine Loan Documents and that the Mezzanine Loan Documents shall not be subject to the principle of construing their meaning against the party which drafted same.

Section 8.22. Brokers and Financial Advisors. Mezzanine Borrower and Mezzanine Lender hereby represent that they have dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transactions contemplated by this Agreement. Mezzanine Borrower hereby agrees to indemnify and hold Mezzanine Lender harmless from and against any and all claims, liabilities, costs and expenses of any kind in any way relating to or arising from a claim by any Person that such Person acted on behalf of Mezzanine Borrower in connection with the transactions contemplated herein. The provisions of this Section shall survive the expiration and termination of this Agreement and the repayment of the Debt.

Section 8.23. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

Section 8.24. Payment of Expenses. Mezzanine Borrower shall, whether or not the Transactions are consummated, pay all Transaction Costs, which shall include, without limitation, all commitment fees due and payable at closing and all reasonable out-of-pocket fees, costs, expenses, and disbursements of Mezzanine Lender and its attorneys, local counsel, accountants and other contractors in connection with (i) the negotiation, preparation, execution and delivery of the Mezzanine Loan Documents and the documents and instruments referred to therein, (ii) the creation, perfection or protection of Mezzanine Lender's Liens in the Collateral (including, without limitation, fees and expenses for title and lien searches and filing and recording fees, intangibles taxes, personal property taxes, mortgage recording taxes, due diligence expenses, travel expenses), (iii) the negotiation, preparation, execution and delivery of any amendment, waiver or consent relating to any of the Mezzanine Loan Documents, and (iv) the preservation of rights under and enforcement of the Mezzanine Loan Documents and the documents and instruments referred to therein, including any restructuring or rescheduling of the Debt.

Section 8.25. Bankruptcy Waiver. Each of Mezzanine Borrower and First Mortgage Loan Borrower hereby agrees that, in consideration of the recitals and mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, if Mezzanine Borrower or First Mortgage Loan Borrower (i) files with any bankruptcy court of competent jurisdiction or is the subject of any

petition under Title 11 of the U.S. Code, as amended, (ii) is the subject of any order for relief issued under Title 11 of the U.S. Code, as amended, (iii) files or is the subject of any petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future law relating to bankruptcy, insolvency or other relief of debtors, (iv) has sought or consents to or acquiesces in the appointment of any trustee, receiver, conservator or liquidator or (v) is the subject of any order, judgment or decree entered by any court of competent jurisdiction approving a petition filed against such party for any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency or other relief for debtors, the automatic stay provided by the Federal Bankruptcy Code and any other such statute shall be modified and annulled as to Mezzanine Lender, so as to permit Mezzanine Lender to exercise any and all of its rights and remedies, upon request of Mezzanine Lender made on notice to Mezzanine Borrower or First Mortgage Loan Borrower and any other party in interest but without the need of further proof or hearing. Neither Mezzanine Borrower nor First Mortgage Loan Borrower nor any other Affiliate of Mezzanine Borrower shall contest the enforceability of this Section.

Section 8.26. Entire Agreement. This Agreement, together with the Exhibits hereto and the other Mezzanine Loan Documents constitutes the entire agreement among the parties hereto with respect to the subject matter contained in this Agreement, the Exhibits hereto and the other Mezzanine Loan Documents and supercedes all prior agreements, understandings and negotiations between the parties.

Section 8.27. Dissemination of Information. Subject to Section 8.28, if Mezzanine Lender determines at any time to sell, transfer or assign the Mezzanine Note, this Mezzanine Loan Agreement and any other Mezzanine Loan Document and any or all servicing rights with respect thereto, or to grant participations therein or issue mortgage pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement, Mezzanine Lender may forward to each purchaser, transferee, assignee, servicer, participant or investor in such securities (collectively, the "Investor") or any Rating Agency rating such securities and each prospective Investor, all documents and information which Mezzanine Lender now has or may hereafter acquire relating to the Mezzanine Loan, Mezzanine Borrower, First Mortgage Loan Borrower, any guarantor, any indemnitor and the Property, which shall have been furnished by or on behalf of Mezzanine Borrower, First Mortgage Loan Borrower, any guarantor, any indemnitor, or any party to any Mezzanine Loan Document, or otherwise furnished in connection with the Mezzanine Loan, as Mezzanine Lender in its discretion determines necessary or desirable.

Section 8.28. Confidentiality. Each of Mezzanine Lender and Mezzanine Borrower agrees to keep information regarding this Agreement and information obtained by it pursuant hereto confidential and agrees that it will use such information only in connection with the transactions contemplated by this Agreement and not disclose any of such information to other Persons, other than (a) to such Person's employees, representatives and agents who are or are expected to be involved in the evaluation of such information in connection with the transactions contemplated by this Agreement and who are advised of the confidential nature of such information, (b) to the extent such information presently is or hereafter becomes available to such Person on a non-confidential basis from a source other than this Agreement, (c) to the

extent disclosure is required by law, regulation or judicial order, or requested or required by bank regulators or auditors, (d) to any Rating Agency in connection with a Securitization or the rating of the Certificates, or (e) to prospective assignees, participants or transferees of the Mezzanine Loan, including in connection with transactions contemplated in Section 8.34.

#### Section 8.29. Indemnification.

(a) In addition to any other indemnifications provided for herein or in the other Mezzanine Loan Documents (but subject to Section 8.15), Mezzanine Borrower shall protect, defend, indemnify and hold harmless Mezzanine Lender and each of its Affiliates and their respective successors and assigns (including their respective trustees, officers, directors, partners, employees, attorneys, accountants, professionals and agents and each other person, if any, controlling Mezzanine Lender or any of its affiliates within the meaning of either Section 15 of the Securities Act of 1933, as amended, or Section 20 of the Securities Exchange Act of 1934, as amended) (each, including Mezzanine Lender, an "Indemnified Party") from and against all liabilities, obligations, claims, and, damages, penalties, causes of action, losses, fines, costs, expenses (including, without limitation, reasonable attorneys' fees and disbursements) imposed upon or incurred by or asserted against any Indemnified Party (other than by reason of such Indemnified Party's default under the Mezzanine Loan Documents or gross negligence or willful misconduct, as determined to have occurred pursuant to the final non-appealable decision of a court of competent jurisdiction or Mezzanine Lender has waived its right to appeal in writing) by reason of (i) ownership or holding of this Agreement, the other Mezzanine Loan Documents, the Property or any of them or any interest therein or any other Collateral, including any funds deposited with Mezzanine Lender, (ii) receipt and application of any Receipts or an Indemnified Party's payment or non-payment of costs and expenses of operating the Property, (iii) any accident, injury to or death of Persons or loss of or damage to property occurring on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways, (iv) any design, construction, alteration, operation, maintenance, use, nonuse or condition of the Property or any part thereof or on adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways, (v) any failure on the part of Mezzanine Borrower or any of its Affiliates, including First Mortgage Loan Borrower, to perform or comply with any of the terms of this Agreement or any other Mezzanine Loan Document, (vi) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof, (vii) any failure of the Property to comply with any Legal Requirements, (viii) the presence in, at or under the Property of any Hazardous Substances, or any release or discharge on or from the Property of any Hazardous Substances, or any release or discharge on or from the Property of any Hazardous Substances, (ix) any representation or warranty made in the Mezzanine Note, this Agreement or any of the other Mezzanine Loan Documents being false or misleading in any material respect as of the date such representation or warranty was made, (x) except to the extent any such claims are made solely as a result of any dealings between Mezzanine Lender and any broker, finder or similar person claiming to be entitled to a commission in connection with the Mezzanine Loan, and with whom Mezzanine Borrower has had no dealings in connection with the Mezzanine Loan, any claim by brokers, finders or similar Persons claiming to be entitled to a commission in connection with any Lease or other action involving the Property or any part thereof, (xi) the claims of any Tenant of any portion of the Property or any person acting through or out of any Tenant or otherwise arising out of or as a consequence of any Lease or occupancy right, (xii) any claim by



Mezzanine Borrower or any Affiliate of Mezzanine Borrower that the relationship of Mezzanine Lender and Mezzanine Borrower is other than that of lender and borrower, or (xiii) the execution and delivery of this Agreement and the other Mezzanine Loan Documents, the transactions contemplated hereby or thereby and the performance of the parties hereto of their respective obligations hereunder or thereunder. Any amounts payable to any Indemnified Party by reason of the application of this Section 8.29 shall become immediately due and payable and shall bear interest at the Default Rate from the date Mezzanine Borrower is notified of such loss or damage is sustained by any Indemnified Party until paid. The indemnifications set forth in this Section 8.29 shall not be applicable to the extent (1) occasioned, arising and caused solely as the result of the negligence or willful misconduct of Mezzanine Lender, its nominee or wholly owned subsidiary or their respective employees or agents and irrespective of whether occurring prior to or subsequent to the date upon which Mezzanine Lender, its nominee or wholly owned subsidiary acquires possession of any interest in the Property by foreclosure, a sale of the Collateral, or any of them, acceptance of a deed or assignment in lieu of foreclosure or sale or otherwise, as determined to have occurred pursuant to the final non-appealable decision of a court of competent jurisdiction (or Mezzanine Lender has waived in writing its right to appeal) or (2) as to matters specific and relating solely to the Property, occasioned, arising and caused solely as the result of any act of any Person (other than an act of Mezzanine Borrower or any of its Affiliates, or an act of any Governmental Authority, including, without limitation, any change in any applicable law) and occurring subsequent to the earlier to occur of (A) the date of payment and performance in full of the Debt and (B) the date upon which Mezzanine Lender, its nominee or wholly owned subsidiary acquires ownership of the Collateral by foreclosure, a sale of the Collateral, acceptance of a deed or assignment in lieu of foreclosure or sale or otherwise of the Collateral. The obligations and liabilities of Mezzanine Borrower under this Section 8.29 shall survive any termination, satisfaction, or assignment of this Agreement and the exercise by Mezzanine Lender of any of its rights or remedies hereunder, including, without limitation, the acquisition of the Collateral by foreclosure or a conveyance in lieu of foreclosure, or otherwise.

(b) In case any claim, action or proceeding (a "Claim") is brought against any Indemnified Party in respect of which indemnification may be sought by such Indemnified party pursuant to this Section 8.29, such Indemnified Party shall give notice thereof to Mezzanine Borrower; provided, however, that the failure of such Indemnified Party to so notify Mezzanine Borrower shall not limit or affect such Indemnified Party's rights to be indemnified pursuant to this Section 8.29 hereof, except to the extent such delay shall materially and adversely affect Mezzanine Borrower's defense of such Claim. Upon receipt of such notice of Claim, Mezzanine Borrower shall, at its sole cost and expense, diligently defend any such Claim with counsel reasonably satisfactory to such Indemnified Party. In the alternative, the Indemnified Parties may elect to conduct their own defense through counsel of their own choosing, and at the expense of Mezzanine Borrower, if (i) the Indemnified Parties reasonably determine that the conduct of its defense by Mezzanine Borrower presents a conflict or potential conflict between Mezzanine Borrower and an Indemnified Party that would make separate representation advisable or otherwise could be prejudicial to its interests, (ii) Mezzanine Borrower refuses to defend or (iii) Mezzanine Borrower shall have failed, in Mezzanine Lender's reasonable judgment, to diligently defend the Claim. Mezzanine Borrower may settle any Claim against Indemnified Parties without such Indemnified Parties' consent, provided that (x) such settlement is without any liability, cost or expense whatsoever to such Indemnified Parties, (y) the settlement does not include or require any admission of liability or culpability by such

Indemnified Parties under any Legal Requirement, whether criminal or civil in nature, and (z) Mezzanine Borrower obtains an effective written release of liability for such Indemnified Parties from the party to the Claim with whom such settlement is being made, which release must be reasonably acceptable to such Indemnified Parties, and a dismissal with prejudice with respect to all Claims made by the party with whom such settlement is being made, with respect to any pending legal action against such Indemnified Parties in connection with such Claim. If the Indemnified Parties are conducting their own defense as provided above, Mezzanine Borrower shall be responsible for any good faith settlement of such Claim entered into by such Indemnified Parties, and such Indemnified Parties shall not be required to obtain Mezzanine Borrower's consent to any such settlement. Nothing contained herein shall be construed as requiring any Indemnified Parties to expend funds or incur costs to defend any Claim in connection with the matters for which such Indemnified Parties are entitled to indemnification pursuant to this Section 8.29 hereof.

Section 8.30. Mezzanine Borrower Acknowledgments. Mezzanine Borrower hereby acknowledges to and agrees with Mezzanine Lender that (i) the scope of Mezzanine Lender's business is wide and includes, but is not limited to, financing, real estate financing, investment in real estate and other real estate transactions which may be viewed as adverse to or competitive with the business of Mezzanine Borrower or its Affiliates and (ii) Mezzanine Borrower has been represented by competent legal counsel and Mezzanine Borrower has consulted with such counsel prior to executing this Mezzanine Loan Agreement and of the other Mezzanine Loan Documents.

Section 8.31. Publicity. Mezzanine Lender and Mezzanine Borrower shall have the right to issue press releases, advertisements and other promotional materials describing the origination of the Mezzanine Loan mutually acceptable to the Parties.

Section 8.32. Cross Collateralization. Without limitation to any other right or remedy provided to Mezzanine Lender in this Agreement or any of the other Mezzanine Loan Documents, Mezzanine Borrower acknowledges and agrees that, to the full extent permitted under applicable law, upon the occurrence of an Event of Default (i) Mezzanine Lender shall have the right to pursue all of its rights and remedies in one proceeding, or separately and independently in separate proceedings which it, as Mezzanine Lender, in its sole and absolute discretion, shall determine from time to time, (ii) Mezzanine Lender is not required to either marshal assets, sell Collateral in any inverse order of alienation, or be subjected to any "one action" or "election of remedies" law or rule, (iii) the exercise by Mezzanine Lender of any remedies against any Collateral will not impede Mezzanine Lender from subsequently or simultaneously exercising remedies against any other Collateral, (iv) all Liens and other rights, remedies and privileges provided to Mezzanine Lender in this Agreement and in the other Mezzanine Loan Documents or otherwise shall remain in full force and effect until Mezzanine Lender has exhausted all of its remedies against the Collateral and all Collateral has been foreclosed, sold and/or otherwise realized upon and (v) all Collateral shall be security for the performance of all of Mezzanine Borrower's obligations hereunder.

Section 8.33. Release. Upon full payment and satisfaction of all of the obligations under the Mezzanine Loan Documents, Mezzanine Lender shall execute such

releases and reconveyances as are customary to release and reconvey the Collateral which secures the Mezzanine Loan.

Section 8.34. Assignment by Mezzanine Lender; Participations; Securitization.

8.34.1 Assignments and Participations. (a) Mezzanine Borrower acknowledges that any Mezzanine Lender may, at its sole cost and expense, on or after the Closing Date sell and assign participation interests in and to the Mezzanine Loan, or pledge, hypothecate or encumber, or sell and assign all or any portion of the Mezzanine Loan, to or with such domestic or foreign banks, insurance companies, pension funds, trusts or other institutional lenders or other Persons, parties or investors (including, without limitation, grantor trusts, owner trusts, special purpose corporations, REMICs, FASITs, real estate investment trusts or other similar or comparable investment vehicles) as may be selected by such Mezzanine Lender in its sole and absolute discretion and on terms and conditions satisfactory to such Mezzanine Lender in its sole and absolute discretion. Mezzanine Borrower and all other Persons associated or connected with the Mezzanine Loan or the Property shall cooperate in all reasonable respects (at such Mezzanine Lender's cost and expense) with such Mezzanine Lender in connection with the sale of participation interests in, or the pledge, hypothecation or encumbrance or sale of all or any portion of, the Mezzanine Loan, and shall, in connection therewith, execute and deliver such estoppels, certificates, instruments and documents as may be reasonably requested by such Mezzanine Lender. Mezzanine Borrower grants to such Mezzanine Lender the right to distribute financial and other information concerning Mezzanine Borrower, the Collateral, and all other pertinent information with respect to the Mezzanine Loan to any Person who has purchased a participation interest in the Mezzanine Loan, or who has purchased the Mezzanine Loan (or any interest therein or portion thereof), or who has made a loan to any Mezzanine Lender secured by the Mezzanine Loan or who has expressed an interest in purchasing a participation interest in the Mezzanine Loan, or expressed an interest in purchasing the Mezzanine Loan (or any interest therein or portion thereof), or the making of a loan to any Mezzanine Lender secured by the Mezzanine Loan. If requested by any Mezzanine Lender, Mezzanine Borrower shall execute and deliver, and shall cause each other Person associated or connected with the Mezzanine Loan or the Property to execute and deliver, at the sole cost of such Mezzanine Lender, such documents and instruments as may be necessary to split the Mezzanine Loan into two or more loans evidenced by separate sets of notes and secured by separate sets of other related Mezzanine Loan Documents to the full extent required by any Mezzanine Lender to facilitate the sale of participation interests in the Mezzanine Loan or the sale of the Mezzanine Loan (or any interest therein or portion thereof) or the making of a loan to such Mezzanine Lender secured by the Mezzanine Loan, it being agreed that (i) any such splitting of the Mezzanine Loan will not adversely affect or diminish the rights of Mezzanine Borrower as presently set forth herein and in the other Mezzanine Loan Documents and will not increase the respective obligations and liabilities of Mezzanine Borrower or any other Person associated or connected with the Mezzanine Loan or the Collateral, (ii) the Mezzanine Loan Documents securing the Mezzanine Loan as so split will have such priority of lien as may be specified by the applicable Mezzanine Lender(s), and (iii) the retained interest of Mezzanine Lender in the Mezzanine Loan as so split shall be allocated to or among one or more of such separate loans in a manner specified by the applicable Mezzanine Lender(s) in their sole and absolute discretion.

(b) Following any assignment pursuant to this Section 8.34, the Agent, acting for this purpose as an agent of Mezzanine Borrower, shall maintain or cause to be maintained a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Mezzanine Lenders, and the principal amount of the Mezzanine Loan owing to, each Mezzanine Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and Mezzanine Borrower and the Agent may treat each Person or entity whose name is recorded in the Register pursuant to the terms hereof as a "Mezzanine Lender" hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Agent shall cause copies of the Register to be delivered to, or available for inspection by, Mezzanine Borrower and any Mezzanine Lender, at any reasonable time and from time to time upon reasonable prior notice.

(c) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Mezzanine Lender and an Assignee, or a participation agreement executed by the parties thereto, the Agent shall accept such Assignment and Acceptance or participation agreement, as the case may be, and record, or cause to be recorded, in the Register, the information contained therein. No assignment or participation shall be effective for purposes of this Agreement, unless it has been recorded in the Register as provided in this Section. A Mezzanine Note shall only evidence a Mezzanine Lender's or Assignee's right, title and interest in and to the Mezzanine Loan, and in no event shall any Mezzanine Note be considered a bearer instrument or obligation. This Section 8.34.1 shall be construed so that the Mezzanine Loan is at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Internal Revenue Code and any related regulations (or any successor provisions of the Internal Revenue Code or such regulations). Furthermore, it is the intent of the parties hereto that all payments by Mezzanine Borrower hereunder shall be exempt from withholding under Sections 1441 and 1442 of the Internal Revenue Code.

8.34.2 Effect of Assignment. From and after the effective date of any assignment of all or any portion of the Mezzanine Loan to any Person (an "Assignee") (a) such Assignee shall be a party hereto and to each of the other Mezzanine Loan Documents to the extent of the applicable percentage or percentages assigned to such Assignee and, except as otherwise specified herein, shall succeed to the rights and obligations of Mezzanine Lender hereunder in respect of such applicable percentage or percentages and (b) Mezzanine Lender shall relinquish its rights and be released from its obligations hereunder and under the Mezzanine Loan Documents to the extent of such applicable percentage or percentages as assigned. The liabilities of Mezzanine Lender and each of the other Assignees shall be separate and not joint and several. Neither Mezzanine Lender nor any Assignee shall be responsible for the obligations of any other Assignee.

8.34.3 Securitization. Mezzanine Lender, at its option, may elect to effect a securitization, syndication or other Secondary Market Transaction (including, without limitation, participation in a Delaware business trust) of the Mezzanine Loan by means of a public or private offering and issuance of certificates of interest therein or notes secured thereby (the "Securities") which at the election of the Mezzanine Lender may be rated by one or more Rating Agencies (the "Securitization"). In such event and upon request by Mezzanine Lender to seek to effect such a Securitization, Mezzanine Borrower shall promptly thereafter cooperate in all reasonable respects with Mezzanine Lender in the Securitization including, without limitation,

(a) amending this Agreement and the other Mezzanine Loan Documents (without, however, increasing the burdens and obligations of Mezzanine Borrower or diminishing its rights hereunder), and executing such additional documents, in order to bifurcate the Mezzanine Loan into two or more constituent loans or to effect such other changes as may be reasonably necessary or desirable in connection with a Securitization or requested by a Rating Agency, (b) providing such information as may be requested in connection with the preparation of a private placement memorandum or registration statement required to privately place or publicly distribute the Securities in a manner which does not conflict with federal or state securities laws, (c) providing in connection with such information, an indemnification certificate (i) certifying that Mezzanine Borrower has carefully examined such private placement memorandum or registration statement, as applicable, including, without limitation, the sections entitled "Special Considerations", "Description of the Mezzanine Loan and the Underlying Mortgaged Properties", "Operator", "The Mezzanine Borrower" and "Certain Legal Aspects of the Mezzanine Loan" (or similarly titled sections), and that such Sections (and any other Sections reasonably requested), insofar as they relate solely to Mezzanine Borrower, its Affiliates, the Mezzanine Loan, the Collateral or the Property, do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, (ii) indemnifying Mezzanine Lender, the underwriter or placement agent and any of their Affiliates for any losses, claims, damages or liabilities (the "Liabilities") to which such parties may become subject insofar as the Liabilities arise out of or are based upon any untrue statement or alleged untrue statement of any material fact relating to Mezzanine Borrower, its Affiliates, the Mezzanine Loan, the Collateral or the Property contained in such Sections or arise out of or are based upon the omission or alleged omission to state therein a material fact relating to Mezzanine Borrower, its Affiliates, the Mezzanine Loan, the Collateral or the Property required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading and (iii) agreeing to reimburse such parties for any legal or other expenses reasonably incurred by such parties in connection with investigating or defending the Liabilities, (d) causing to be rendered (at Mezzanine Lender's expense) such customary opinion letters as may be requested by and satisfactory to any Rating Agency including, without limitation, substantive non-consolidation opinion letters, (e) making such customary representations, warranties and covenants with respect to the Mezzanine Borrower and First Mortgage Loan Borrower and their respective Affiliates, the Collateral and the Property as may be requested by any Rating Agency, (f) providing such information regarding the Property, the Collateral and Mezzanine Borrower and First Mortgage Loan Borrower and their respective Affiliates as may be requested by a Rating Agency or potential investors in Securities or otherwise required in connection with an election of REMIC or FASIT or other tax status and ongoing administration and reporting by any trust formed in connection with the Securitization, (g) amending the organizational documents of Mezzanine Borrower or the Control Entity of Mezzanine Borrower or making such other changes to the structure of Mezzanine Borrower or the Control Entity of Mezzanine Borrower required by any Rating Agency to conform to requirements customarily imposed in similar transactions, and (h) obtaining a comfort letter (in customary form and containing customary exceptions) from a nationally recognized accounting firm in connection with financial information relating to Mezzanine Borrower and First Mortgage Loan Borrower, the Collateral or the Property and which is, in connection with the Securitization, presented in a private placement memorandum or prospectus. In no event shall Mezzanine Borrower be

required to pay any Rating Agency or other out-of-pocket fees or expenses in connection with any such Securitization other than the direct costs incurred by Mezzanine Borrower is cooperating in the manner described in clauses (a) through (b) above.

8.34.4 Other Business. Mezzanine Lender, each Assignee and each participant and their respective Affiliates may accept deposits from, lend money to, act as trustee under indentures of, and generally engage in any kind of business with, Mezzanine Borrower, or any of them, any Affiliate of Mezzanine Borrower, any of Mezzanine Borrower's subsidiaries and any Person who may do business with or own interests in or securities of Mezzanine Borrower or any such Affiliate or subsidiary, without any duty to account therefor.

8.34.5 Privity of Contract. This Agreement is being entered into by Mezzanine Lender individually and as agent for all present and future Assignees, and privity of contract is hereby created among Mezzanine Lender and all present and future Assignees, on the one hand, and Mezzanine Borrower, on the other hand.

Section 8.35. The Agent. Upon the initial occurrence of a sale, assignment, pledge, grant, participation, syndication, securitization or other similar transaction contemplated in Section 8.34, Mezzanine Lender shall appoint one (1) representative (the "Agent") to act collectively on behalf of all Person(s) having an interest in the Mezzanine Loan.

[NO ADDITIONAL TEXT ON THIS PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Mezzanine Loan Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

MEZZANINE LENDER:

MERRILL LYNCH MORTGAGE CAPITAL INC.,  
a Delaware corporation

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

Name: Steven M. Glassman  
Title: Vice President

MEZZANINE BORROWER:

OHN HOLDINGS, LLC  
a Delaware limited liability company

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

Name: J. Russell Worsham  
Title: Vice President

EXHIBIT A  
ORGANIZATIONAL CHART OF  
FIRST MORTGAGE LOAN BORROWER  
AND MEZZANINE BORROWER



EXHIBIT C  
APPROVED OPERATING BUDGET;  
APPROVED FF&E BUDGET

EXHIBIT D  
FORM OF MEZZANINE NOTE

EXHIBIT E

FORM OF ASSIGNMENT AND ACCEPTANCE

Reference is made to that certain Mezzanine Loan Agreement dated as of \_\_\_\_\_, 2000 (as amended and in effect on the date hereof, the "Mezzanine Loan Agreement"), between [MERRILL LYNCH MORTGAGE CAPITAL INC.,] as lender, and [\_\_\_\_\_], as borrower. Terms defined in the Mezzanine Loan Agreement are used herein with the same meanings.

The Assignor named herein hereby sells and assigns, without recourse, to the Assignee named herein, and the Assignee hereby purchases and assumes, without recourse, from the Assignor, effective as of the Assignment Date set forth herein, the interests set forth herein (the "Assigned Interest") in the Assignor's rights and obligations under the Mezzanine Loan Agreement, but excluding accrued interest and fees to and excluding the Assignment Date. The Assignee hereby acknowledges receipt of a copy of the Mezzanine Loan Agreement and the other Mezzanine Loan Documents as of the date hereof. From and after the Assignment Date (i) the Assignee shall be a party to and be bound by the provisions of the Mezzanine Loan Agreement and, to the extent of the Assigned Interest, have the rights and obligations of a Mezzanine Lender thereunder and (ii) the Assignor shall, to the extent of the Assigned Interest, relinquish its rights and be released from its obligations under the Mezzanine Loan Agreement.

This Assignment and Acceptance is being delivered to the Lender together with an Administrative Questionnaire in the form supplied by the Lender, duly completed by the Assignee.

This Assignment and Acceptance shall be governed by and construed in accordance with the laws of the State of New York.

Date of Assignment: \_\_\_\_\_

Legal Name of Assignor: \_\_\_\_\_

Legal Name of Assignee: \_\_\_\_\_

Assignee's Address for Notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Effective Date of Assignment ("Assignment Date"): \_\_\_\_\_

Facility	Principal Amount Assigned	Percentage Assigned of Mezzanine Loan (set forth, to at least 8 decimals, as a percentage of the Mezzanine Loan)
Mezzanine Loan:	\$	%

The terms set forth herein are hereby agreed to:

[NAME OF ASSIGNOR], as Assignor

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

[NAME OF ASSIGNEE], as Assignee

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

Receipt acknowledged:

[ [AGENT] ]  
\_\_\_\_\_

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

GAYLORD ENTERTAINMENT COMPANY  
1997 OMNIBUS STOCK OPTION AND INCENTIVE PLAN

1. PURPOSE; TYPES OF AWARDS; CONSTRUCTION.

The purpose of this 1997 Omnibus Stock Option and Incentive Plan (formerly known as the Amended and Restated 1997 Stock Option and Incentive Plan) of Gaylord Entertainment Company (the "Plan") is to afford an incentive to officers, directors, key employees, consultants and advisors of Gaylord Entertainment Company (the "Company"), or any Subsidiary (as defined herein) which now exists or hereafter is organized or acquired by the Company, to acquire a proprietary interest in the Company, to continue as officers, directors, employees, consultants and advisors, to increase their efforts on behalf of the Company and to promote the success of the Company's business.

It is further intended that options granted by the Compensation or other Committee (the "Committee") of the Board of Directors of the Company (the "Board") pursuant to Section 8 of the Plan shall constitute "incentive stock options" ("Incentive Stock Options") within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended (the "Code"), and options granted by the Committee pursuant to Section 7 of the Plan shall constitute "nonqualified stock options" ("Nonqualified Stock Options"). The Committee may also grant stock appreciation rights ("Stock Appreciation Rights" or "SARs") pursuant to Section 9 of the Plan; shares of restricted stock ("Restricted Stock") pursuant to Section 10 of the Plan; Deferred Shares of stock pursuant to Section 11 of the Plan; and Performance Shares and Performance Units pursuant to Section 12 of the Plan.

The provisions of the Plan are intended to satisfy the requirements of Section 16(b) of the Securities Exchange Act of 1934, and shall be interpreted in a manner consistent with the requirements thereof, as now or hereafter construed, interpreted, and applied by regulations, rulings, and cases. The Plan is also designated so that awards granted hereunder intended to comply with the requirements for "performance-based" compensation under Section 162(m) of the Code may comply with such requirements. The creation and implementation of the Plan shall not diminish or prejudice other compensation plans or programs approved from time to time by the Board.

2. DEFINITIONS.

As used in this Plan, the following words and phrases shall have the meanings indicated:

(a) "Common Stock" shall mean shares of Common Stock, par value \$.01 per share, of the Company.

(b) "Deferral Period" means the period of time during which Deferred Shares are subject to deferral limitations under Section 11 of this Plan.

(c) "Deferred Shares" means an award pursuant to Section 11 of this Plan of the right to receive shares of Common Stock at the end of a specified Deferral Period.

(d) "Disability" shall mean a Grantee's (as defined in Section 3 hereof) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve (12) months.

(e) "Fair Market Value" per share of Common Stock as of a particular date shall mean (i) the closing sales price per share of Common Stock on the national securities exchange on which the Common Stock is principally traded, for the last preceding date on which there was a sale of such Common Stock on such exchange, or (ii) if the shares of Common Stock are then traded in an over-the-counter market, the average of the closing bid and asked prices for the shares of Common Stock in such over-the-counter market for the last preceding date on which there was a sale of such Common Stock in such market, or (iii) if the shares of Common Stock are not then listed on a national securities exchange or traded in an over-the-counter market, such value as the Committee, in its sole discretion, shall determine.

(f) "Immediate Family" shall mean any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, and shall include adoptive relationships.

(g) "Option" or "Options" shall mean a grant to a Grantee of an option or options to purchase shares of Common Stock. Options granted by the Committee pursuant to the Plan shall constitute either Incentive Stock Options or Nonqualified Stock Options.

(h) "Parent" shall mean any company (other than the Company) in an unbroken chain of companies ending with the Company if, at the time of granting an Option, each of the companies other than the Company owns stock or equity interests (including partnership interests) possessing fifty percent (50%) or more of the total combined voting power of all classes of stock or equity interests in one of the other companies in such chain.

(i) "Performance Goals" means performance goals based on one or more of the following criteria: (i) pre-tax income or after-tax income; (ii) operating cash flow; (iii) operating profit; (iv) return on equity, assets, capital, or investment; (v) earnings or book value per share; (vi) sales or revenues; (vii) operating expenses; (viii) cost of capital; (ix) Common Stock price appreciation; and (x) implementation or completion of critical projects or processes. Where applicable, the Performance Goals may be expressed in terms of attaining a specified level of the particular criteria or the attainment of a percentage increase or decrease in the particular criteria, and may be applied to one or more of the Company or any Subsidiary, or a division or strategic business unit of the Company, or may be applied to the performance of the Company relative to a market index, a group of other companies, or a combination thereof, all as determined by the Committee. The Performance Goals may include a threshold level of performance below which no payment will be made (or no vesting will occur), levels of performance at which specified payments will be made (or specified vesting will occur), and a maximum level of performance above which no additional payment will be made (or at which full vesting will occur). Each of the foregoing Performance Goals shall be determined, to the extent applicable, in accordance with generally accepted accounting principles and shall be subject to certification by the Committee; provided, that the Committee shall have the authority to make equitable adjustments to the Performance Goals in recognition of unusual or non-recurring events affecting the Company or any Subsidiary or the financial statements of the Company or any Subsidiary, in response to changes in applicable laws or regulations, or to account for items of gain, loss, or expense determined to be extraordinary or unusual in nature or infrequent in occurrence or related to the disposal of a segment of business or related to a change in accounting principles.

(j) "Performance Period" means a period of time established under Section 12 of this Plan within which the Performance Goals relating to a Performance Share, Performance Unit, or Deferred Shares are to be achieved.

(k) "Performance Share" means a bookkeeping entry that records the equivalent of one share of Common Stock awarded pursuant to Section 12 of this Plan.

(l) "Performance Unit" means a bookkeeping entry that records a unit equivalent to \$1.00 awarded pursuant to Section 12 of this Plan.

(m) "Subsidiary" shall mean any company (other than the Company) in an unbroken chain of companies beginning with the Company if, at the time of granting an Option, each of the companies other than the last company in the unbroken chain owns stock or equity interests (including partnership interests) possessing fifty percent (50%) or more of the total combined voting power of all classes of stock or equity interests in one of the other companies in such chain.

(n) "Ten Percent Stockholder" shall mean a Grantee who, at the time an Incentive Stock Option is granted, owns stock possessing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or any Parent or Subsidiary.

(o) "Retirement" means retirement by an employee from active employment with the Company or any Subsidiary (i) on or after attaining age 65, or (ii) with the express written consent of the Company on or after attaining age 55.

(p) "Voting Trust" shall mean the trust created by that certain Voting Trust Agreement, dated as of October 3, 1990, as amended October 7, 1991, and as may be amended hereafter from time to time, and "Voting Trustees" shall mean the trustees of the Voting Trust.

### 3. ADMINISTRATION.

The Plan shall be administered by the Committee, which will be comprised solely of "Non-Employee Directors" within the meaning of Rule 16b-3 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or by the Board if for any reason the Committee is not so comprised, in which case all references herein to the Committee shall refer to the Board.

The Committee shall have the authority in its discretion, subject to and not inconsistent with the express provisions of the Plan, to administer the Plan and to exercise all the powers and authorities either specifically granted to it under the Plan or necessary or advisable in the administration of the Plan, including, without limitation, the authority to grant Options, SARs, Restricted Stock, Deferred Shares, Performance Shares, and Performance Units; to determine which Options shall constitute Incentive Stock Options and which Options shall constitute Nonqualified Stock Options and whether such Options will be accompanied by Stock Appreciation Rights; to determine the purchase price of the shares of Common Stock covered by each Option (the "Option Price") and SARs, the kind of consideration payable (if any) with respect to awards, and the various methods for payment; to determine the Deferral Period, the period during which Options may be exercised and during which Restricted Stock shall be subject to restrictions, and whether in whole or in installments; to determine the persons to whom, and the time or times at which awards shall be granted (such persons are referred to herein as "Grantees"); to determine the number of shares to be covered by each award; to determine the terms, conditions, and restrictions of any Performance

Goals and the number of Options, SARs, shares of Restricted Stock, Deferred Shares, Performance Shares or Performance Units subject thereto; to interpret the Plan; to prescribe, amend, and rescind rules and regulations relating to the Plan; to determine the terms and provisions of the agreements (which need not be identical) entered into in connection with awards granted under the Plan (the "Agreements"); to cancel or suspend awards, as necessary; and to make all other determinations deemed necessary or advisable for the administration of the Plan.

The Committee may delegate to one or more of its members or to one or more agents such administrative duties as it may deem advisable, and the Committee or any person to whom it has delegated duties as aforesaid may employ one or more persons to render advice with respect to any responsibility the Committee or such person may have under the Plan. All decisions, determinations, and interpretations of the Committee shall be final and binding on all Grantees of any awards under this Plan.

The Board shall fill all vacancies, however caused, in the Committee. The Board may from time to time appoint additional members to the Committee, and may at any time remove one or more Committee members and substitute others. One member of the Committee shall be selected by the Board as chairman. The Committee shall hold its meetings at such times and places as it shall deem advisable. All determinations of the Committee shall be made by a majority of its members either present in person or participating by conference telephone at a meeting or by written consent. The Committee may appoint a secretary and make such rules and regulations for the conduct of its business as it shall deem advisable, and shall keep minutes of its meetings.

No members of the Board or Committee shall be liable for any action taken or determination made in good faith with respect to the Plan or any award granted hereunder.

#### 4. ELIGIBILITY.

Directors, officers, key employees, consultants and advisors of the Company or any Subsidiary shall be eligible to receive awards hereunder; provided, however, that only consultants or advisors who have rendered bona fide services to the Company or any Subsidiary in connection with its business operations, and not in connection with the offer or sale of securities in capital-raising transactions, shall be eligible to receive awards hereunder. In determining the persons to whom awards shall be granted and the number of shares or Performance Units to be covered by each award, the Committee, in its sole discretion, shall take into account the contribution by the eligible participants to the management, growth, and profitability of the business of the Company and such other factors as the Committee shall deem relevant.

#### 5. STOCK.

The maximum number of shares of Common Stock reserved for the grant of awards under the Plan shall be 5,450,000 (including shares of Common Stock reserved for the grant of awards issued in connection with the Distribution Agreement (as defined below)), subject to adjustment as provided in Section 13 hereof. Such shares may, in whole or in part, be authorized but unissued shares or shares that shall have been or may be reacquired by the Company.

If any outstanding award under the Plan should, for any reason, expire or be canceled, forfeited, or terminated, without having been exercised in full, the shares of Common Stock allocable



to the unexercised, canceled, forfeited, or terminated portion of such award shall (unless the Plan shall have been terminated) become available for subsequent grants of awards under the Plan.

The maximum number of shares of Common Stock with respect to which awards (including Options, SARs, Restricted Stock, Deferred Shares, Performance Shares, and Performance Units) may be granted under the Plan to any eligible employee during any consecutive three-year period shall be 500,000, subject to adjustment as provided in Section 13 hereof. Notwithstanding the foregoing, shares of Common Stock issued or issuable to any person in connection with the Agreement and Plan of Distribution, dated as of September 30, 1997, between the Company and Gaylord Entertainment Company, a Delaware corporation (the "Distribution Agreement") shall not be counted for purposes of the maximum number of shares limitation in the preceding sentence.

#### 6. TERMS AND CONDITIONS OF OPTIONS.

Each Option granted pursuant to the Plan shall be evidenced by a written agreement between the Company and the Grantee (the "Option Agreement"), in such form as the Committee shall from time to time approve, which Option Agreement shall comply with and be subject to the following terms and conditions:

- (a) Number of Shares. Each Option Agreement shall state the number of shares of Common Stock to which the Option relates.
- (b) Type of Option. Each Option Agreement shall specifically state that the Option constitutes an Incentive Stock Option or a Nonqualified Stock Option.
- (c) Option Price. Each Option Agreement shall state the Option Price, which, in the case of an Incentive Stock Option, shall not be less than one hundred percent (100%) of the Fair Market Value of the shares of Common Stock covered by the Option on the date of grant. The Option Price shall be subject to adjustment as provided in Section 13 hereof. Unless otherwise stated in the resolution, the date on which the Committee adopts a resolution expressly granting an Option shall be considered the day on which such Option is granted.
- (d) Medium and Time of Payment. The Option Price shall be paid in full, at the time of exercise, in any manner that the Committee shall deem appropriate or that the Option Agreement shall provide for, including, in cash, in shares of Common Stock having a Fair Market Value equal to such Option Price, in cash provided through a broker-dealer sale and remittance procedure, approved by the Committee, in a combination of cash and Common Stock, or in such other manner as the Committee shall determine.
- (e) Term and Exercisability of Options. Each Option shall be exercisable at such times and under such conditions as the Committee, in its discretion, shall determine; provided, however, that in the case of an Incentive Stock Option, such exercise period shall not exceed ten (10) years from the date of grant of such Option. The exercise period shall be subject to earlier termination as provided in Section 6(g) hereof. An Option may be exercised, as to any or all full shares of Common Stock as to which the Option has become exercisable, by giving written notice of such exercise to the Committee or its designated agent.
- (f) Termination of Employment.

(i) Generally. Except as otherwise provided herein or as determined by the Committee, an Option may not be exercised unless the Grantee is then in the service or employ of the Company or a Parent or Subsidiary (or a company or a parent or subsidiary company of such company issuing or assuming the Option in a transaction to which Section 424(a) of the Code applies), and unless the Grantee has remained continuously in such service or employ since the date of grant of the Option. Unless otherwise determined by the Committee at or after the date of grant, in the event that the employment of a Grantee or the service provided to the Company by the Grantee terminates (other than by reason of death, Disability, Retirement, or for Cause) all Options that are exercisable at the time of such termination may be exercised for a period of 90 days from the date of such termination or until the expiration of the stated term of the Option, whichever period is shorter. For purposes of interpreting this Section 6(f) only, the service of a director as a non-employee member of the Board shall be deemed to be employment by the Company.

(ii) Death or Disability. If a Grantee's employment with, or service to, the Company or a Parent or Subsidiary terminates by reason of death, or if the Grantee's employment or service terminates by reason of Disability, all Options theretofore granted to such Grantee will become fully vested and exercisable (notwithstanding any terms of the Options providing for delayed exercisability) and may be exercised by the Grantee, by the legal representative of the Grantee's estate, or by the legatee under the Grantee's will at any time until the expiration of the stated term of the Option. In the event that an Option granted hereunder is exercised by the legal representative of a deceased or disabled Grantee, written notice of such exercise must be accompanied by a certified copy of letters testamentary or equivalent proof of the right of such legal representative or legatee to exercise such Option.

(iii) Retirement. If a Grantee's employment with, or service to, the Company or a Parent or Subsidiary terminates by reason of Retirement, any Option held by the Grantee may thereafter be exercised, to the extent it was exercisable at the time of such Retirement or on such accelerated basis as the Committee may determine at or after the date of grant (but before the date of such Retirement), at any time until the expiration of the stated term of the Option.

(iv) Cause. If a Grantee's employment with, or service to, the Company or a Parent or Subsidiary terminates for "Cause" (as determined by the Committee in its sole discretion) the Option, to the extent not theretofore exercised, shall terminate on the date of termination of employment.

(v) Committee Discretion. Notwithstanding the provisions of subsections (i) through (iv) above, the Committee may, in its sole discretion, at or after the date of grant (but before the date of termination), establish different terms and conditions pertaining to the effect on any Option of termination of a Grantee's employment with, or service to, the Company or a Parent or Subsidiary, to the extent permitted by applicable federal and state law.

(g) Other Provisions. The Option Agreements evidencing Options under the Plan shall contain such other terms and conditions, not inconsistent with the Plan, as the Committee may determine.

## 7. NONQUALIFIED STOCK OPTIONS.

Options granted pursuant to this Section 7 are intended to constitute Nonqualified Stock Options and shall be subject only to the general terms and conditions specified in Section 6 hereof .

## 8. INCENTIVE STOCK OPTIONS.

Options granted pursuant to this Section 8 are intended to constitute Incentive Stock Options and shall be subject to the following special terms and conditions, in addition to the general terms and conditions specified in Section 6 hereof

(a) Value of Shares. The aggregate Fair Market Value (determined as of the date the Incentive Stock Option is granted) of the shares of equity securities of the Company with respect to which Incentive Stock Options granted under this Plan and all other option plans of any Parent or Subsidiary become exercisable for the first time by each Grantee during any calendar year shall not exceed \$100,000. To the extent such \$100,000 limit has been exceeded with respect to any Options first becoming exercisable, including acceleration upon a Change in Control, and notwithstanding any statement in the Option Agreement that it constitutes an Incentive Stock Option, the portion of such Option(s) that exceeds such \$100,000 limit shall be treated as a Nonqualified Stock Option.

(b) Ten Percent Stockholder. In the case of an Incentive Stock Option granted to a Ten Percent Stockholder, (i) the Option Price shall not be less than one hundred ten percent (110%) of the Fair Market Value of the shares of Common Stock on the date of grant of such Incentive Stock Option, and (ii) the exercise period shall not exceed five (5) years from the date of grant of such Incentive Stock Option.

## 9. STOCK APPRECIATION RIGHTS.

The Committee is authorized to grant SARs to Grantees on the following terms and conditions:

(a) In General. Unless the Committee determines otherwise, an SAR (i) granted in tandem with a Nonqualified Stock Option may be granted at the time of grant of the related Nonqualified Stock Option or at any time thereafter, and (ii) granted in tandem with an Incentive Stock Option may only be granted at the time of grant of the related Incentive Stock Option. An SAR granted in tandem with an Option shall be exercisable only to the extent the underlying Option is exercisable and shall terminate when the underlying Option terminates.

(b) SARs. An SAR shall confer on the Grantee a right to receive an amount with respect to each share subject thereto, upon exercise thereof, equal to the excess of (i) the Fair Market Value of one share of Common Stock on the date of exercise over (ii) the grant price of the SAR (which in the case of an SAR granted in tandem with an Option shall be equal to the exercise price of the underlying Option, and which in the case of any other SAR shall be such price as the Committee may determine).

(c) Performance Goals. The Committee may condition the exercise of any SAR upon the attainment of specified Performance Goals, in its sole discretion.

## 10. RESTRICTED STOCK.

The Committee may award shares of Restricted Stock to any eligible employee or director. Each award of Restricted Stock under the Plan shall be evidenced by an instrument, in such form as the Committee shall from time to time approve (the "Restricted Stock Agreement"), and shall comply

with the following terms and conditions (and with such other terms and conditions not inconsistent with the terms of this Plan as the Committee, in its discretion, shall establish including, without limitation, the requirement that a Grantee provide consideration for Restricted Stock upon the lapse of restrictions):

(a) The Committee shall determine the number of shares of Common Stock to be issued to the Grantee pursuant to the award.

(b) Shares of Restricted Stock may not be sold, assigned, transferred, pledged, hypothecated or otherwise disposed of, except by will or the laws of descent and distribution, for such period as the Committee shall determine from the date on which the award is granted (the "Restricted Period"). The Committee may impose such other restrictions and conditions on the shares as it deems appropriate including the satisfaction of Performance Goals. Certificates for shares of stock issued pursuant to Restricted Stock awards shall bear an appropriate legend referring to such restrictions, and any attempt to dispose of any such shares of stock in contravention of such restrictions shall be null and void and without effect. During the Restricted Period, such certificates shall be held in escrow by an escrow agent appointed by the Committee. In determining the Restricted Period of an award, the Committee may provide that the foregoing restrictions lapse at such times, under such circumstances, and in such installments, as the Committee may determine.

(c) Subject to such exceptions as may be determined by the Committee, if the Grantee's continuous employment with the Company or any Parent or Subsidiary shall terminate for any reason prior to the expiration of the Restricted Period of an award, any shares remaining subject to restrictions (after taking into account the provisions of Subsection (f) of this Section 10) shall thereupon be forfeited by the Grantee and transferred to, and reacquired by, the Company or a Parent or Subsidiary at no cost to the Company or such Parent or Subsidiary.

(d) During the Restricted Period the Grantee shall possess all incidents of ownership of such shares, subject to Subsection (b) of this Section 10, including the right to receive cash dividends with respect to such shares and to vote such shares; provided, that shares of Common Stock distributed in connection with a stock split or stock dividend shall be subject to restriction and a risk of forfeiture to the same extent as the Restricted Stock with respect to which such shares are distributed.

(e) Upon the occurrence of any of the events described in Section 13(c), all restrictions then outstanding with respect to shares of Restricted Stock awarded hereunder shall automatically expire and be of no further force or effect.

(f) The Committee shall have the authority (and the Restricted Stock Agreement may so provide) to cancel all or any portion of any outstanding restrictions prior to the expiration of the Restricted Period with respect to any or all of the shares of Restricted Stock awarded on such terms and conditions as the Committee shall deem appropriate.

#### 11. DEFERRED SHARES.

The Committee may authorize grants of Deferred Shares to Grantees upon such terms and conditions as the Committee may determine in accordance with the following provisions:

(a) Each grant shall constitute the agreement by the Company to issue or transfer shares of Common Stock to the Grantee in the future in consideration of the performance of services, subject to the fulfillment during the Deferral Period of such conditions as the Committee may specify.

(b) Each grant may be made without additional consideration from the Grantee or in consideration of a payment by the Grantee that is less than the Fair Market Value on the date of grant.

(c) Each grant shall provide that the Deferred Shares covered thereby shall be subject to a Deferral Period, which shall be fixed by the Committee on the date of grant, and any grant or sale may provide for the earlier termination of such period in the event of a change in control of the Company or other similar transaction or event.

(d) During the Deferral Period, the Grantee shall not have any right to transfer any rights under the subject award, shall not have any rights of ownership in the Deferred Shares and shall not have any right to vote such shares, but the Committee may on or after the date of grant authorize the payment of dividend equivalents on such shares in cash or additional shares of Common Stock on a current, deferred or contingent basis.

(e) Any grant or the vesting thereof may be further conditioned upon the attainment of Performance Goals established by the Committee in accordance with the applicable provisions of Section 12 of this Plan regarding Performance Shares and Performance Units.

(f) Each grant shall be evidenced by an agreement delivered to and accepted by the Grantee and containing such terms and provisions as the Committee may determine consistent with this Plan.

## 12. PERFORMANCE SHARES AND PERFORMANCE UNITS.

The Committee may also authorize grants of Performance Shares and Performance Units, which shall become payable to the Grantee upon the achievement of specified Performance Goals, upon such terms and conditions as the Committee may determine in accordance with the following provisions:

(a) Each grant shall specify the number of Performance Shares or Performance Units to which it pertains, which may be subject to adjustment to reflect changes in compensation or other factors.

(b) The Performance Period with respect to each Performance Share or Performance Unit shall commence on the date of grant and may be subject to earlier termination in the event of a Change in Control (as defined in Section 13(c)) or other similar transaction or event.

(c) Each grant shall specify the Performance Goals that are to be achieved by the Grantee.

(d) Each grant may specify in respect of the specified Performance Goals a minimum acceptable level of achievement below which no payment will be made and may set forth a formula for determining the amount of any payment to be made if performance is at or above such

minimum acceptable level but falls short of the maximum achievement of the specified Performance Goals.

(e) Each grant shall specify the time and manner of payment of Performance Shares or Performance Units that shall have been earned, and any grant may specify that any such amount may be paid by the Company in cash, shares of Common Stock or any combination thereof and may either grant to the Grantee or reserve to the Committee the right to elect among those alternatives.

(f) Any grant of Performance Shares may specify that the amount payable with respect thereto may not exceed a maximum specified by the Committee on the date of grant. Any grant of Performance Units may specify that the amount payable, or the number of shares of Common Stock issued, with respect thereto may not exceed maximums specified by the Committee on the Grant Date.

(g) Any grant of Performance Shares may provide for the payment to the Grantee of dividend equivalents thereon in cash or additional shares of Common Stock on a current, deferred or contingent basis.

(h) If provided in the terms of the grant, the Committee may adjust Performance Goals and the related minimum acceptable level of achievement if, in the sole judgment of the Committee, events or transactions have occurred after the date of grant that are unrelated to the performance of the Grantee and result in distortion of the Performance Goals or the related minimum acceptable level of achievement.

(i) Each grant shall be evidenced by an agreement delivered to and accepted by the Grantee, which shall state that the Performance Shares or Performance Units are subject to all of the terms and conditions of this Plan and such other terms and provisions as the Committee may determine consistent with this Plan.

13. EFFECT OF CERTAIN CHANGES.

(a) If there is any change in the shares of Common Stock through the declaration of extraordinary cash dividends, stock dividends, recapitalization, stock splits, or combinations or exchanges of such shares, or other similar transactions, the number of shares of Common Stock available for awards (both the maximum number of shares issuable under the Plan as a whole and the maximum number of shares issuable on a per-employee basis, each as set forth in Section 5 hereof), the number of such shares covered by outstanding awards, the Performance Goals, and the price per share of Options or SARs shall be proportionately adjusted by the Committee to reflect such change in the issued shares of Common Stock; provided, that any fractional shares resulting from such adjustment shall be eliminated; and provided, further, that, with respect to Incentive Stock Options, such adjustment shall be made in accordance with Section 424(h) of the Code.

(b) In the event of the dissolution or liquidation of the Company; in the event of any corporate separation or division, including but not limited to, split-up, split-off or spin-off; or in the event of other similar transactions, the Committee may, in its sole discretion, provide that either:

(i) the Grantee of any award hereunder shall have the right to exercise an Option (at its then Option Price) and receive such property, cash, securities, or any combination

thereof upon such exercise as would have been received with respect to the number of shares of Common Stock for which such Option might have been exercised immediately prior to such dissolution, liquidation, or corporate separation or division; or

(ii) each Option shall terminate as of a date to be fixed by the Committee and that not less than thirty (30) days' written notice of the date so fixed shall be given to each Grantee, who shall have the right, during the period of thirty (30) days preceding such termination, to exercise all or part of such Option.

In the event of a proposed sale of all or substantially all of the assets of the Company or the merger of the Company with or into another corporation, any award then outstanding shall be assumed or an equivalent award shall be substituted by such successor corporation or a parent or subsidiary of such successor corporation, unless such successor corporation does not agree to assume the award or to substitute an equivalent award, in which case the Committee shall, in lieu of such assumption or substitution, provide for the realization of such outstanding awards in the manner set forth in Section 13(b)(i) or 13(b)(ii) above.

(c) If, while any awards remain outstanding under the Plan, any of the following events shall occur (which events shall constitute a "Change in Control" of the Company):

(i) the "beneficial ownership," as defined in Rule 13d-3 under the Exchange Act, of securities representing more than a majority of the combined voting power of the Company are acquired by any "person" as defined in Sections 13(d) and 14(d) of the Exchange Act (other than (A) the Company, (B) any trustee or other fiduciary holding securities under an employee benefit plan of the Company, (C) the Voting Trust and the Voting Trustees, (D) Edward L. Gaylord or any member of his Immediate Family, or any "person" controlled by, controlling or under common control with Edward L. Gaylord or any member of his Immediate Family; or (E) any corporation owned, directly or indirectly, by the shareholders of the Company in substantially the same proportions as their ownership of stock of the Company); or

(ii) the shareholders of the Company approve a definitive agreement to merge or consolidate the Company with or into another company (other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) a majority of the combined voting power of the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation), or to sell or otherwise dispose of all or substantially all of its assets, or adopt a plan of liquidation; or

(iii) during any period of two consecutive years, individuals who at the beginning of such period were members of the Board cease for any reason to constitute at least a majority thereof (unless the election, or the nomination for election by the Company's shareholders, of each new director was approved by a vote of at least two-thirds of the directors then still in office who were directors at the beginning of such period);

then from and after the date on which any such Change in Control shall have occurred (the "Acceleration Date"), any Option, SAR, share of Restricted Stock, Deferred Share, Performance Share, or Performance Unit awarded pursuant to this Plan shall be exercisable or otherwise nonforfeitable in full, as applicable, whether or not otherwise exercisable or forfeitable.

Following the Acceleration Date, the Committee shall, in the case of a merger, consolidation, or sale or disposition of assets, promptly make an appropriate adjustment to the number and class of shares of Common Stock available for awards, and to the amount and kind of shares or other securities or property receivable upon exercise or other realization of any outstanding awards after the effective date of such transaction, and, if applicable, the price thereof.

(d) In the event of a change in the Common Stock of the Company as presently constituted that is limited to a change of all of its authorized shares of Common Stock into the same number of shares with a different par value or without par value, the shares resulting from any such change shall be deemed to be the Common Stock within the meaning of the Plan.

(e) Except as herein before expressly provided in this Section 13, the Grantee of an award hereunder shall have no rights by reason of any subdivision or consolidation of shares of stock of any class or the payment of any stock dividend or any other increase or decrease in the number of shares of stock of any class or by reason of any dissolution, liquidation, merger, or consolidation or spin-off of assets or stock of another company; and any issue by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall not affect, and no adjustment by reason thereof shall be made with respect to, the number or price of shares of Common Stock subject to an award. The grant of an award pursuant to the Plan shall not affect in any way the right or power of the Company to make adjustments, reclassifications, reorganizations or changes of its capital or business structures or to merge or to consolidate or to dissolve, liquidate, or sell, or transfer all or part of its business or assets or engage in any similar transactions.

14. SURRENDER AND EXCHANGES OF AWARDS.

The Option Price of an Option may not be amended or modified after the grant of the Option, and an Option may not be surrendered in consideration of or exchanged for a grant of a new Option having an Option Price below that of the Option which was surrendered or exchanged.

15. PERIOD DURING WHICH AWARDS MAY BE GRANTED.

Awards may be granted pursuant to the Plan from time to time within a period of ten (10) years from the date of the Distribution (as defined in the Distribution Agreement), provided that awards granted prior to such tenth anniversary date may be extended beyond such date.

16. LIMITS ON TRANSFERABILITY OF AWARDS.

Awards of Incentive Stock Options (and any SAR related thereto), Deferred Shares, Performance Shares, and Performance Units shall not be transferable otherwise than by will or by the laws of descent and distribution, and all Incentive Stock Options are exercisable during the Grantee's lifetime only by the Grantee. Awards of Nonqualified Stock Options (and any SAR related thereto) shall not be transferable, without the prior written consent of the Committee, other than (i) by will or by the laws of descent and distribution, (ii) by a Grantee to a member of his or her Immediate Family, or (iii) to a trust for the benefit of the Grantee or a member of his or her Immediate Family. Awards of Restricted Stock shall be transferable only to the extent set forth in the Restricted Stock Agreement.

17. EFFECTIVE DATE.



The Plan shall be deemed to have taken effect on October 1, 1997.

18. AGREEMENT BY GRANTEE REGARDING WITHHOLDING TAXES.

If the Committee shall so require, as a condition of exercise of an Option or SAR or other realization of an award, each Grantee shall agree that no later than the date of exercise or other realization of an award granted hereunder, the Grantee will pay to the Company or make arrangements satisfactory to the Committee regarding payment of any federal, state, or local taxes of any kind required by law to be withheld upon the exercise of an Option or other realization of an award. Alternatively, the Committee may provide that a Grantee may elect, to the extent permitted or required by law, to have the Company deduct federal, state, and local taxes of any kind required by law to be withheld upon the exercise of an Option or realization of any award from any payment of any kind due to the Grantee. The Committee may, in its sole discretion, permit withholding obligations to be satisfied in shares of Common Stock subject to the award.

19. AMENDMENT AND TERMINATION OF THE PLAN.

The Board at any time and from time to time may suspend, terminate, modify, or amend the Plan without stockholder approval to the fullest extent permitted by the Exchange Act and the rules and regulations thereunder; provided, however, that no suspension, termination, modification, or amendment of the Plan may adversely affect any award previously granted hereunder, unless the written consent of the Grantee is obtained.

20. RIGHTS AS A SHAREHOLDER.

Except as provided in Section 10(d) hereof, a Grantee or a transferee of an award shall have no rights as a shareholder with respect to any shares covered by the award until the date of the issuance of a stock certificate to him or her for such shares. No adjustment shall be made for dividends (ordinary or extraordinary, whether in cash, securities, or other property) or distribution of other rights for which the record date is prior to the date such stock certificate is issued, except as provided in Section 13 hereof.

21. NO RIGHTS TO SERVICE OR EMPLOYMENT.

Nothing in the Plan or in any award granted or Agreement entered into pursuant hereto shall confer upon any Grantee the right to continue in the employ of the Company or any Subsidiary or to be entitled to any remuneration or benefits not set forth in the Plan or such Agreement or to interfere with or limit in any way the right of the Company or any such Subsidiary to terminate such Grantee's service to or employment by the Company or such Subsidiary. Awards granted under the Plan shall not be affected by any change in duties or position of a Grantee as long as such Grantee continues to provide service to or is in the employ of the Company or any Subsidiary.

## 22. BENEFICIARY.

A Grantee may file with the Committee a written designation of a beneficiary on such form as may be prescribed by the Committee and may, from time to time, amend or revoke such designation. If no designated beneficiary survives the Grantee, the executor or administrator of the Grantee's estate shall be deemed to be the Grantee's beneficiary.

## 23. UNFUNDED STATUS OF PLAN.

The Plan is intended to constitute an "unfunded" plan for incentive and deferred compensation. With respect to any payments not yet made to a Grantee by the Company, nothing contained herein shall give any such Grantee any rights that are greater than those of a general creditor of the Company. In its sole discretion, the Committee may authorize the creation of trusts or other arrangements to meet the obligations created under the Plan to deliver Common Stock or payments in lieu of or with respect to awards hereunder; provided, however, that, unless the Committee otherwise determines with the consent of the affected participant, the existence of such trusts or other arrangements is consistent with the "unfunded" status of the Plan.

## 24. GOVERNING LAW.

The Plan and all determinations made and actions taken pursuant hereto shall be governed by the laws of the State of Delaware.

GAYLORD ENTERTAINMENT COMPANY  
RETIREMENT BENEFIT RESTORATION PLAN

AS AMENDED AND RESTATED EFFECTIVE  
JANUARY 1, 1995

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THE PURPOSE OF THE GAYLORD ENTERTAINMENT COMPANY RETIREMENT BENEFIT RESTORATION PLAN (THE "PLAN") IS TO PROVIDE DEFERRED COMPENSATION TO A SELECT GROUP OF MANAGEMENT AND HIGHLY COMPENSATED EMPLOYEES WHOSE BENEFITS UNDER THE QUALIFIED RETIREMENT PLAN WOULD BE RESTRICTED (WHETHER OR NOT SUCH EMPLOYEE IS ACTUALLY A PARTICIPANT IN THE QUALIFIED RETIREMENT PLAN) DUE TO THE LIMITATIONS IMPOSED BY THE INTERNAL REVENUE CODE, SO THAT THE TOTAL PENSION AND PENSION-RELATED BENEFITS OF SUCH PARTICIPANT CAN BE DETERMINED ON THE SAME BASIS AS APPLICABLE TO PARTICIPANTS IN THE QUALIFIED RETIREMENT PLAN WHOSE BENEFITS ARE NOT RESTRICTED BECAUSE OF SUCH LIMITATIONS.

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1. DEFINITIONS

As used in this document, unless otherwise defined or required by the context, the following terms have the meanings set forth in this section.

- (a) "AVERAGE ANNUAL COMPENSATION" has the same meaning as in the Qualified Retirement Plan, except the dollar limitations on compensation contained therein will not apply.
- (b) "BENEFICIARY" means "Eligible Spouse" as defined in the Qualified Retirement Plan.
- (c) "COMPANY" means Gaylord Entertainment Company.
- (d) "EMPLOYER" means the Company and those companies affiliated with the Company whose Employees are covered by the Qualified Retirement Plan.
- (e) "JOINT & SURVIVOR PENSION" means monthly pension benefit payable for as long as either the Participant or the Participant's Beneficiary is alive.
- (f) "NLT PLAN" means the Opryland USA Inc. Special Executive Retirement Plan.
- (g) "NONQUALIFIED PLANS" have the meaning set forth in Section 6.
- (h) "NONQUALIFIED SAVINGS PLAN" means the Gaylord Entertainment Company Supplemental Deferred Compensation Plan.
- (i) "PARTICIPANT" means an individual who participates in this Plan in accordance with the provisions of Section 3 hereof and whose interest hereunder has not been fully paid.
- (j) "PLAN" means the Gaylord Entertainment Company Retirement Benefit Restoration Plan.
- (k) "QUALIFIED RETIREMENT PLAN" means the Retirement Plan for Employees of Gaylord Entertainment Company and Affiliated and Adopting Companies, or any successor plan. Any references herein to specific sections of the Qualified Retirement Plan will be deemed to include comparable provisions of any successor plan.

- (1) "QUALIFIED SAVINGS PLAN" means the Gaylord Entertainment Company 401(k) Savings Plan, or any successor plan. Any references herein to specific sections of the Qualified Savings Plan will be deemed to include comparable provisions of any successor plan.

All other terms used in this Plan shall have the same meaning assigned to them under the provisions of the Qualified Retirement Plan unless otherwise qualified by the context.

2. ADMINISTRATION

This Retirement Benefit Restoration Plan will be administered by the Benefit Trust Committee that administers the Qualified Retirement Plan. The Benefit Trust Committee will administer the Retirement Benefit Restoration Plan in a manner consistent with the administration of the Qualified Retirement Plan, except the Retirement Benefit Restoration Plan will be administered as an unfunded plan which is not intended to meet the qualification requirements of Section 401 of the Internal Revenue Code. The Benefit Trust Committee will have full power and authority to interpret, construe and administer the Retirement Benefit Restoration Plan; and the Benefit Trust Committee's interpretations and construction hereof, and of the payments to be made hereunder, will be binding and conclusive on all persons for all purposes.

3. ELIGIBILITY TO PARTICIPATE

(a) AUTOMATIC PARTICIPATION

Employees who were Participants in the Qualified Retirement Plan on January 1, 1995, and Employees who thereafter became Participants in the Qualified Retirement Plan, whose pension or pension-related benefits under the Qualified Retirement Plan are limited because of (i) the maximum amount of retirement income limitations imposed by Section 415 of the Internal Revenue Code, and/or (ii) the limitation imposed by Section 401(a)(17) of the Internal Revenue Code on the amount of compensation that may be taken into account under the Qualified Retirement Plan will automatically become Participants in this Plan on the first day such Employees' benefits become so limited.

(b) ADDITIONAL PARTICIPANTS

In addition, the Benefit Trust Committee may designate as a Participant in this Plan any Employee the Benefit Trust Committee determines is a member of a select group of management or highly compensated employees within the meaning of ERISA Sections 201(2), 301(a)(3), and 401(a)(1).

With respect to a Participant who is not a participant in the Qualified Retirement Plan, such Participant's monthly benefit under the Qualified Retirement Plan for purposes of the calculation in Section 4 will be the monthly benefit that such Participant would have been entitled to receive if he was a participant in the Qualified Retirement Plan based on (i) such Participant's active service with an Employer, and (ii) such Participant's compensation with an Employer.

## 4. AMOUNT OF BENEFIT

The benefits payable to a Participant, or to his Beneficiary, under this Plan will equal the excess, if any, of:

- (i) The benefits that would have been paid to such Participant, or on his behalf to his Beneficiary, under the Qualified Retirement Plan, if the provisions of the Qualified Retirement Plan were administered without regard to the maximum amount of retirement income limitations imposed by Section 415 of the Internal Revenue Code and without the limitation imposed by Section 401(a)(17) of the Internal Revenue Code on the amount of his compensation that may be taken into account under the Qualified Retirement Plan  

over
- (ii) The benefits that are payable to such Participant, or on his behalf to his Beneficiary, under the Qualified Retirement Plan.

If a Participant's Total Annual Benefit (as defined below) exceeds forty-five percent (45%) of the Participant's Average Annual Compensation, the Participant's benefit under this Plan will be reduced until such Total Annual Benefit equals forty-five percent (45%) of Average Annual Compensation.

"Total Annual Benefit" means the total annual benefit the Participant would receive under the following plans and from the following sources if each benefit not already expressed as a single life annuity were converted to a single life annuity:

- (a) this Plan;
- (b) the Qualified Retirement Plan;
- (c) the employer matching contributions account under the Qualified Savings Plan and the Nonqualified Savings Plan;
- (d) the NLT Plan; and
- (e) one half of the Participant's Social Security benefit.

For purposes of this Section, the annuity represented by a Participant's employer matching contributions account under the Qualified Savings Plan and Nonqualified Savings Plan will be deemed to equal one-third of one percent (1/3%) of the Participant's Average Annual Compensation multiplied by the Participant's Years of Benefit Service earned with an Employer after October 1, 1980.

For purposes of this Section, a Participant's annual Social Security Benefit will be determined based upon estimated compensation histories in accordance with the rules in this paragraph. The pre-separation or pre-retirement compensation history is estimated by applying a salary scale, projected backwards, to the Participant's compensation (as defined in Section 3.03 of Revenue Ruling 71-446) at separation or retirement. The salary scale represents the actual change in the average wages from year to year as used by the Social Security Administration to determine earnings index factors for Social Security Average Indexed Monthly Earnings. The determination of the amount of a Participant's Social Security Benefit will be made by the Benefit Trust Committee.

## 5. PAYMENT OF BENEFITS

Benefits under this Plan will be paid in the form of a Joint and Survivor Pension at the same time as retirement benefits are payable to a Participant, or on his behalf to his Beneficiary, under the Qualified Retirement Plan.

If the benefits payable to a Participant under the Qualified Retirement Plan are attributable to periods of employment with more than one Employer, the amounts payable to such Participant under this Plan will be apportioned among such Employers on an equitable basis determined by the Benefit Trust Committee in its sole and absolute discretion.

All benefits payable under this Plan will be payable at the same time or times as benefits payable under the Qualified Retirement Plan, and such benefits payable under this Plan will be actuarially adjusted, as provided in the Qualified Retirement Plan, to reflect the time in which paid.

## 6. ADJUSTMENT TO BENEFITS

The Company currently sponsors, and in the future may sponsor, other deferred compensation plans that are not qualified under Code Section 401(a) (collectively, "Nonqualified Plans"). The Benefit Trust Committee, in its sole and absolute discretion, may adjust (but is not required to adjust) the benefits of a Participant under this Plan to take into account benefits provided to such Participant under other Nonqualified Plans, if in the best judgment of the Benefit Trust Committee such adjustment would be necessary or advisable to carry out the intent of this Plan. The Benefit Trust Committee will exercise its discretion hereunder in a uniform and nondiscriminatory manner.

## 7. COST-OF-LIVING ADJUSTMENT IN AMOUNT OF BENEFIT

In the event that the maximum amount of retirement income limitation of Section 415 of the Code as set forth in the Qualified Retirement Plan is increased after the date of commencement of the Participant's retirement benefit pursuant to the provisions of Section 415(d) of the Code and if, as a result of such increase, the amount of his retirement income or other benefit payable under the Qualified Retirement Plan is increased, the amount of the retirement benefit or other benefit payable to or on behalf of the Participant under this Plan will be correspondingly reduced. If, because the date the amount of such cost-of-living adjustment is announced by the Internal Revenue Service is after the effective date of such adjustment, or because of any other reason, the Participant or his Beneficiary has received a retroactive increase in the amount of the benefit payable on his behalf under the Qualified Retirement Plan that causes the benefits that he receives under this Plan to be in excess of the amounts that are due under this Plan, the excess of the benefits that have actually been paid to or on behalf of the Participant under this Plan over the amounts that are due under this Plan will be forfeited and must be refunded to the Employer by the Participant or, if applicable, his Beneficiary in a manner suitable to the Benefit Trust Committee.



## 8. PARTICIPANT'S RIGHTS

A Participant's rights under this Plan will be the same as a Participant's rights under the Qualified Retirement Plan, except that he will not be entitled to any payments from the trust fund maintained under the Qualified Retirement Plan on the basis of any benefits to which he may be entitled under this Plan. All benefits payable under this Plan to or on behalf of Participants who are Employees of a particular Employer will be paid from the general assets of that Employer. An Employer will not be required to set aside any funds to discharge its obligations hereunder, but the Employer may set aside such funds if it chooses to do so. Any setting aside of amounts by an Employer with which to discharge its obligations hereunder will not be deemed to create a trust, and legal and equitable title to any funds so set aside will remain subject to the claims of the general creditors of the Employer, present and future. No Employee or any other person will have, under any circumstances, any interest whatever in any particular property or assets of the Employer by virtue of this Plan, and the rights of the Employee, his Beneficiary, or any other person who may claim a right to receive benefits under this Plan will be no greater than the rights of an unsecured general creditor of the Employer.

## 9. AMENDMENT AND DISCONTINUANCE

The Benefit Trust Committee may at any time amend or terminate this Plan. However, if this Plan should be amended or terminated, each Employer will remain liable for any benefits accrued by its Employees under this Plan (determined in the case of a Participant in the active service of the Employer on the basis of such Participant's presumed termination of employment as of the date of such amendment or discontinuance) as of the date of such action.

The Benefit Trust Committee reserves the right, in its sole and absolute discretion, to accelerate the payment of any benefits under this Plan without the consent of the Participant, his Beneficiary or any other person claiming through the Participant. Any computations under this paragraph will be performed on an actuarially equivalent basis, using the following assumptions:

Mortality: 1983 Group Annuity Mortality Table for Males

Interest: the rate of interest on 30-year Treasury securities on the first day of the month preceding the month of distribution, plus 1.5%.

## 10. RESTRICTIONS ON ASSIGNMENT

The benefits provided hereunder are intended for the personal security of persons entitled to payment under this Plan and are not subject in any manner to the debts or other obligations of the persons to whom they are payable. The interest of a Participant or his Beneficiary may not be sold, transferred, assigned, or encumbered in any manner, either voluntarily or involuntarily, and any attempt so to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge the same will be null and void; neither will the benefits hereunder be liable for or subject to the debts, contracts, liabilities, engagements

or torts of any person to whom such benefits or funds are payable, nor will they be subject to garnishment, attachment, or other legal equitable process, nor will they be an asset in bankruptcy, except that no amount will be payable hereunder until and unless any and all amounts representing debts or other obligations owed to any Employer or any affiliate of any Employer by the Employee with respect to whom such amount would otherwise be payable will have been fully paid and satisfied.

11. CONTINUED EMPLOYMENT

Nothing contained in this Plan will be construed as conferring upon any Employee the right to continue in the employ of any Employer in any capacity.

12. LIABILITY OF BENEFIT TRUST COMMITTEE

Unless resulting from his own fraud or willful misconduct, no member of the Benefit Trust Committee will be liable for any loss arising out of any action taken or failure to act by the Benefit Trust Committee or a member of such committee in connection with this Plan. The Benefit Trust Committee, each individual member of such committee, and any agent thereof will be fully protected in relying upon the advice of the following professional consultants or advisors employed by the Employer, or the Benefit Trust Committee: any attorney insofar as legal matters are concerned, any accountant insofar as accounting matters are concerned, and any actuary insofar as actuarial matters are concerned.

13. INDEMNIFICATION

The Employers hereby jointly and severally indemnify and agree to defend and hold harmless the members of the Benefit Trust Committee, and all directors, officers, and employees of an Employer or such committee against any loss, claim, cost, expense (including attorneys' fees), judgment or liability arising out of any action taken or failure to act by the Benefit Trust Committee, or any such individual in connection with this Plan; provided, however, that this indemnity will not apply to an individual if such loss, claim, cost, expense, judgment or liability is due to such individual's fraud or willful misconduct.

14. DISTRIBUTION IN THE EVENT PARTICIPATION IS DISALLOWED

Notwithstanding any provision herein to the contrary, in the event that the Benefit Trust Committee, in its sole and absolute discretion, determines that the participation of any Participant in this Plan may cause this Plan to fail to be exempt from the requirements of Parts 2, 3, and 4 of Subtitle B of Title I of ERISA as either (i) an unfunded plan of deferred compensation for a select group of management or highly compensated employees, or (ii) an excess benefit plan as defined in Section 3(36) of ERISA, such Participant will cease to be a Participant in this Plan as of the date such determination is

made by the Benefit Trust Committee, and as soon as administratively practical, the actuarially equivalent single-sum value of the benefit that he has accrued as of the date of such determination under this Plan will be paid to such Participant (or to his Beneficiary in the event of his death) in a single cash payment in lieu and in full satisfaction of all of his rights and interest under this Plan.

15. BINDING ON EMPLOYER, EMPLOYEES, AND THEIR SUCCESSORS

This Plan will be binding upon and inure to the benefit of the Company and to any other Employer participating in this Plan, their successors and assigns, and the employee and his heirs, executors, administrators, and duly appointed legal representatives.

16. LAWS GOVERNING

This plan will be construed in accordance with and governed by the laws of the State of Tennessee.

August 10, 2000

Mr. Terry E. London  
505 Belgrave Park  
Nashville, TN 37215

Dear Terry:

This letter is intended to summarize our agreement regarding your resignation as President and Chief Executive Officer and as a Director of Gaylord Entertainment Company and as a director and an officer of all Company subsidiaries or affiliates as of July 28, 2000 ("Effective Date").

The Company agrees to provide certain payments and benefits to you in recognition of your service to the Company and in consideration for entering into this agreement. First, the Company will pay you a total of \$1,000,000 in cash payable in one lump sum at the time of execution of this letter agreement or, if you so choose, in one or more deferred payments, provided that no payment would be made subsequent to March 14, 2001. The Company also agrees that all of the following vested stock options to purchase shares of the Company's common stock need to be exercised within 90 days of the Effective Date: 120,937 shares at a strike price of \$10.17; 13,605 shares at a strike price of \$25.05 and 12,957 shares at a strike price of \$27.35. All other stock options granted to you by the Company and not previously vested or exercised are hereby terminated. The restricted stock grant of 7,500 shares made on March 20, 2000 will immediately vest and be available to you.

For the 24-month period beginning July 28, 2000, the Company will provide you with medical and dental coverage based on your current elections under the Company's medical and dental plans. This will be provided to you at no premium cost. Any changes made to these medical and dental plans will apply as well to your coverages. If you obtain medical and/or dental coverage through another employer or source prior to the end of the 24-month period referred to above, the Company's coverage will then terminate. We would request that you notify the Company in the event such other coverage is obtained. At the end of the 24-month period you will be eligible for COBRA coverage at your own expense, should you so elect.

For the 24-month period beginning July 28, 2000, you will be provided, at no charge to you, with a term life insurance policy in the amount of \$1,350,000. If you obtain life insurance coverage through another employer prior to the end of the 24-month period, the Company's coverage will then terminate, and we would request that you notify the Company in the event such alternative coverage is obtained.

Terry E. London  
August 10, 2000  
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The Company will transfer to you title to the Company car in your possession on July 28, 2000. You will be responsible for payment of title transfer fees, sales tax and registration costs. You shall also be entitled to retain at no charge the personal computer, cellular telephone and Palm Pilot in your possession on July 28.

Any other employee benefits or perquisites of employment to which you are entitled after the Effective Date will be paid or provided only in conformity with the provisions of the applicable Company employee benefit plans or policies. The premium payments, the transfer of the Company car, and the transfer of various smaller items to you should constitute taxable income to you. In addition, the Company will withhold from any amounts payable under this letter agreement all taxes or assessments as required by applicable federal, state or local laws or regulations.

The foregoing payments and benefits have been provided in view of your past services to the Company and for the agreements you have made herein.

In return for the foregoing, you have agreed to the following. You agree to maintain in strict confidence all confidential information, proprietary information and trade secrets of the Company (such as customer lists, sales and pricing data, and other competitive information) of which you became aware through or during your employment with the Company.

Second, you do, both for yourself and for your dependents, successors, assigns, heirs, executors, and administrators, release and forever discharge the Company, its successors and assigns, and its officers, directors, agents, employees, shareholders, subsidiaries, and related or affiliated companies ("Releasees") from any and all claims, demands, damages, actions, and causes of action whatsoever (including claims for attorneys' fees) which you now have or may have in the future against the Releasees arising from or in any way related to your employment with the Company or your resignation of employment, including, but not limited to, claims for severance or other termination pay and benefits. This second undertaking by you is conditioned upon the Company's fulfillment of its obligations as set forth in this letter.

Third, you will cooperate fully with the Company and with the Company's counsel in connection with any present or future actual or threatened litigation or administrative proceedings involving the Releasees relating to events or conduct occurring (or claimed to have occurred) during the period of your employment or related to your employment with the Company. This undertaking includes making yourself reasonably available for interviews and discussions with the Company's counsel as well as for depositions and trial testimony. You will, of course, be reimbursed for your reasonable travel, telephone, and similar expenses incurred in connection with such cooperation, which the Company shall endeavor to schedule at times not conflicting with the reasonable requirements of any future employer.

You and the Company mutually agree not to disclose the terms of this letter agreement to any third party unless required by applicable law, regulation or judicial action.

This letter agreement will inure to the benefit of and be binding upon the Company, its successors and assigns, and you and your heirs and personal representatives. It also reflects our final agreements with respect to your termination.

Terry E. London  
August 10, 2000  
Page 3

I have enclosed two originals of this letter agreement. If it accurately reflects our agreements, I would appreciate it if you would sign both of the enclosed copies and return a signed copy to my attention.

I am grateful to you for your service to the Company. It was a pleasure to have been associated with you, and I sincerely wish you the best in all your future endeavors.

Yours truly,

/s/ E. K. Gaylord II

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E. K. Gaylord II

EKG/jjc  
Enclosures

I acknowledge and agree to the terms of the foregoing letter.

/s/ Terry E. London

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Terry E. London

August 11, 2000

## EMPLOYMENT AGREEMENT

THIS AGREEMENT, dated as of September 14, 2000 (the "Effective Date") by and between GAYLORD ENTERTAINMENT COMPANY, a Delaware corporation having its corporate headquarters at One Gaylord Drive, Nashville, Tennessee 37214 (together with all subsidiaries and other affiliates referred to as "the Company") and DENNIS J. SULLIVAN.

WHEREAS, the Company desires to employ Executive and to enter into an agreement embodying the terms of such employment and Executive desires to accept such employment and enter into such an agreement;

NOW, THEREFORE, in consideration of the premises and mutual covenants herein and for other good and valuable consideration, the parties agree as follows:

1. Term of Employment; Executive Representation.

(a) Employment Term. The term of Executive's employment hereunder shall commence on the Effective Date and shall continue for a period of six (6) months, unless sooner terminated as hereinafter provided (the "Employment Term").

(b) Executive Representation. Executive hereby represents to the Company that the execution and delivery of this Agreement by Executive and the Company and the performance by Executive of his duties hereunder shall not constitute a breach of, or otherwise contravene, the terms of any employment agreement or other agreement or policy to which Executive is a party or otherwise bound.

2. Position; Reporting Responsibility; Employment Responsibilities.

(a) During the Employment Term: (i) Executive's title shall be President and Chief Executive Officer (and he may have other corporate titles in various corporate entities affiliated with the Company as appropriate); (ii) Executive shall principally perform his duties to the Company from the Company's offices in the Nashville, Tennessee metropolitan area (subject to normal and customary travel requirements in the conduct of the Company's business); and, (iii) Executive shall report to the Board of Directors of the Company.

(b) During the Employment Term, Executive shall perform such duties as shall be determined from time to time by the Board of Directors of the Company.

(c) During the Employment Term, Executive will devote his full business time and best efforts to the performance of his duties hereunder and will not engage in any other business, profession or occupation for compensation or otherwise which would conflict with the rendition of such services either directly or indirectly, without the prior written consent of the Company.

3. Base Salary. During the Employment Term, unless terminated for Cause or by Executive without Good Reason, the Company shall pay Executive a base salary (the "Base Salary") of \$300,000, payable in regular installments in accordance with the Company's usual payment practices.

4. Annual Bonus. For the Employment Term, Executive shall be eligible for a cash bonus in an amount up to 70% of his Base Salary; provided that such bonus shall be awarded in whole or in part at the discretion of the Compensation Committee of the Board of Directors of the Company based upon the following performance criteria, each of which shall account for up to 25% of the total possible bonus:

(a) Achievement of operating cash flow in excess of \$13.3 million as of the close of the fourth quarter 2000 and achievement of operating cash flow in excess of -\$1.1 million as of the close of the first quarter 2001.

(b) Reduction of the Company's monthly cash drain to \$3 million or less by the end of the first quarter 2001.

(c) Completion of the wrap financing for the Florida Hotel Project by the close of the fourth quarter 2000, and completion of financing arrangements for the take out of the bridge loan by the close of the first quarter 2001.

(d) Completion of divestitures of unwanted assets as approved by the Board of Directors in a satisfactory and timely manner.

5. Stock Option Grant. The Company hereby grants to Executive options to purchase 10,000 shares of common stock of the Company ("Company Common Stock") (the "Stock Options"). The Stock Options shall (i) be granted pursuant to the Company's 1997 Omnibus Stock Option and Incentive Plan, and as may hereinafter be further amended; (ii) be subject to the terms of a stock option agreement between the Company and Executive in the form prescribed for Company executives generally; (iii) vest as of the date of this Agreement, (iv) be exercisable at the closing price of the Company's Common Stock as reported in the Wall Street Journal for the trading day immediately preceding October 19, 2000; and (v) expire at the close of business on September 16, 2003.

6. Employee Benefits; Vehicle Allowance.

(a) During the Employment Term, Executive shall be entitled to participate in and enjoy the benefits of the Company Health Insurance Plan and any other benefit plan or plans which may be in effect or instituted by the Company for the benefit of senior executives generally and for which the Executive is otherwise eligible.

(b) During the Employment Term, Executive shall be entitled to receive from the Company a vehicle allowance of \$600 per month.

(c) Executive shall be entitled to two and one-half weeks of paid vacation during the Employment Term.

7. Business Expenses. During the Employment Term, the Company shall reimburse Executive, in accordance with the Company's policies and procedures, for all reasonable expenses incurred by Executive in connection with the performance of his duties for the Company.



8. Termination. The Employment Term and Executive's employment hereunder may be terminated by the Company at any time and for any reason. Notwithstanding any other provision of this Agreement, the provisions of this Section 8 shall exclusively govern Executive's rights upon termination of employment with the Company.

(a) Termination by the Company Without Cause or Resignation by Executive for Good Reason.

(i) The Employment Term and Executive's employment hereunder may be terminated by the Company without Cause (as defined in Section 8(b)) or by Executive's resignation for Good Reason (as defined immediately below). Following termination of Executive's employment by the Company without Cause (other than by reason of Executive's death or Permanent Disability) or by Executive's resignation for Good Reason, except as set forth in this Section 8(a), Executive shall have no further rights to any compensation or any other benefits under this Agreement. It shall be deemed a termination without Cause if Executive is terminated prior to the end of the Employment Term as a result of the employment of a permanent President and Chief Executive Officer for the Company.

(ii) For purposes of this Agreement, "Good Reason" shall mean: (A) a reduction in Executive's Base Salary or (B) any other breach by the Company of any material provision of this Agreement; provided that none of the events described in clauses (A) or (B) of this Section 8(a)(ii) shall constitute Good Reason unless Executive shall have notified the Company in writing describing the events which constitute Good Reason and then only if the Company shall have failed to cure such event within thirty days after the Company's receipt of such written notice.

(iii) If Executive's employment is terminated by the Company without Cause (other than by reason of death or Permanent Disability) or if Executive resigns for Good Reason, Executive shall continue to receive the Base Salary for the remainder of the Employment Term; payable as if Executive were still employed by the Company. In addition, Executive shall be entitled to receive accrued but unpaid Base Salary through the date of termination, any cash bonus earned as of the date of termination, unpaid vacation pay, unreimbursed expenses incurred pursuant to Section 7, and any other benefits owed to Executive pursuant to any written employee benefit plan or policy of the Company. The exercise of Executive's Stock Options shall be governed by the Company's Omnibus 1997 Stock Option and Incentive Plan, as amended by the terms of this Agreement.

(b) Termination by the Company for Cause or Resignation by Executive without Good Reason.

(i) At the option of the Company, Executive's employment may be terminated by written notice to Executive upon the occurrence of any one or more of the following events (each, a "Cause"):

(1) any action by Executive constituting fraud, self-dealing, embezzlement, or dishonesty in the course of his employment hereunder;

(2) any conviction of Executive of a crime involving moral turpitude;

(3) any action of Executive, regardless of its relation to his employment, that has brought or reasonably could bring the Company into substantial public disgrace or disrepute;

(4) failure of Executive after reasonable notice promptly to comply with any valid and legal directive of the Board of Directors;

(5) a material breach by Executive of any of his obligations under this Agreement and failure to cure such breach within ten (10) days of his receipt of written notice thereof from the Company; or

(6) a failure by Executive to perform adequately his responsibilities under this Agreement as demonstrated by objective and verifiable evidence showing that the business operations under Executive's control have been materially harmed as a result of Executive's gross negligence or willful misconduct.

(ii) Upon the termination of Executive's employment by the Company for Cause or by Executive without Good Reason, Executive shall be entitled to an amount equal to the accrued but unpaid Base Salary through the date of termination plus any unpaid vacation pay, unreimbursed expenses incurred pursuant to Section 7, and any other benefits owed to Executive pursuant to any written employee benefit plan or policy of the Company. All Stock Options, to the extent not theretofore exercised, shall terminate on the date of termination of employment under this Section 8(b).

(iii) Following such termination of Executive's employment by the Company for Cause or resignation by Executive without Good Reason, except as set forth in this Section 8(b), Executive shall have no further rights to any compensation or any other benefits under this Agreement.

(c) Permanent Disability or Death.

(i) The Employment Term and Executive's employment hereunder shall terminate upon his death and may be terminated by the Company if Executive becomes physically or mentally incapacitated (such incapacity is hereinafter referred to as "Permanent Disability"). As used herein, the term "Permanent Disability" shall mean a physical or mental incapacity or disability which renders Executive unable substantially to render the services required hereunder for a period of thirty (30) consecutive days.

(ii) Upon termination of Executive's employment hereunder for either Permanent Disability or death, Executive or his estate (as the case may be) shall be entitled to receive an amount equal to the accrued but unpaid Base Salary through the date of termination. Executive or his estate shall be entitled to any unpaid vacation pay, unreimbursed expenses incurred pursuant to Section 7, and any other benefits owed to Executive pursuant to any written employee benefit plan or policy of the Company, excluding benefits payable pursuant to any plan beneficiary pursuant to a contractual beneficiary designation by Executive. Upon a determination of Permanent Disability, payment of Executive's salary, bonus and other benefits (except those in which he is then vested) shall cease and Executive shall be maintained as an inactive employee and shall be entitled to any long-term disability benefits provided by the Company. The exercise of Executive's Stock Options shall be governed by the Company's Omnibus 1997 Stock Option and Incentive Plan, as amended by the terms of this Agreement.

(iii) Following such termination of Executive's employment due to death or Permanent Disability, except as set forth in this Section 8(c), Executive shall have no further rights to any compensation or any other benefits under this Agreement.

(d) Notice of Termination. Any purported termination of employment by the Company or by Executive (other than due to Executive's death) shall be communicated by written Notice of Termination to the other party hereto. For purposes of this Agreement, a "Notice of Termination" shall mean a notice which shall indicate the specific termination provision in this Agreement relied upon and shall set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of employment under the provision so indicated.

#### 9. Confidentiality; Non-Solicitation of Employees, Others.

(a) Nondisclosure; Etc. Executive agrees that he shall not commit any act, or in any way assist others to commit any act, which could reasonably be expected to injure the Company or any of its businesses. Without limiting the generality of the foregoing, Executive recognizes and acknowledges that all information about the Company or relating to any of its respective products, services, or any phase of its operations, business, or financial affairs which is not a matter of public record, including without limitation, trade secrets, contracts with agents, artists, distributors, or producers, computer programs, financial information of every type and kind, plans, and strategies, ("Confidential Information") is not generally known to the Company's competitors and is valuable, special, and unique to the business of the Company. Accordingly, Executive shall not, directly or indirectly, use any such Confidential Information for his own benefit, divulge, disclose, or make accessible any such Confidential Information or any part thereof to any person, firm, corporation, association, or other entity for any reason or purpose whatsoever (other than in the course of carrying out his duties hereunder), or render any services to any person, firm, corporation, association, or other entity to whom any such Confidential Information, in whole or in part, has been disclosed or is threatened to be disclosed by or at the instance of Executive. Confidential Information shall not include any information which is or becomes generally available to the public other than as a result of disclosure in violation of this Agreement.

(b) Property of Company. All memoranda, notes, lists, records, and other documents (and all copies thereof) constituting Confidential Information made or compiled by Executive or made available to Executive shall be the Company's property, shall be kept confidential in accordance with the provisions of this Section 9, and shall be delivered to the Company at any time on request and in any event upon the termination of Executive's employment for any reason.

(c) Non-Solicitation of Employees, Others. During the Employment Term, and for a period of one (1) year thereafter, Executive shall not, without the prior written consent of the Company, directly or indirectly, solicit or encourage any employee of the Company to leave the employment of the Company or hire any employee who has left the employment of the Company or any of its affiliates, nor shall Executive directly or indirectly, knowingly solicit or encourage any artist, producer, writer, distributor, customer, client, agent, or account of the Company to engage the services of Executive or any person or entity (other than the Company or its affiliates) in which Executive is a partner, shareholder, director, officer, employee, principal, member, manager, agent, trustee, or consultant or engaged in any other relationship or capacity.

(d) Relief. Since the Company shall be irreparably damaged if the provisions of this Section 9 are not specifically enforced, the Company shall be entitled to an injunction or any other appropriate decree of specific performance (without the necessity of posting any bond or other security in connection therewith) restraining any violation of Executive's covenants or failure of Executive to fulfill such covenants under this Section 9. Such remedies shall not be exclusive and shall be in addition to any other remedy which the Company may have for any breach or threatened breach of this Section 9 by Executive.

#### 10. Miscellaneous.

(a) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee without reference to principals of conflicts of laws.

(b) Entire Agreement/Amendments. This Agreement contains the entire understanding of the parties with respect to the employment of Executive by the Company. There are no restrictions, agreements, promises, warranties, covenants or undertakings between the parties with respect to the subject matter herein other than those expressly set forth herein. This Agreement may not be altered, modified, or amended except by written instrument signed by the parties hereto.

(c) No Waiver. The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver of such party's rights or deprive such party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

(d) Severability. In the event that any one or more of the provisions of this Agreement shall be or become invalid, illegal or unenforceable in any respect, the validity,

legality and enforceability of the remaining provisions of this Agreement shall not be affected thereby.

(e) Assignment. This Agreement shall not be assignable by Executive. This Agreement may be assigned by the Company to a company which is a successor in interest to substantially all of the business operations of the Company. Such assignment shall become effective when the Company notifies the Executive of such assignment or at such later date as may be specified in such notice. Upon such assignment, the rights and obligations of the Company hereunder shall become the rights and obligations of such successor company, provided that any assignee expressly assumes the obligations, rights and privileges of this Agreement.

(f) Headings. The section headings contained herein are for the purposes of convenience only and are not intended to define or limit the contents of the sections.

(g) Successors; Binding Agreement. This Agreement shall inure to the benefit of and be binding upon personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees.

(h) Notice. For the purpose of this Agreement, notices and all other communications provided for in the Agreement shall be in writing and shall be deemed to have been duly given when delivered or mailed by United States registered mail, return receipt requested, postage prepaid, addressed to the respective addresses set forth below, or to such other address as either party may have furnished to the other in writing in accordance herewith, except that notice of change of address shall be effective only upon receipt.

If to the Company, to:

Gaylord Entertainment Company  
One Gaylord Drive  
Nashville, Tennessee 37214  
Attention: Rod Connor  
Facsimile Number: (615) 316-6312

If to Executive: To the most recent address of Executive set forth in the personnel records of the Company.

(i) Counterparts. This Agreement may be signed in counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

(j) No Third Party Beneficiary. This Agreement shall not confer any rights or remedies upon any person or entity other than the parties hereto and their respective successors and permitted assigns.

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

/s/ Dennis J. Sullivan  
-----  
Dennis J. Sullivan

GAYLORD ENTERTAINMENT COMPANY

By: /s/ E. K. Gaylord II  
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Title: Chairman  
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September 15, 2000

Mr. Tim DuBois  
4925 Tyne Valley Boulevard  
Nashville, TN 37220

Dear Tim:

This letter is intended to summarize our agreement regarding your request that you and Gaylord Entertainment Company (the "Company") sever your employment relationship and terminate you as Executive Vice President of Gaylord Entertainment Company (the "Company") and as President of its Creative Content Group as of September 8, 2000 ("Effective Date").

The Company agrees to provide certain payments and benefits to you in recognition of your service to the Company and in consideration for entering into this agreement. First, promptly upon execution of this letter agreement, the Company will pay you your normal salary, automobile allowance, and accrued but unused vacation through the Effective Date (\$52,224), and you will be reimbursed for any reasonable and customary business expenses incurred by you through the Effective Date. You will also be paid the vested amount currently held in your account under the Company's Supplemental Deferred Compensation Plan (approximately \$62,600) within thirty (30) days after the date hereof. You will also be eligible for COBRA coverage at your own expense, which will allow you to maintain your current medical and dental coverage for a period of up to eighteen months, should you so elect.

In addition, the Company will pay to you (i) the remaining balance of your Signing Bonus, as that term is defined in your Executive Employment Agreement dated February 15, 2000 (the "Employment Agreement"), in the amount of \$520,000 plus accrued earnings of approximately \$19,000, which amount is currently held by the Company in Account A of the Rabbi Trust established pursuant to your Employment Agreement within thirty (30) days after the date hereof, and (ii) the prorated portion of your Guaranteed Cash Bonus for the current Contract Year through the Effective Date, in the amount of \$221,130 promptly upon execution of this letter agreement.

The foregoing payments and benefits have been provided in view of your past services to the Company and for the agreements you have made herein.

In return for the foregoing, you have agreed to the following. You agree that you will honor Section 11 of your Employment Agreement regarding the nondisclosure of confidential information and that such provision will remain in full force and effect. You also agree that for a period of one (1) year from the date of this letter agreement you will not, without the Company's prior written consent, directly or indirectly, solicit or encourage any employee of the Company or any of its affiliates to leave the employment of the Company or any of its affiliates, nor will you hire any employee who has left the employment of the Company or any of its affiliates; provided, however, that with respect to the former Arista employees and artists listed on Exhibit A, you will be bound by the procedures and agreements set forth on Exhibit A. You will also not, for such one (1) year period, directly or indirectly, without the prior written consent of the Company, solicit or encourage any artist or writer who is under contract with the Company or any of its affiliates or any other person whose relationship with entities that comprise the Creative Content Group of the Company would be materially impaired as a result thereof, to engage your

services or the services of any person or entity in which you are an employee, partner, shareholder, director, officer, principal, agent or consultant.

Because the Company would be irreparably damaged if the provisions of the immediately foregoing paragraph were not specifically enforced, the Company shall be entitled to an injunction or any other appropriate decree of specific performance (without the necessity of posting any bond or other security in connection therewith) restraining any violation of any undertaking set forth in the paragraph immediately above. These remedies would be in addition to any other relief the Company may have for any breach or threatened breach of any such undertaking. If any provision of this letter agreement is held to be unenforceable because of its scope, it is the intention of the parties that the court making such determination shall modify such provision and that such modified provision shall then be applicable.

Second, you do, both for yourself and for your dependents, successors, assigns, heirs, executors, and administrators, release and forever discharge the Company, its successors and assigns, and its officers, directors, agents, employees, shareholders, subsidiaries, and related or affiliated companies ("Releasees") from any and all claims, demands, damages, actions, and causes of action whatsoever (including claims for attorneys' fees) ("Claims") which you now have or may have in the future against the Releasees arising from or in any way related to your employment with the Company or your resignation of employment, including, but not limited to, claims for severance or other termination pay and benefits, or any obligation under your Employment Agreement or the Rabbi Trust. The Company, in turn, on behalf of itself and the Releasees, releases and discharges you from any and all Claims which the Releasees now have or may have in the future against you arising from or in any way related to your employment with the Company or your resignation of employment. Of course, neither you nor the Company is releasing any Claim arising out of the non-performance of any obligation under this letter agreement.

Third, you will make yourself reasonably available to the Company, at its request, for a period of thirty (30) days from the Effective Date to consult with its representatives regarding matters related to the Creative Content Group or to your employment with the Company.

In addition, at any time in the future you will cooperate fully with the Company and with the Company's counsel in connection with any present or future actual or threatened litigation or administrative proceedings involving the Releasees relating to events or conduct occurring (or claimed to have occurred) during the period of your employment or related to your employment with the Company. This undertaking includes making yourself reasonably available for interviews and discussions with the Company's counsel as well as for depositions and trial testimony. You will, of course, be reimbursed for your reasonable travel, telephone, and similar expenses incurred in connection with such cooperation, which the Company shall schedule at times not conflicting with your then prior commitments or the reasonable requirements of any future employer.

Other than the obligations set out in this letter, you agree that the Company has no further obligation to you arising from your Employment Agreement or the Rabbi Trust. You understand and agree that the Rabbi Trust shall be terminated pursuant to its terms as of the Effective Date, and hereby consent to such termination. In this regard, you agree to execute and deliver the Notice to Trustee attached as Exhibit A. You further acknowledge and agree that all property held in the Rabbi Trust shall be returned to the Company. Other than the payment directly by the Company of the balance of your Signing Bonus plus accrued earnings pursuant to this agreement, you acknowledge that you are not entitled to any property currently held in the Rabbi Trust, including the restricted shares of the Company's Stock held in Account B of the Rabbi Trust and



the shares of Viacom Class C Preferred Stock held in Account C of the Rabbi Trust. You also acknowledge and agree that all options granted to you to purchase shares of Company stock are hereby canceled.

Any other employee benefits or perquisites of employment to which you are entitled after the Effective Date will be paid or provided only in conformity with the provisions of the applicable Company employee benefit plans or policies. In addition, the Company will withhold from any amounts payable under this letter agreement all taxes or assessments as required by applicable federal, state or local laws or regulations.

You and the Company mutually agree not to disclose the terms of this letter agreement to any third party unless required by applicable law, regulation or judicial action. In addition, you and the Company each agree not to disparage each other.

Finally, the Company will prepare and release a press release regarding your termination and will provide you with a copy of such press release before it is issued.

This letter agreement will inure to the benefit of and be binding upon the Company, its successors and assigns, and you and your heirs and personal representatives. It also reflects our final agreements with respect to your resignation.

I have enclosed two originals of this letter agreement. If it accurately reflects our agreements, I would appreciate it if you would sign both of the enclosed copies and return a signed copy to my attention.

I am grateful to you for your service to the Company. It was a pleasure to have been associated with you, and I sincerely wish you the best in all your future endeavors.

Yours truly,

/s/ E. K. Gaylord II

-----  
E. K. Gaylord II

EKG/jjc  
Enclosures

I acknowledge and agree to the terms of the foregoing letter.

/s/ James DuBois

September 29, 2000

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James "Tim" DuBois

NOTICE TO TRUSTEE

Notice is hereby given that, pursuant to Section 2(c) of the Deferred Compensation Rabbi Trust for the Benefit of James "Tim" DuBois, dated March 10, 2000 (the "Rabbi Trust"), by and between Gaylord Entertainment Company ("Company") and SunTrust Bank, Nashville, N.A. ("Trustee"), the Company has elected to make payment of benefits directly to Mr. DuBois under the terms of his Employment Agreement (as that term is defined in the Rabbi Trust).

All payments of benefits due Mr. DuBois pursuant to the Employment Agreement have been or will within 30 days be made pursuant to a letter agreement between Mr. DuBois and the Company of even date herewith, as acknowledged by Mr. DuBois below. The Company therefore directs Trustee, pursuant to Sections 4 and 12(b) of the Rabbi Trust, that the Rabbi Trust has been terminated and directs Trustee to return to the Company all assets held in the Rabbi Trust.

GAYLORD ENTERTAINMENT COMPANY

By: /s/ E. K. Gaylord II  
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Its: Chairman

Attest: /s/ Thomas J. Sherrard  
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Date: 9/28/00

Agreed and acknowledged:

/s/ James DuBois  
-----  
James "Tim" DuBois

Attest: /s/ P. DuBois  
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Date: 9/29/00

With respect to the following former Arista employees, Tim DuBois agrees that he will not, directly or indirectly, solicit or encourage any of them to leave the employment of the Company or any of its affiliates while they are still employed by the Company or any of its affiliates. If, however, the Company or any of its affiliates shall determine to terminate the employment relationship with any of the following employees, and shall have notified such employee of that fact in writing, Tim DuBois shall thereafter be entitled to solicit and/or hire such employee.

The employees to which the preceding paragraph applies are:

Steve Williams - Vice President A&R

Cheryl Horkoff - Manager, Production & Business Affairs

Page Kelley - Vice President, Business Affairs

Susan Heard - Vice President, Production

Maude Gilman/Clapham - Vice President, Visual Imaging

Trace Samczyk - Manager, Production

Linda Engbrenghof - Sr. Director, Online Business Development

Scott Robinson - President, Dualtone Records

Dan Herrington - General Manager, Dualtone Records

J. R. Robertson

Wade Hunt

With respect to the group "Bering Strait," Tim DuBois shall not, directly or indirectly, solicit or attempt to enter into any contract with such group unless and until the Company or any of its affiliates shall elect to terminate the contract currently in existence and shall have notified such group in writing of such intent to terminate.

With respect to Clint Daniels, Tim DuBois may solicit and/or engage such artist solely in his capacity as an artist, and any such solicitation or engagement shall not include Clint Daniels' services as a songwriter.

February 14, 2001

Carl Kornmeyer, President  
Music, Media & Entertainment Group  
Gaylord Entertainment Company  
One Gaylord Drive  
Nashville, TN 37214

Dear Carl:

The Company believes at this time that it is in its best interests and in the interest of its shareholders that key management employees are given reasonable assurances of employment security. The Company intends to rely on you and your leadership in the performance of your duties during a period that may involve divestitures and material changes to various business units in the Company. In addition, the Company is mindful of certain representations previously made to you about continued employment at a time when you had the right to certain severance payments under a change of control agreement with the Company. You, in turn, desire to maintain your employment with the Company and devote your best efforts to the service of the Company.

Accordingly, the Company agrees that in the event your employment with the Company is terminated without cause (as defined below) or if you should leave the employment of the Company for good reason (as defined below) the Company will pay to you, promptly following such termination, the amount of \$1,585,965 in one lump sum payment as severance compensation. It is agreed that this lump sum cash payment will not be reduced by any compensation received by you from any other source for services rendered following your termination. It is understood that the foregoing lump sum payment will not impair or otherwise affect your rights under any of the Company's benefit plans or under its 1997 Omnibus Stock Option and Incentive Plan or with respect to any other non-salary and non-bonus severance benefits customarily provided by the Company to terminating employees. Moreover such payment will not preclude you from receiving your accrued and unpaid salary, bonus and vacation pay up to the date of such termination. It does, however, represent the Company's entire obligation with respect to any severance payment that may otherwise be payable to you at the time of termination, and you agree and acknowledge that the Company's payment of the lump sum amount referred to above will satisfy the Company's obligation to you with respect to any and all

such severance payments. You may elect to receive the severance compensation provided either by this letter or by any change of control agreement you may have with the Company, but not both.

For purposes of this letter a termination without cause would be any termination by the Company not precipitated by any action on your part constituting fraud or dishonesty, your conviction of a crime involving moral turpitude, any action by you that has brought or could reasonably bring the Company into substantial public disgrace or dispute, or your failure after reasonable notice promptly to comply with any valid and legal directive of the Company's Board of Directors or the CEO. As used in the foregoing paragraph termination by you for good reason would mean your transfer by the Company to a business location outside of the Nashville Metropolitan area or a reduction of your authority and responsibility below that level currently vested in you.

If you are in accord with the provisions of this letter, I would request that you execute a copy in the space provided below and return it to me.

Yours truly,

/s/ Dennis J. Sullivan, Jr.

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Dennis J. Sullivan, Jr., President  
and Chief Executive Officer

I acknowledge and agree with the provisions of this letter.

/s/ Carl Kornmeyer

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Carl Kornmeyer

2/14/01

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Date

## SEVERANCE AGREEMENT

AGREEMENT between Gaylord Entertainment Company, a Delaware corporation ("GEC"), and Denise Wilder Warren (the "Key Employee").

## W I T N E S E T H

WHEREAS, the Board of Directors of GEC (the "Board") believes that, in the event of a threat or occurrence of a "Change of Control" (as defined hereafter) of GEC, it is in the best interest of GEC and its present and future shareholders that the business of GEC be continued with a minimum of disruption, and that such objective will be achieved if GEC key management employees are given reasonable assurances of employment security during the period of uncertainty often associated with Change of Control; and

WHEREAS, GEC believes the giving of such assurances by GEC will enable it (a) to secure the continued services of both its key operational and management employees in the performance of both their regular duties and such extra duties as may be required of them during such period of uncertainty, (b) to be able to rely on such employees to manage and maintain their focus on the affairs of GEC during any such period, and (c) to have the ability to attract new key employees as needed; and

WHEREAS, the Board has approved entering into severance agreements with certain key management employees of GEC in order to achieve the foregoing objectives; and

WHEREAS, Key Employee is a key management employee of GEC or one of its subsidiaries;

NOW, THEREFORE, GEC and Key Employee agree as follows:

1. CHANGE OF CONTROL. For the purposes of this Agreement, a "Change of Control" shall be deemed to have taken place if: (i) any person or entity, including a "group" as defined in Section 13(d)(3) of the Securities Exchange Act of 1934, other than GEC, a wholly-owned subsidiary thereof or any employee benefit plan of GEC or any of its subsidiaries, and other than E. L. Gaylord or any member of his immediate family or any affiliate of Mr. Gaylord or any member of his immediate family, hereafter becomes the beneficial owner of GEC securities having 40% or more of the combined voting power of the then outstanding securities of GEC that may be cast for the election of directors of GEC (other than as a result of an issuance of securities initiated by GEC in the ordinary course of business); or (ii) as the result of, or in connection with, any cash tender or exchange offer, merger or other business combination, sale of assets or contested election, or any combination of the foregoing transactions, 100% of the combined voting power of the outstanding securities of GEC entitled to vote generally in the election of directors of GEC prior to any such transaction is reduced to less than a majority of the combined voting power of the outstanding securities of GEC or any successor corporation or entity entitled to vote generally in the election of directors immediately after such transaction; or (iii) during any period of two consecutive years, individuals who at the beginning of any such period constitute the Board of Directors of GEC cease for any reason to constitute at least a majority thereof, unless the election, or the nomination for election by GEC's shareholders, of each director of GEC first elected during such period was approved by a vote of at least two-thirds of the directors of GEC then still in office who were

directors of GEC at the beginning of any such period. Upon a Change of Control of GEC while the Key Employee is still an employee of GEC, this Agreement and all of its provisions shall become operative immediately.

2. EMPLOYMENT. GEC and Key Employee hereby agree that, if Key Employee is in the employ of GEC on the date on which a Change of Control occurs (the "Change of Control Date"), GEC will continue to employ Key Employee and Key Employee will remain in the employ of GEC, for the period commencing on the Change of Control Date and ending on the Second anniversary of such date (the "Employment Period"), to exercise such authority and perform such duties as are commensurate with the authority being exercised and duties being performed by the Key Employee immediately prior to the Change of Control Date. Nothing expressed or implied in this Agreement shall create any right or duty on the part of GEC or the Key Employee to have the Key Employee remain in the employment of GEC prior to any Change in Control, provided; however, that any termination of employment of the Key Employee or the removal of the Key Employee from the office or position in GEC following the commencement of any discussion with a third person that ultimately results in a Change in Control with that or another person shall be deemed to be a termination or removal of the Key Employee after a Change in Control for purposes of this Agreement.

3. COMPENSATION AND BENEFITS. During the Employment Period, GEC will (a) continue to pay the Key Employee a salary at not less than the amount paid to Key Employee on the Change of Control Date, (b) pay the Key Employee cash bonuses not less in amount than 60% of the average of cash bonuses paid during the two 12-month periods preceding the Change of Control Date, (c) continue employee benefit programs to or for the benefit of Key Employee and his or her beneficiaries at levels in effect on the Change of Control Date as more particularly described in Section 7, and (d) pay to Key Employee any Additional Amount determined pursuant to Section 4.

4. TAX REIMBURSEMENT PAYMENT.

(a) Notwithstanding anything to the contrary contained in this Agreement, in any plan of GEC or its affiliates, or in any other agreement or understanding, GEC will pay to Key Employee, at the times hereinafter specified, an amount (the "Additional Amount") equal to the excise tax under Section 4999 of the Internal Revenue Code of 1986, as amended (the "Code"), if any, incurred or to be incurred by Key Employee by reason of the payments under this Agreement, payments under the supplemental executive retirement plan, acceleration of vesting of stock options or restricted stock granted under the 1997 Stock Option and Incentive Plan, or any other payments under any plan, agreement or understanding between Key Employee and GEC or its affiliates, constituting Excess Parachute Payments (as defined below), plus all excise taxes and federal, state and local income taxes incurred or to be incurred by the Key Employee with respect to receipt of the Additional Amount. For purposes of this Agreement, the term "Excess Parachute Payment" shall mean any payment or any portion thereof which would be an "excess parachute payment" within the meaning of Section 280G(b) of the Code, and which would result in the imposition of an excise tax on the Key Employee under Section 4999 of the Code. Attached hereto as Exhibit A is an example illustrating the computation of the Additional Amount.

(b) All determinations required to be made regarding the Additional Amount, including whether payment of any Additional Amount is required and the amount of any Additional Amount, shall be made by the independent accounting firm which is advising

GEC (the "Accounting Firm"), and the Accounting Firm shall provide detailed support calculations to GEC and Key Employee within one hundred twenty (120) days following the "Termination Event," as such term is defined in Section 5, below. In computing taxes, the Accounting Firm shall use the highest marginal federal, state and local income tax rates applicable to the Key Employee for the year in which the Additional Amount is to be paid (or if those tax rates are unknown, for the year in which the calculation is made) and shall assume the full deductibility of state and local income taxes for purposes of computing federal income tax liability. The portion of the Additional Amount based on the excise tax as determined by the Accounting Firm to be due shall be paid to Key Employee no later than March 1 immediately following the calendar year in which a Termination Event occurs. The portion of the Additional Amount based on the excise tax as determined by the Accounting Firm to be due for each calendar year following the calendar year in which a Termination Event occurs during the Employment Period shall be paid to the Key Employee on or before March 1 immediately following the end of each such calendar year. If GEC determines that the excise tax for any year will be different from the amount originally calculated in the report of the Accounting Firm delivered within one hundred twenty (120) days following the Termination Event, then GEC shall provide to Key Employee detailed support calculations by the Accounting Firm specifying the basis for the change in the Additional Amount.

5. TERMINATION OF EMPLOYMENT.

(a) If, during the Employment Period, Key Employee's employment is terminated by GEC (or a subsidiary of GEC) or a successor thereto for other than gross misconduct<sup>1</sup>;

(b) or if

(i) there is a reduction in Key Employee's salary under Section 3(a), a reduction in Key Employee's bonus below the level set forth in Section 3(b), a reduction in Key Employee's benefits, or a material change in Key Employee's status, working conditions or management responsibilities, or

(ii) Key Employee is required to relocate his or her residence more than 100 miles from his or her city of employment,

and Key Employee voluntarily terminates his or her employment within 60 days of any such event, or the last in a series of events, then Key Employee shall be entitled to continue to receive those benefits described in Section 5(e) and to receive a lump sum payment ("Severance Compensation") equal to the sum of

(x) 150% of Key Employee's "Base Amount" as determined under paragraph (c) below, and

- - - - -  
 (1) For purposes of this Agreement, the term "gross misconduct" shall mean an intentional act of fraud or embezzlement, intentional wrongful damage to property of GEC, or intentional wrongful disclosure of material confidential information of GEC. No act or failure to act on the part of the Key Employee shall be deemed intentional unless determined by a final judicial decision to be done, or omitted to be done, by Key Employee not in good faith and without reasonable belief that his or her action or omission was in the best interest of GEC.



(y) any portion of the Additional Amount not theretofore paid, as described in paragraph (d) below.

The lump sum payment shall be subject to and reduced by all applicable federal and state withholding taxes and shall be paid to the Key Employee within 30 business days after his or her termination of employment. The termination of employment pursuant to Section 5(a) or 5(b) shall be referred to herein as a "Termination Event."

(c) The Base Amount for purposes of this Section 5 shall be Key Employee's base salary and bonuses paid to him or her during the 12-month period preceding the date of his or her termination of employment pursuant to paragraph (a). If Key Employee has not been employed for a 12-month period, his or her Base Amount shall be his or her annualized base salary at the rate then in effect and bonuses paid to Key Employee prior to the date of his or her termination of employment.

(d) The Additional Amount shall be determined in the same manner described in section 4, as illustrated in Exhibit A. At or prior to the time of payment of the Additional Amount (or the remainder thereof), GEC shall provide to Key Employee a report of the Accounting Firm, including detailed support calculations, describing its determination of the Additional Amount (or an updated report of the Accounting Firm to its report for the year in which the Termination Event occurs, if that report has already been provided to Key Employee). If GEC determines that no Additional Amount is due under this paragraph (c), it shall provide to Key Employee an opinion of the Accounting Firm that Key Employee will not incur an excise tax on any or all of the Severance Compensation, vesting of stock options, or other payments under any plan, agreement or understanding between Key Employee and GEC. Any such opinion shall be based upon the proposed regulations under Code Sections 280G and 4999 or substantial authority within the meaning of Code Section 6662.

(e) After termination of employment for which Key Employee is entitled to Severance Compensation, and continuing until the end of the Employment Period (i.e., the second anniversary of the Change of Control Date, or if later, during the extended term of this Agreement pursuant to Section 16), GEC shall maintain at its expense for the continued benefit of Key Employee and his or her dependents all medical, dental, basic life insurance, and basic accident insurance plans of GEC in which Key Employee or his or her dependents are entitled to participate pursuant to Section 7, provided that such continued participation is possible under the terms and provisions of such plans. In the event that the participation by Key Employee or his or her dependents in any such plan is barred, or if the benefits in any of the plans are reduced to a level below what they were on the Change of Control Date, GEC shall arrange to provide Key Employee and his or her dependents with benefits equivalent to those which they were receiving under such plans immediately prior to the Change of Control Date, such benefits to be provided at GEC's expense by means of individual insurance policies, or if such policies cannot be obtained, from GEC's assets. If Key Employee should accept employment with another employer and if Key Employee and/or his or her dependents should become covered under that employer's medical, dental, life insurance and accident insurance plans, or any of them, or if Key Employee and/or his or her dependents should obtain comparable coverage from any other source (e.g. spousal coverage), then effective on the date that such coverage commences, the obligation of GEC to provide any benefits under this Section 5(e) to Key Employee or his or her dependents shall terminate to the extent that

equivalent coverage is provided under the plans of the subsequent employer or otherwise obtained coverage.

The medical and dental benefits required to be provided pursuant to this Section 5(d) are not intended to be a substitute for any extended coverage benefits ("COBRA rights") described in Section 4980B of the Code, and such COBRA rights shall not commence until after the period of coverage specified in the first sentence of this Section 5(e) comes to an end.

(f) In the event of a dispute concerning the amount of Severance Compensation, including a dispute as to the calculation of the Additional Amount or the employee benefits to which Key Employee is entitled pursuant to the terms of this Agreement, which is not resolved within 60 days after the date of termination of employment, Key Employee may submit the resolution of the dispute to arbitration. Any arbitration pursuant to this Agreement shall be determined in accordance with the rules of the American Arbitration Association then in effect, by a single arbitrator if the parties shall agree upon one, or otherwise by three arbitrators, one appointed by each party, and a third arbitrator appointed by the two arbitrators selected by the parties, all arbitrators to come from a panel proposed by the American Arbitration Association. If any party shall fail to appoint an arbitrator within 30 days after it is notified to do so, then the arbitration shall be accomplished by a single arbitrator. Unless otherwise agreed by the parties hereto, all arbitration proceedings shall be held in Nashville, Tennessee. Each party agrees to comply with any award made in any such proceeding, which shall be final, and to the entry of judgment in accordance with applicable law in any jurisdiction upon any such award. The decision of the arbitrators shall be tendered within 60 days of final submission of the parties in writing or any hearing before the arbitrators and shall include their individual votes. If the Key Employee is entitled to any award pursuant to the determination reached in the arbitration proceeding that is greater than that proposed by GEC, he or she shall be entitled to payment by GEC of all attorneys' fees, costs (including expenses of arbitration), and other out-of-pocket expenses incurred in connection with the arbitration.

#### 6. INDEMNIFICATION.

(a) If Key Employee shall have to institute litigation brought in good faith to enforce any of his or her rights under the Agreement, GEC shall indemnify Key Employee for his or her reasonable attorney's fees and disbursements incurred in any such litigation.

(b) In the event that an excise tax is ever assessed by the Internal Revenue Service against Key Employee (or if GEC and Key Employee mutually agree that an excise tax is payable) by reason of the payments under this Agreement, payments under the supplemental executive retirement plan, acceleration of vesting of stock options or restricted stock granted under the GEC 1997 Stock Option and Incentive Plan, or any other payments under any plan, agreement or understanding between Key Employee and GEC or its affiliates, constituting Excess Parachute Payments, and if such excise tax was not included in the determination by the Accounting Firm of the Additional Amount that has been actually paid to Key Employee, GEC agrees to indemnify Key Employee by paying to Key Employee the amount of such excise tax, together with any interest and penalties, including reasonable legal and accounting fees and other out-of-pocket expenses incurred by Key Employee, attributable to the failure to pay such excise tax by the date it was originally due, plus all

federal, state and local income taxes incurred with respect to payment of the excise tax, calculated in a manner analogous to Exhibit A. This indemnification obligation shall survive the termination of the Employment Period and shall apply to all such excise taxes on Excess Parachute Payments, whether due before or after termination of employment, except that no such right of indemnification shall exist after termination of employment for gross misconduct (as defined pursuant to paragraph (a) of Section 5).

(c) If the excise tax for any year which is actually imposed on Key Employee is finally determined to be less than the amount taken into account in the calculation of the Additional Amount that was paid to Key Employee pursuant to Section 4 or Section 5, then Key Employee shall repay to GEC, at the time that the amount of such reduction in excise tax is finally determined, the portion of the Additional Amount attributable to such reduction (including the portion of the Additional Amount attributable to the excise tax and federal and state income taxes imposed on the Additional Amount being repaid by Key Employee, to the extent that such repayment results in a reduction in such excise tax, federal or state income tax), plus interest on the amount of such repayment at the rate provided in section 1274(b)(2)(B) of the Code.

7. NORMAL EMPLOYEE BENEFITS. During the Employment Period, Key Employee and his or her dependents shall be entitled to participate in any and all employee benefit plans maintained by GEC (or a subsidiary of GEC), or a successor thereto, which provide benefits for its executives and for its salaried employees generally, including, without limitation, its tax-qualified retirement plans, supplemental executive retirement plan, stock option and other stock award plans, and welfare benefit plans providing medical and dental benefits, group life insurance, disability benefits and accidental death and dismemberment insurance. Any future increases in benefits in any of such plans available to executives or salaried employees of GEC generally shall also be provided to Key Employee.

Nothing in this Agreement shall preclude GEC from amending or terminating any employee benefit plan, but it is the intent of the parties that Key Employee and his or her dependents shall be entitled during the Employment Period to the same level of benefits in all employee benefit plans as the level in effect in the respective plans of GEC on the Change of Control Date. In the case of the stock option and other stock award plans, the requirement that the same level of benefits be provided shall be satisfied if Key Employee enjoys at least the same reward opportunities as provided by GEC prior to the Change of Control Date. If any of the employee benefit plans are amended to reduce benefits to Key Employee or his or her dependents, or if Key Employee or his or her dependents become ineligible to participate in any such plans, GEC shall arrange to provide Key Employee and his or her dependents with benefits equivalent to those which they were receiving under such plans immediately prior to the Change of Control Date, such benefits to be provided at GEC's expense by means of individual insurance policies, or if such policies cannot be obtained, from GEC's assets.

8. CONFIDENTIALITY. Key Employee recognizes that he or she has or will have access to and may participate in the origination of non-public confidential information and will owe a fiduciary duty with respect to such information to GEC. Confidential information includes, but is not limited to, trade secrets, supplier information, pricing information, internal corporate planning, GEC secrets, methods of marketing, methods of showroom selection and operation, ideas and plans for development, historical financial data and forecasts, long range plans and strategies, and any other data or information of or concerning GEC that is not generally known to the public or in the industry

in which GEC is engaged. Key Employee agrees that from the date of this Agreement and throughout the Employment Period he or she will, except as specifically authorized by GEC in writing, maintain in strict confidence and will not use or disclose, other than disclosure made in the ordinary course of business of GEC or to other employees of GEC, any confidential information belonging to GEC. If Key Employee shall breach the terms of this Section 8, all of his or her rights under this Agreement shall terminate.

9. WITHHOLDING OF TAXES. GEC may withhold from any amounts payable under this Agreement all federal, state, city or other taxes as shall be required pursuant to any law or government regulations or ruling.

10. GOVERNING LAW. This Agreement shall be construed according to the laws of Tennessee, without giving effect to the principles of conflicts of laws of such State.

11. AMENDMENT; MODIFICATION; WAIVER. This Agreement may not be amended except by the written agreement of the parties hereto. No provisions of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing signed by Key Employee and GEC. No waiver by either party hereto at any time of any breach by the other party hereto or compliance with any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time.

12. BINDING EFFECT.

(a) This Agreement shall be binding on GEC, its successors and assigns. Should there be a consolidation or merger of GEC with or into another corporation, or a purchase of all or substantially all of the assets of GEC by another entity, the surviving or acquiring corporation will succeed to the rights and obligations of GEC under this Agreement.

(b) This Agreement shall inure to the benefit of and be enforceable by Key Employee's personal or legal representatives, executors, administrators, successors, heirs, distributees and/or legatees.

(c) This Agreement is personal in nature and neither of the parties hereto shall, without the consent of the other, assign, transfer or delegate this Agreement or any rights or obligations hereunder except as expressly provided in paragraphs (a) or (b) hereof. Without limiting the generality of the foregoing, Key Employee's right to receive payments hereunder shall not be assignable, transferable or delegable, whether by pledge, creation of a security interest or otherwise, other than by a transfer by will or by the laws of descent and distribution and, in the event of any attempted assignment or transfer contrary to this Section 13 (c), GEC shall have no liability to pay any amount so attempted to be assigned, transferred or delegated.

(d) GEC and Key Employee recognize that each party will have no adequate remedy at law for breach by the other of any of the agreements contained herein and, in the event of any such breach, GEC and Key Employee hereby agree and consent that the other shall be entitled to a decree of specific performance, mandamus or other appropriate remedy to enforce performance of this Agreement.

(e) Notwithstanding anything to the contrary contained in this Agreement, in any plan of GEC or its affiliates, or in any other agreement or understanding, GEC shall pay to Key Employee all amounts required to be paid hereunder (including the Additional Amount and Severance Compensation), as well as amounts required by the terms of any other plan, agreement or understanding (including the accelerated vesting of stock options and restricted stock upon a Change of Control), regardless of whether any such amounts or accelerated vesting constitute Excess Parachute Payments.

13. ENTIRE CONTRACT. This Agreement constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, express or implied with respect to the subject matter of this Agreement.

14. NOTICE. For all purposes of this Agreement, all communications provided for herein shall be in writing and shall be deemed to have been duly given when delivered or after three business days after having been mailed registered or certified mail, return receipt requested, addressed to the addresses set forth at the end of this Agreement or to such other address as any party furnishes in writing to the other party.

15. TERM. This Agreement shall be effective from the date of its execution by GEC and for the twenty-four (24) months next succeeding any Change of Control, and shall continue in effect from year to year after such twenty-four (24) month period, unless GEC shall notify Key Employee in writing 90 days in advance of an anniversary of its execution that the Agreement shall terminate or unless, prior to a Change of Control or the commencement of any discussion with a third person that ultimately results in a Change of Control, the Key Employee ceases for any reason to be an employee of GEC in which event this Agreement shall immediately terminate and be of no further effect. Notwithstanding the foregoing, the indemnification provisions of this Agreement contained in Section 6 shall survive until the expiration of the statute of limitations for assessment of any excise tax with regard to an Excess Parachute Payment on account of the Change of Control.

IN WITNESS WHEREOF the parties hereto have executed this Severance Agreement as of the \_\_\_\_\_ day of February, 2001.

GAYLORD ENTERTAINMENT COMPANY

KEY EMPLOYEE

DENISE WILDER WARREN

By: /s/ Dennis J. Sullivan, Jr

/s/ Denise Wilder Warren

-----  
Dennis J. Sullivan, Jr.,  
Chief Executive Officer  
One Gaylord Drive  
Nashville, TN 37214

-----  
Address:4943 Tyne Valley Blvd.  
Nashville, TN 37220  
\_\_\_\_\_

## EXHIBIT A

1.	Excess Parachute Payment Subject to Excise Tax	\$50,000
2.	Excise Tax on Item 1 @ 20% \$10,000	
3.	Total Additional Amount under Agreement *	\$27,190
4.	Verification of Total Additional Amount	
1)	Excise Tax on additional \$27,190 @ 20%	- \$ 5,438
2)	State Income Tax on \$27,190 @ 6%	- \$ 1,631
3)	Federal Income Tax on \$27,190	-
a)	Additional income -	\$27,190
b)	State Income Tax deduction -	(1,631)
c)	Net Additional Federal Taxable Income -	\$25,558
d)	Federal Income Tax @ 39.6% -	\$10,121
4)	Total Taxes on Additional Amount	\$17,190
5)	Net Amount Available to Key Employee to pay Excise Tax in #2	\$10,000

\* The formula used to compute the Additional Amount is to divide the Excise Tax amount on the excess parachute payment by a percentage equal to 100% less the sum of the Excise Tax percentage plus the state income tax percentage plus the federal tax percentage less a percentage determined by multiplying the federal tax percentage times the state tax percentage. Thus in the example above, the following percentages should be subtracted from 100%:

1)	Excise Tax Percentage		20.00%
2)	Assumed State Tax Percentage	-	6.00%
3)	Federal Income Tax Percentage	-	39.60%
	Total		65.60%
	Less 39.6% Times 6%	=	2.38%
			63.22%

The resulting percentage of 100% - 63.22% = 36.78% should be divided into \$10,000 = \$27,190.

## ITEM 6. SELECTED FINANCIAL DATA

The following selected historical financial data for the five years ended December 31, 2000 is derived from the Company's audited consolidated financial statements. The unaudited selected consolidated pro forma income statement data for the year ended December 31, 1997 is presented as if the CBS Merger had occurred on January 1, 1997. The unaudited selected consolidated pro forma information does not purport to represent what the Company's results of operations would have been had such transactions, in fact, occurred on such date or to project the Company's financial position or results of operations for any future period. The information in the following table should be read in conjunction with the Company's audited consolidated financial statements and related notes included herein.

YEARS ENDED DECEMBER 31,  
(AMOUNTS IN THOUSANDS, EXCEPT PER SHARE DATA)

	ACTUAL			UNAUDITED PRO FORMA	ACTUAL	
	2000	1999	1998	1997(8)	1997(9)(10)	1996
Income statement data:						
Revenues (1):						
Hospitality and attractions	\$ 256,722	\$ 257,709	\$257,335	\$ 322,463	\$ 322,463	\$ 288,870
Music, media and entertainment	257,594	269,637	280,388	259,795	524,258	464,531
Corporate and other	64	5,294	5,642	1,380	1,380	2,216
Total revenues	514,380	532,640	543,365	583,638	848,101	755,617
Operating expenses:						
Operating costs (1)	367,886	346,412	333,967	385,475 (11)(12)	533,268 (11)(12)	451,695
Selling, general and administrative	161,403	138,318	123,681	132,511	161,280	125,459
Impairment and other charges	105,538 (2)	12,201 (4)	--	42,006 (14)	42,006 (14)	--
Restructuring charges	16,193 (3)	3,102	--	13,654 (13)	13,654 (13)	--
Merger costs	--	(1,741)	--	22,645 (13)	22,645 (13)	--
Depreciation and amortization:						
Hospitality and attractions	27,149	25,515	23,835	28,544	28,544	25,570
Music, media and entertainment	25,469	20,310	13,709	11,262	20,423	19,218
Corporate and other	5,837	6,749	5,240	4,430	4,430	4,068
Total depreciation and amortization	58,455	52,574	42,784	44,236	53,397	48,856
Total operating expenses	709,475	550,866	500,432	640,527	826,250	626,010
Operating income (loss):						
Hospitality and attractions	38,024	38,270	44,051	50,846	50,846	42,634
Music, media and entertainment	(76,269)	(16,962)	19,550	(3,121)(11)(12)	75,619 (11)(12)	110,718
Corporate and other	(35,119)	(25,972)	(20,668)	(26,309)	(26,309)	(23,745)
Impairment and other charges	(105,538)(2)	(12,201)(4)	--	(42,006)(14)	(42,006)(14)	--
Restructuring charges	(16,193)(3)	(3,102)	--	(13,654)(13)	(13,654)(13)	--
Merger costs	--	1,741	--	(22,645)(13)	(22,645)(13)	--
Total operating income (loss)	(195,095)	(18,226)	42,933	(56,889)	21,851	129,607
Interest expense	(31,629)	(16,101)	(30,031)	(26,994)	(27,177)	(19,538)
Interest income	4,729	6,275	25,606	23,726	24,022	22,904
Other gains and losses	(4,548)	589,574 (5)(6)	11,359 (6)(7)	146,193 (15)	143,532 (15)	71,741 (18)
Income (loss) from continuing operations before income taxes	(226,543)	561,522	49,867	86,036	162,228	204,714
Provision (benefit) for income taxes	(73,073)	211,730	18,673	(19,788)(16)	10,792 (16)	73,549
Income (loss) from continuing operations	(153,470)	349,792	31,194	105,824	151,436	131,165
Cumulative effect of accounting change, net of taxes	--	--	--	(7,537)(17)	(7,537)(17)	--
Net income (loss)	\$(153,470)	\$ 349,792	\$ 31,194	\$ 98,287	\$ 143,899	\$ 131,165
Income (loss) per share:						
Income (loss) from continuing operations	\$ (4.60)	\$ 10.63	\$ 0.95	\$ 3.27	\$ 4.68	\$ 4.07
Net income (loss)	\$ (4.60)	\$ 10.63	\$ 0.95	\$ 3.04	\$ 4.45	\$ 4.07
Income (loss) per share - assuming dilution:						
Income (loss) from continuing operations	\$ (4.60)	\$ 10.53	\$ 0.94	\$ 3.24	\$ 4.64	\$ 4.02
Net income (loss)	\$ (4.60)	\$ 10.53	\$ 0.94	\$ 3.01	\$ 4.41	\$ 4.02
Dividends per share	\$ --	\$ 0.80	\$ 0.65	N/A	\$ 1.05	\$ 1.08





AS OF DECEMBER 31,  
(AMOUNTS IN THOUSANDS)

	2000	1999	1998	1997	1996
	-----	-----	-----	-----	-----
Balance sheet data:					
Total assets	\$1,939,553 (5)	\$1,732,384 (5)	\$1,011,992	\$1,117,562	\$1,182,248
Total debt	197,429	310,123	282,981 (6)	388,397	363,409
Secured forward exchange contract	613,054 (5)	--	--	--	--
Total stockholders' equity	727,865	961,159 (5)	525,160	516,224	512,963

- (1) Effective October 1, 2000, the Company adopted the provisions of the Securities and Exchange Commission Staff Accounting Bulletin ("SAB") 101, "Revenue Recognition in Financial Statements", as amended, and certain related authoritative literature. The Company classified certain amounts as revenues that historically, in accordance with industry practice, were reported as a reduction to operating expenses totaling \$21,852, \$18,890, \$22,106, and \$8,459 for 1999, 1998, 1997 and 1996, respectively.
- (2) During 2000, the Company recorded nonrecurring pretax impairment and other charges of \$105,538 related to the divestiture of certain businesses and reduction in the carrying values of certain assets.
- (3) During 2000, the Company recorded nonrecurring pretax restructuring charges of \$16,193.
- (4) Charge related to the closing of Word's Unison Records label.
- (5) Includes pretax gain of \$459,307 on the divestiture of television station KTVT in Dallas-Ft. Worth in exchange for CBS Series B preferred stock, which was converted into 11,003,000 shares of Viacom, Inc. Class B common stock in May 2000, \$4,210 of cash, and other consideration. The CBS Series B preferred stock was included in total assets at its market value of \$648,434 at December 31, 1999. The Viacom, Inc. Class B common stock was included in total assets at its market value of \$514,391 at December 31, 2000. During 2000, the Company entered into a seven-year forward exchange contract with respect to 10,937,900 shares of the Viacom, Inc. Class B common stock. Prepaid interest related to the secured forward exchange contract of \$171,863 was included in total assets at December 31, 2000.
- (6) In 1995, the Company sold its cable television systems (the "Systems"), which resulted in a gain of \$42,998, net of income taxes of \$30,824. Net proceeds were \$198,800 in cash and a note receivable with a face amount of \$165,688, which was recorded at \$150,688, net of a \$15,000 discount. As part of the sale transaction, the Company also received contractual equity participation rights (the "Rights") equal to 15% of the net distributable proceeds from future asset sales. During 1998, the Company collected the full amount of the note receivable and recorded a pretax gain of \$15,000 related to the note receivable discount. During 1999, the Company received cash and recognized a pretax gain of \$129,875 representing the value of the Rights. The proceeds from the note receivable prepayment and the Rights were used to reduce outstanding bank indebtedness.
- (7) Includes:
- (a) a pretax gain of \$16,072 on the sale of the Company's investment in the Texas Rangers Baseball Club, Ltd.;
  - (b) a pretax gain totaling \$8,538 primarily related to the settlement of contingencies from the sales of television stations KHTV in Houston and KSTW in Seattle;
  - (c) a pretax loss of \$23,616 on the write-off of a note receivable from Z Music; and
  - (d) a pretax loss of \$9,200 related to the termination of an operating lease for a satellite transponder for CMT International.
- (8) Reflects the unaudited pro forma results of operations as if the CBS Merger had occurred on January 1, 1997.
- (9) Includes the results of operations of the Cable Networks Business for the first nine months of 1997. On October 1, 1997, the Cable Networks Business was acquired by CBS in the CBS Merger.
- (10) In January 1997, the Company purchased the net assets of Word for approximately \$120,000. The results of operations of Word have been included from the date of acquisition.
- (11) Includes pretax charge of \$11,740 for the write-down to net realizable value of certain television program rights.
- (12) Includes a pretax charge of \$5,000 related to plans to cease the European operations of CMT International effective March 31, 1998.
- (13) The merger costs and the 1997 restructuring charge are related to the CBS Merger.

- (14) Charge related to the closing of the Opryland theme park at the end of the 1997 operating season.
- (15) Includes a pretax gain of \$144,259 on the sale of television station KSTW in Seattle.
- (16) Includes a deferred tax benefit of \$55,000 related to the revaluation of certain reserves as a result of the CBS Merger.
- (17) Reflects the cumulative effect of the change in accounting method for deferred preopening costs to expense these costs as incurred, effective January 1, 1997, of \$12,335, net of a related tax benefit of \$4,798.
- (18) Includes a pretax gain of \$73,850 on the sale of television station KHTV in Houston.

MANAGEMENT'S DISCUSSION AND ANALYSIS  
OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

## OVERVIEW

During 2000, the Company restated its reportable segments for all periods presented based upon internal realignment of operational responsibilities. The Company is managed using the following three business segments: hospitality and attractions; music, media and entertainment; and corporate and other. Certain events that occurred during 2000, 1999 and 1998 affect the comparability of the Company's results of operations among the periods under review. The principal events are as follows:

## ASSESSMENT OF STRATEGIC ALTERNATIVES

During 2000, the Company endured a significant number of departures from its senior management, including the Company's President and Chief Executive Officer. In addition, the Company continued to produce weaker than anticipated operating results during 2000 while attempting to fund its capital requirements related to its hotel construction project in Florida and hotel development activities in Texas. As a result of these factors, during the fourth quarter of 2000, the Company completed an assessment of its strategic alternatives related to its operations and capital requirements and developed a new strategic plan designed to refocus the Company's operations, reduce its operating losses and reduce its negative cash flows.

As a result of the Company's strategic assessment, the Company adopted a plan to divest a number of its under-performing businesses through sale or closure and to curtail certain projects and business lines that were no longer projected to produce a positive return. As a result of the completion of the strategic assessment, the Company recognized pretax impairment and other charges totaling \$105.5 million during 2000 in accordance with the provisions of Statement of Financial Accounting Standards ("SFAS") No. 121, "Accounting for the Impairment of Long-lived Assets and for Long-lived Assets to be Disposed Of", and other relevant authoritative literature. The components of the impairment and other charges for the years ended December 31 are as follows, in millions:

	2000 -----	1999 -----
Gaylord Digital	\$ 48.1	\$ --
Wildhorse Saloon near Orlando	15.9	--
Word Entertainment	8.2	--
Unison Records	4.9	12.2
Programming, film and other content	15.0	--
Other intangible assets	8.3	--
Other property and equipment	4.2	--
Other	0.9	--
	-----	-----
Total impairment and other charges	\$ 105.5	\$ 12.2
	=====	=====

As part of the Company's strategic assessment, the Company closed Gaylord Digital in the fourth quarter of 2000. Gaylord Digital was formed to initiate a focused Internet strategy through the acquisition of a number of websites and investments in technology start-up businesses. During 1999 and 2000, Gaylord Digital was unable to produce the operating results initially anticipated and required an extensive amount of capital to fund its operating losses, investments and technology infrastructure. As a result of the closing, the Company recorded a pretax charge of \$48.1 million in 2000 to reduce the carrying value of Gaylord Digital's assets to their fair value based upon estimated selling prices. The Company sold Musicforce.com and Lightsource.com subsequent to the closure of Gaylord Digital. The Gaylord Digital charge included the write-down of intangible assets of \$25.8 million, property and equipment (including software) of \$14.8 million, investments of \$7.0 million and other assets of \$0.5 million.

During November 2000, the Company ceased its operations of the Wildhorse Saloon near Orlando. Walt Disney World Resort paid the Company approximately \$1.8 million for the net assets of the Wildhorse Saloon near Orlando and released the Company from its operating lease for the Wildhorse Saloon location. As a result of this divestiture, the Company recorded pretax charges of \$15.9 million to reflect the impairment and other charges related to the divestiture. The Wildhorse Saloon near Orlando charge included the write-off of equipment of \$9.5 million, intangible assets of \$8.1 million and other working capital items of \$0.1 million offset by the \$1.8 million of proceeds received from Disney.

The operations of Word Entertainment ("Word") were also reviewed during the fourth quarter of 2000 as part of the Company's strategic assessment. As a result, the Company determined that certain projects and potential transactions should be discontinued. As such, certain assets and lines of business within Word were deemed to be unrealizable and were written down to their estimated fair value, based upon projected cash flows, resulting in pretax charges of \$8.2 million during the fourth quarter of 2000. The charges related to Word included the write-down of inventories of \$3.0 million, intangible assets of \$2.8 million, other assets of \$1.3 million and a charge of \$1.1 million for the divestiture of a record label.

During 1999, the Company recorded a pretax loss of \$12.2 million related to the closing of Unison Records ("Unison"), a specialty record label of Word which dealt primarily in value-priced acoustical and instrumental recordings. The Unison closing charge is reflected as impairment and other charges in the consolidated statements of operations. The Unison closing charge includes write-downs of the carrying value of inventories, accounts receivable and other assets of \$4.3 million, \$3.5 million and \$3.9 million, respectively, and other costs associated with the Unison closing of \$0.5 million. During 2000, the Company pursued the sale of the Unison business with several potential buyers. During the fourth quarter of 2000, the Company determined that the expected proceeds from future transactions to liquidate the Unison assets would be less than previously anticipated and recorded an additional asset write-down of \$4.9 million to further reduce the carrying value of the accounts receivable and inventories of Unison.

The Company's strategic assessment of its programming, film and other content assets completed in the fourth quarter of 2000 resulted in pretax impairment and other charges of \$15.0 million based upon the projected cash flows for these assets in the music, media and entertainment segment. This charge included music and film catalogs of \$7.0 million, investments of \$5.0 million and other receivables of \$3.0 million.

During the course of conducting the strategic assessment, the Company also evaluated the goodwill and intangible assets of other businesses. These reviews indicated that certain intangible assets related to the music, media and entertainment segment were not recoverable from future cash flows based upon the Company's new strategic direction. The Company recorded pretax impairment and other charges related to intangible assets, primarily goodwill, in the music, media and entertainment segment of \$8.3 million in 2000. In addition, the property and equipment of the Company was reviewed to determine whether the change in the Company's strategic direction created impaired assets. This review indicated that certain property and equipment would not be recovered by projected cash flows. The Company recorded pretax impairment and other charges related to its property and equipment of \$4.2 million. These charges included property and equipment write-downs in the hospitality and attractions segment of \$1.6 million, in the music, media and entertainment segment of \$1.0 million, and in the corporate and other segment of \$1.6 million.

As part of the Company's assessment of strategic alternatives, the Company recognized pretax restructuring charges of \$16.2 million during 2000, in accordance with Emerging Issues Task Force Issue No. 94-3, "Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity (including Certain Costs Incurred in a Restructuring)". These restructuring charges consist of contract termination costs of \$10.0 million to exit specific activities and employee severance and related costs of \$6.4 million offset by the reversal of the remaining restructuring accrual from the restructuring charges taken in 1999 of \$0.2 million. The 2000 restructuring charges relate to the Company's strategic decisions to exit certain lines of business, primarily in the music, media and entertainment segment, and to implement its new strategic plan. As part of the Company's restructuring plan, approximately 375 employees were terminated or were informed of their pending termination. As of December 31, 2000, the Company has recorded cash charges of \$3.3 million against the restructuring accrual. The remaining balance of the restructuring accrual at December 31, 2000 of \$13.1 million is included in accounts payable and accrued liabilities in the consolidated balance sheet. The Company anticipates the completion of the restructuring during 2001.

During 1999, the Company recognized pretax restructuring charges of \$3.1 million related to streamlining the Company's operations, primarily the Opryland Hotel Nashville. The restructuring charges included estimated costs for employee severance and termination benefits of \$2.4 million and other restructuring costs of \$0.7 million. As of December 31, 2000, no accrual remained. As of December 31, 1999, the Company had recorded cash charges of \$2.6 million against the restructuring accrual.

#### DIVESTITURE OF FILM AND SPORTS BUSINESSES

In March 2001, the Company sold five businesses: Pandora Films, Gaylord Films, Gaylord Sports Management, Gaylord Event Television and Gaylord Production Company, (collectively, the "OPUBCO Acquired Companies") to affiliates of The Oklahoma Publishing Company ("OPUBCO") for \$22 million in cash and the assumption of approximately \$20 million in debt. The Company does not anticipate recognizing a material gain or loss on the divestiture in 2001. OPUBCO owns a 6.3% interest in the Company. Four of the Company's directors, who are the beneficial owners of an additional 27.8% of the Company, are also directors of OPUBCO and voting trustees of a voting trust that controls OPUBCO.

In October 1999, CBS Corporation ("CBS") acquired the Company's television station KTVT in Dallas-Ft. Worth in exchange for \$485 million of CBS Series B convertible preferred stock, \$4.2 million of cash and other consideration. The Company recorded a pretax gain of \$459.3 million, which is included in other gains and losses in the consolidated statements of operations in 1999.

## RESULTS OF OPERATIONS

Effective October 1, 2000, the Company adopted the provisions of the Securities and Exchange Commission Staff Accounting Bulletin ("SAB") 101, "Revenue Recognition in Financial Statements", as amended, and certain related authoritative literature. SAB 101 is effective for all quarters beginning October 1, 2000. SAB 101 summarizes certain of the Staff's views in applying generally accepted accounting principles to revenue recognition. Accordingly, the Company classified certain amounts as revenues that historically, in accordance with industry practice, were reported as a reduction to operating expenses. To comply with the new requirements, the Company reclassified \$21.9 million and \$18.9 million from operating expenses to revenues for the years ended December 31, 1999 and 1998, respectively. As part of this reclassification, the Company reclassified \$12.0 million and \$11.0 million for the years ended December 31, 1999 and 1998, respectively, in the hospitality and attractions segment, primarily related to revenues recognized on service charges and gratuities for convention services. In addition, the Company reclassified \$9.9 million and \$7.9 million for the years ended December 31, 1999 and 1998, respectively, in the music, media and entertainment segment, primarily related to licensing revenues and freight charges at Word.

The following table contains selected results of operations data for each of the three years ended December 31, 2000, 1999 and 1998 (in thousands). The table also shows the percentage relationships to total revenues and, in the case of segment operating income, its relationship to segment revenues.

	2000	%	1999	%	1998	%
	-----	----	-----	----	-----	----
Revenues:						
Hospitality and attractions	\$ 256,722	49.9%	\$ 257,709	48.4%	\$257,335	47.4%
Music, media and entertainment	257,594	50.1	269,637	50.6	280,388	51.6
Corporate and other	64	--	5,294	1.0	5,642	1.0
	-----	-----	-----	-----	-----	-----
Total revenues	514,380	100.0	532,640	100.0	543,365	100.0
	-----	-----	-----	-----	-----	-----
Operating expenses:						
Operating costs	367,886	71.5	346,412	65.0	333,967	61.4
Selling, general and administrative	161,403	31.4	138,318	26.0	123,681	22.8
Impairment and other charges	105,538	20.5	12,201	2.3	--	--
Restructuring charges	16,193	3.1	3,102	0.6	--	--
Merger costs	--	--	(1,741)	(0.3)	--	--
Depreciation and amortization:						
Hospitality and attractions	27,149		25,515		23,835	
Music, media and entertainment	25,469		20,310		13,709	
Corporate and other	5,837		6,749		5,240	
	-----	-----	-----	-----	-----	-----
Total depreciation and amortization	58,455	11.4	52,574	9.8	42,784	7.9
	-----	-----	-----	-----	-----	-----
Total operating expenses	709,475	137.9	550,866	103.4	500,432	92.1
	-----	-----	-----	-----	-----	-----
Operating income (loss):						
Hospitality and attractions	38,024	14.8	38,270	14.9	44,051	17.1
Music, media and entertainment	(76,269)	(29.6)	(16,962)	(6.3)	19,550	7.0
Corporate and other	(35,119)	--	(25,972)	--	(20,668)	--
Impairment and other charges	(105,538)	--	(12,201)	--	--	--
Restructuring charges	(16,193)	--	(3,102)	--	--	--
Merger costs	--	--	1,741	--	--	--
	-----	-----	-----	-----	-----	-----
Total operating income (loss)	\$(195,095)	(37.9)%	\$ (18,226)	(3.4)%	\$ 42,933	7.9%
	=====	=====	=====	=====	=====	=====

YEAR ENDED DECEMBER 31, 2000, COMPARED TO YEAR ENDED DECEMBER 31, 1999

## REVENUES

TOTAL REVENUES - Total revenues decreased \$18.3 million, or 3.4%, to \$514.4 million in 2000 primarily due to the divestiture of KTVT partially offset by revenues of newly acquired businesses including Gaylord Event Television and Corporate Magic. Excluding the revenues of significant divested businesses, primarily KTVT, Gaylord Digital, the Wildhorse Saloon near Orlando, and the OPUBCO Acquired Companies, from both periods, total revenues decreased \$5.6 million, or 1.2%, in 2000.

Revenues in the hospitality and attractions segment decreased \$1.0 million, or 0.4%, to \$256.7 million in 2000. Revenues of the Opryland Hotel Nashville decreased \$4.6 million to \$229.9 million in 2000. The Opryland Hotel Nashville's occupancy rate decreased to 75.9% in 2000 compared to 78.0% in 1999. The Opryland Hotel Nashville sold 770,000 rooms in 2000 compared to 789,600 rooms sold in 1999, reflecting a 2.5% decrease from 1999. The Opryland Hotel Nashville's average daily rate increased to \$143.86 in 2000 from \$137.18 in 1999. The decrease in revenues from the Opryland Hotel Nashville was partially offset by increased revenues from the Radisson Hotel at Opryland of \$1.6 million, or 31.7%, in 2000. The occupancy rate of the Radisson Hotel at Opryland increased to 59.3% in 2000 from 48.8% in 1999. The increase in revenues for the Radisson Hotel at Opryland is primarily attributable to a renovation project during 1999, which caused a portion of the rooms to be unavailable during 1999.

Revenues in the music, media and entertainment segment decreased \$12.0 million, or 4.5%, to \$257.6 million in 2000. Excluding the revenues of significant divested businesses, primarily KTVT, Gaylord Digital, the Wildhorse Saloon near Orlando, and the OPUBCO Acquired Companies, from both periods, revenues in the music, media and entertainment segment increased \$0.6 million, or 0.3%, to \$209.5 million in 2000. Corporate Magic, a company specializing in the production of creative events in the corporate entertainment marketplace which was acquired in March 2000, had revenues subsequent to its acquisition of \$4.2 million. The revenues of MusicCountry, formerly known as CMT International, increased \$2.2 million, or 51.2%, in 2000. Revenues of Word decreased \$6.5 million, or 4.6%, to \$133.0 million related to 1999 revenues of the now-closed Unison and a decline in sales of children's products.

Revenues in the corporate and other segment decreased \$5.2 million to \$0.1 million in 2000. Corporate and other segment revenues consisted primarily of consulting and other services revenues related to the Opry Mills partnership in 1999, which did not continue beyond 1999.

## OPERATING EXPENSES

TOTAL OPERATING EXPENSES - Total operating expenses increased \$158.6 million, or 28.8%, to \$709.5 million in 2000. Excluding the nonrecurring impairment and other charges, restructuring charges and merger costs, total operating expenses increased \$50.4 million, or 9.4%, to \$587.7 million in 2000. Operating costs, as a percentage of revenues, increased to 71.5% during 2000 as compared to 65.0% during 1999. Selling, general and administrative expenses, as a percentage of revenues, increased to 31.4% during 2000 as compared to 26.0% in 1999.

OPERATING COSTS - Operating costs increased \$21.5 million, or 6.2%, to \$367.9 million in 2000. Excluding the operating costs of significant divested businesses, primarily KTVT, Gaylord Digital, the Wildhorse Saloon near Orlando, and the OPUBCO Acquired Companies, from both periods, operating costs increased \$7.8 million, or 2.6%, to \$310.9 million in 2000.

Operating costs in the hospitality and attractions segment decreased \$3.1 million in 2000 primarily as a result of lower operating costs at the Opryland Hotel Nashville of \$9.0 million related to lower revenues and stringent cost controls. During 2000, the Company recorded certain nonrecurring operating costs associated primarily with the settlement of tax and utility contingencies related to prior years totaling \$5.0 million in the hospitality and attractions segment.

Excluding the operating costs of significant divested businesses, primarily KTVT, Gaylord Digital, the Wildhorse Saloon near Orlando, and the OPUBCO Acquired Companies, from both periods, operating costs in the music, media and entertainment segment increased \$11.3 million in 2000. The operating costs of Word increased \$6.5 million in 2000 related to increased royalties, development of new children's products, and higher costs related to lower-margin distributed products. The operating costs of Corporate Magic subsequent to its March 2000 acquisition were \$3.1 million.

SELLING, GENERAL AND ADMINISTRATIVE - Selling, general and administrative expenses increased \$23.1 million, or 16.7%, to \$161.4 million in 2000. Excluding the selling, general and administrative expenses of significant divested businesses, primarily KTVT, Gaylord Digital, the Wildhorse Saloon near Orlando, the OPUBCO Acquired Companies, and country music label development costs, from both periods, selling, general and administrative expenses increased \$11.5 million, or 9.3%, to \$135.1 million in 2000. The Company's development of a country music label was suspended during 2000.

Selling, general and administrative expenses in the hospitality and attractions segment increased \$0.7 million in 2000. Hotel development and marketing efforts related to hotel developments in Florida and Texas increased selling, general and administrative expenses \$3.4 million during 2000. The selling, general and administrative expenses of the Opryland Hotel Nashville decreased \$2.6 million in 2000 as a result of stringent cost controls.

Excluding the selling, general and administrative expenses of significant divested businesses, primarily KTVT, Gaylord Digital, the Wildhorse Saloon near Orlando, the OPUBCO Acquired Companies, and country music label development costs, from both periods, selling, general and administrative expenses in the music, media and entertainment segment increased \$5.5 million in 2000. The increase is primarily attributable to an increase in the selling, general and administrative expenses of the Company's live entertainment businesses of \$5.6 million in 2000. This increase is partially offset by a decrease in the selling, general and administrative expenses of Word of \$2.2 million in 2000.

Corporate selling, general and administrative expenses, consisting primarily of senior management salaries and benefits, legal, human resources, accounting, and other administrative costs, increased \$5.2 million in 2000, including an increase of \$2.0 million of expense associated with the naming rights for the Gaylord Entertainment Center.

DEPRECIATION AND AMORTIZATION - Depreciation and amortization increased \$5.9 million, or 11.2%, to \$58.5 million in 2000. Excluding the depreciation and amortization of significant divested businesses, primarily KTVT, Gaylord Digital, the Wildhorse Saloon near Orlando, and the OPUBCO Acquired Companies, from both periods, depreciation and amortization increased \$2.7 million, or 5.9%, in 2000. The increase is primarily attributable to the depreciation expense of capital expenditures and the amortization expense of intangible assets, primarily goodwill, associated with acquisitions.

#### OPERATING INCOME (LOSS)

Total operating income decreased \$176.9 million to an operating loss of \$195.1 million during 2000. Excluding the operating income (loss) of significant divested businesses, primarily KTVT, Gaylord Digital, the Wildhorse Saloon near Orlando, the OPUBCO Acquired Companies, and country music label development costs, as well as the impairment, restructuring and merger charges from both periods, total operating income decreased \$27.6 million to an operating loss of \$28.8 million in 2000.

Hospitality and attractions segment operating income decreased \$0.2 million to \$38.0 million in 2000 primarily related to costs of the Company's hotel construction and development projects offset by increased profit margins of the Opryland Hotel Nashville. Excluding the operating income (loss) of significant divested businesses, primarily KTVT, Gaylord Digital, the Wildhorse Saloon near Orlando, the OPUBCO Acquired Companies, and country music label development costs, from both periods, the operating loss of the music, media and entertainment segment increased \$18.1 million to an operating loss of \$31.8 million in 2000 primarily as a result of the operating losses of Word and the Company's live entertainment businesses. The operating loss of the corporate and other segment increased \$9.1 million to an operating loss of \$35.1 million in 2000 primarily related to consulting and other services revenues related to the Opry Mills partnership in 1999, which did not continue beyond 1999, and increased administrative costs.

Hotel development and marketing expenses related to the Company's hotel developments in Florida and Texas are expected to significantly impact the Company's results of operations during 2001. The Company currently projects hotel development and marketing expenses to exceed \$20 million in 2001.

#### INTEREST EXPENSE

Interest expense increased \$15.5 million to \$31.6 million, net of capitalized interest of \$6.8 million, in 2000. The increase in 2000 is primarily attributable to higher average borrowing levels, including the secured forward exchange contract. The Company's weighted average interest rate on its borrowings, including the interest expense associated with the secured forward exchange contract, was 6.6% in 2000 as compared to 6.4% in 1999.

The Company recently entered into new loan agreements and is negotiating with potential additional financing sources regarding the Company's future financing arrangements. The Company's future effective interest rates and borrowing levels will be higher than the Company's historical effective interest rates and borrowing levels.

## INTEREST INCOME

Interest income decreased \$1.5 million to \$4.7 million in 2000. The decrease in 2000 primarily relates to nonrecurring interest income in 1999 of \$2.0 million related to the settlement of contingencies between the Company and CBS as well as a \$1.8 million prepayment penalty from Bass Pro recorded as interest income during 1999. These 1999 transactions are partially offset by an increase in interest income from invested cash balances during 2000.

## OTHER GAINS AND LOSSES

Other gains and losses during 2000 were comprised of the following pretax amounts, in millions:

	GAIN/ (LOSS) -----
Settlement of Word acquisition contingencies	\$ (3.3)
Loss on disposal of KOA Campground	(3.2)
Other gains and losses, net	2.0
	----- \$ (4.5) =====

During 2000, the Company settled contingencies remaining from the 1997 acquisition of Word, which resulted in a pretax charge of \$3.3 million. In December 2000, the Company sold the KOA Campground and recorded a pretax loss related to the disposal of \$3.2 million.

Other gains and losses during 1999 were comprised of the following pretax amounts, in millions:

	GAIN/ (LOSS) -----
Gain on divestiture of KTVT	\$ 459.3
Gain on equity participation rights	129.9
Other gains and losses, net	0.4
	----- \$ 589.6 =====

In October 1999, CBS acquired the Company's television station KTVT in Dallas-Ft. Worth in exchange for \$485 million of CBS Series B convertible preferred stock, \$4.2 million of cash and other consideration. The Company recorded a pretax gain of \$459.3 million, which is included in other gains and losses in the consolidated statements of operations in 1999.

During 1995, the Company sold its cable television systems (the "Systems"). Net proceeds consisted of \$198.8 million in cash and a 10-year note receivable with a face amount of \$165.7 million. The note receivable was recorded net of a \$15.0 million discount to reflect the note at fair value. During 1998, the Company received \$238.4 million representing prepayment of the entire balance of the note receivable and related accrued interest. The Company recorded a \$15.0 million pretax gain during 1998 related to the note receivable discount originally recorded as part of the Systems sale transaction. During 1999, the Company recognized a pretax gain of \$129.9 million related to the collection of \$130 million in proceeds from the redemption of certain equity participation rights in the Systems.

## INCOME TAXES

The Company's benefit for income taxes was \$73.1 million in 2000 compared to an income tax provision of \$211.7 million in 1999. The Company's effective tax rate on its income (loss) before provision (benefit) for income taxes was 32.3% for 2000 compared to 37.7% for 1999.



YEAR ENDED DECEMBER 31, 1999, COMPARED TO YEAR ENDED DECEMBER 31, 1998

## REVENUES

TOTAL REVENUES - Total revenues decreased \$10.7 million, or 2.0%, to \$532.6 million in 1999 primarily due to the effect of the divestiture of KTVT. Excluding the total revenues of KTVT from both periods, total revenues increased \$4.8 million, or 1.0%, in 1999.

Revenues in the hospitality and attractions segment increased \$0.4 million, or 0.1%, to \$257.7 million in 1999. Revenues of the Opryland Hotel Nashville decreased \$0.8 million to \$234.4 million in 1999. The Opryland Hotel Nashville's occupancy rate decreased to 78.0% in 1999 as compared to 79.1% in 1998. The Opryland Hotel Nashville sold 789,600 rooms in 1999 compared to 801,900 rooms sold in 1998, reflecting a 1.5% decrease from 1998. The Opryland Hotel Nashville's average daily rate decreased to \$137.18 in 1999 from \$138.51 in 1998. Revenues associated with the Company's attractions properties decreased \$1.1 million in 1999 related to softness in Nashville tourism during 1999.

Revenues in the music, media and entertainment segment decreased \$10.8 million, or 3.8%, to \$269.6 million in 1999. The decrease is primarily the result of the divestiture of KTVT in October 1999. Excluding the revenues of KTVT from both periods, revenues in the music, media and entertainment segment increased \$4.8 million, or 2.1%, to \$233.6 million in 1999. The increase results primarily from the revenues of Gaylord Event Television, which was acquired in December 1999, of \$7.1 million. Revenues from the Wildhorse Saloon near Orlando, Florida, which opened in April 1998, increased \$1.9 million in 1999. Pandora revenues decreased \$3.4 million, or 30.2%, to \$7.9 million in 1999 due to fewer film releases in 1999.

Revenues in the corporate and other segment decreased \$0.3 million to \$5.3 million in 1999. Corporate and other segment revenues consist primarily of consulting and other services revenues related to the Opry Mills partnership in both 1999 and 1998.

## OPERATING EXPENSES

TOTAL OPERATING EXPENSES - Total operating expenses increased \$50.4 million, or 10.1%, to \$550.9 million in 1999. Operating costs, as a percentage of revenues, increased to 65.0% during 1999 as compared to 61.4% during 1998. Selling, general and administrative expenses, as a percentage of revenues, increased to 26.0% during 1999 as compared to 22.8% in 1998.

OPERATING COSTS - Operating costs increased \$12.4 million, or 3.7%, to \$346.4 million in 1999. Excluding the operating costs of KTVT from both periods, operating costs increased \$16.1 million, or 5.2%, to \$328.0 million in 1999.

Operating costs of the hospitality and attractions segment decreased \$1.0 million in 1999 related to lower operating costs of the General Jackson showboat.

Operating costs in the music, media and entertainment segment increased \$13.5 million in 1999. Excluding the operating costs of KTVT from both periods, operating costs in the music, media and entertainment segment increased \$17.1 million in 1999. The increase is primarily the result of the December 1999 acquisition of Gaylord Event Television, which had operating costs in 1999 of \$6.5 million and the operating costs of Gaylord Digital of \$2.7 million. Operating costs of the Wildhorse Saloon locations increased \$3.6 million in 1999 related to increased revenues and the opening of the Orlando, Florida location in April 1998. The operating costs of Word increased \$4.7 million in 1999 related to increased revenues of lower-margin distributed products and increased costs associated with the relocation of Word's warehouse from Texas to Tennessee. Costs associated with Z Music increased operating costs by \$2.0 million in 1999.

SELLING, GENERAL AND ADMINISTRATIVE - Selling, general and administrative expenses increased \$14.6 million, or 11.8%, to \$138.3 million in 1999. Excluding the selling, general and administrative expenses of KTVT from the results of both periods, selling, general and administrative expenses increased \$17.3 million, or 15.1%, in 1999.

Selling, general and administrative expenses in the hospitality and attractions segment increased \$5.5 million in 1999. Hotel development efforts in Florida and Texas increased selling, general and administrative expenses \$2.3 million in 1999. The selling, general and administrative costs of the Opryland Hotel Nashville increased \$2.2 million in 1999 primarily related to higher selling and marketing costs.

Selling, general and administrative expenses in the music, media and entertainment segment increased \$5.7 million in 1999. Excluding the selling, general and administrative expenses of KTVT from both periods, selling, general and administrative expenses in the music, media and entertainment segment increased \$8.3 million in 1999. The 1999 increase is primarily attributable to higher selling, general and administrative expenses of Word of \$8.3 million and Gaylord Digital of \$4.4 million. These increases were partially offset by the 1998 recognition of a valuation reserve of \$4.3 million on a long-term note receivable from Z Music, Inc.

Corporate selling, general and administrative expenses, consisting primarily of senior management salaries and benefits, legal, human resources, accounting, and other administrative costs, increased \$3.7 million in 1999, including \$1.4 million of expense associated with the naming rights for the Gaylord Entertainment Center subsequent to entering into the naming rights agreement.

DEPRECIATION AND AMORTIZATION - Depreciation and amortization increased \$9.8 million, or 22.9%, to \$52.6 million in 1999. Excluding the depreciation and amortization of KTVT from both periods, depreciation and amortization increased \$9.6 million, or 23.7%, in 1999. The increase is primarily attributable to the depreciation expense of capital expenditures and the amortization expense of intangible assets, primarily goodwill, associated with acquisitions.

#### OPERATING INCOME (LOSS)

Total operating income decreased \$61.2 million to an operating loss of \$18.2 million during 1999. Excluding the operating results of KTVT, impairment and other charges, merger costs reduction and the restructuring charges from both periods, total operating income decreased \$38.1 million to an operating loss of \$13.0 million in 1999.

Hospitality and attractions segment operating income decreased \$5.8 million to \$38.3 million in 1999 primarily related to lower operating income produced by the Opryland Hotel Nashville and expenses associated with hotel developments in Florida and Texas. Excluding the operating income of KTVT from both periods, operating income of the music, media and entertainment segment decreased \$27.1 million in 1999 primarily related to lower operating income generated by Word, Pandora and Gaylord Digital. The operating income of KTVT was \$8.4 million and \$17.8 million in 1999 and 1998, respectively. The operating loss of the corporate and other segment increased \$5.3 million to \$26.0 million in 1999.

#### INTEREST EXPENSE

Interest expense decreased \$13.9 million to \$16.1 million in 1999. The decrease in 1999 is primarily attributable to lower average borrowing levels and lower weighted average interest rates during 1999 than in 1998. During the fourth quarter of 1998, the Company used proceeds of \$238.4 million from a long-term note receivable to reduce outstanding indebtedness. During the first quarter of 1999, the Company used the proceeds from the redemption of certain equity participation rights described below to further reduce outstanding indebtedness. The Company's weighted average interest rate on its borrowings was 6.4% in 1999 compared to 6.6% in 1998.

#### INTEREST INCOME

Interest income decreased \$19.3 million to \$6.3 million in 1999. The decrease in 1999 primarily relates to the December 1998 collection of a long-term note receivable. This decrease was partially offset in 1999 by nonrecurring interest income of \$2.0 million related to the settlement of contingencies between the Company and CBS as well as interest income earned from Bass Pro, including a \$1.8 million prepayment penalty.

## OTHER GAINS AND LOSSES

Other gains and losses during 1999 were comprised of the following pretax amounts, in millions:

	GAIN/ (LOSS)
	-----
Gain on divestiture of KTVT	\$ 459.3
Gain on equity participation rights	129.9
Other gains and losses, net	0.4
	-----
	\$ 589.6
	=====

During 1995, the Company sold the Systems. Net proceeds consisted of \$198.8 million in cash and a 10-year note receivable with a face amount of \$165.7 million. The note receivable was recorded net of a \$15.0 million discount to reflect the note at fair value. During 1998, the Company received \$238.4 million representing prepayment of the entire balance of the note receivable and related accrued interest. The Company recorded a \$15.0 million pretax gain during 1998 related to the note receivable discount originally recorded as part of the Systems sale transaction. During 1999, the Company recognized a pretax gain of \$129.9 million related to the collection of \$130 million in proceeds from the redemption of certain equity participation rights in the Systems.

In October 1999, CBS acquired the Company's television station KTVT in Dallas-Ft. Worth in exchange for \$485 million of CBS Series B convertible preferred stock, \$4.2 million of cash and other consideration. The Company recorded a pretax gain of \$459.3 million, which is included in other gains and losses in the consolidated statements of operations in 1999.

The Company recorded a pretax loss of \$23.6 million during 1998 related to the write-off of a note receivable from Z Music when the Company foreclosed on the note receivable and took a controlling interest in the assets of Z Music. Also during 1998, the Company sold its investment in the Texas Rangers Baseball Club, Ltd. for \$16.1 million and recognized a gain of the same amount.

During 1998, the Company terminated an operating lease for a satellite transponder related to the European operations of MusicCountry, formerly known as CMT International. The termination of the satellite transponder lease resulted in a pretax charge of \$9.2 million during 1998. Additionally, the Company recorded a gain of \$8.5 million during 1998 primarily related to the settlement of contingencies arising from the sale of television stations KHTV in Houston and KSTW in Seattle.

## INCOME TAXES

The Company's provision for income taxes was \$211.7 million in 1999 compared to \$18.7 million in 1998. The Company's effective tax rate on its income before provision for income taxes was 37.7% for 1999 compared to 37.4% for 1998.

## 2001 LOANS

During March 2001, the Company, through special purpose entities, entered into two new loan agreements, a \$275 million senior loan (the "Senior Loan") and a \$100 million mezzanine loan (the "Mezzanine Loan") (collectively, the "2001 Loans") with affiliates of Merrill Lynch & Company acting as principal. The Senior Loan is secured by a first mortgage lien on the assets of the Opryland Hotel Nashville and is due in 2004. Amounts outstanding under the Senior Loan bear interest at one-month LIBOR plus 1.5% as of the closing date. The Mezzanine Loan, secured by the equity interest in the owner of the Opryland Hotel Nashville, is due in 2004 and bears interest at one-month LIBOR plus 6.0% as of the closing date. Future securitization, syndication or other transactions related to the Senior Loan and the Mezzanine Loan by the affiliates of Merrill Lynch could result in an adjustment in the interest rate spread over one-month LIBOR, not to exceed an interest rate spread of 2.0% on the Senior Loan and 8.0% on the Mezzanine Loan. At the Company's option, the 2001 Loans may be extended for two additional one-year terms beyond their scheduled maturities, subject to the Company meeting certain financial ratios and other criteria. The 2001 Loans require monthly principal payments of \$0.7 million during their three-year terms in addition to monthly interest payments. The terms of the Senior Loan and the Mezzanine Loan require the purchase of interest rate hedges in notional amounts equal to the outstanding balances of the Senior Loan and the Mezzanine Loan in order to protect against adverse changes in one-month LIBOR. Pursuant to these agreements, the Company has purchased instruments which cap its exposure to one-month LIBOR at 7.50%. The Company used \$235 million of the proceeds from the 2001 Loans to refinance the Interim Loan discussed below. At closing, the Company was required to escrow certain amounts, including \$20 million related to future capital expenditures of the Opryland Hotel Nashville. The net proceeds from the 2001 Loans after refinancing of the Interim Loan, required escrows and fees were approximately \$98 million. The 2001 Loans require that the Company maintain certain escrowed cash balances and certain financial covenants, and imposes limits on transactions with affiliates and indebtedness.

## INTERIM LOAN

During the fourth quarter of 2000, the Company entered into a six-month \$200 million interim loan agreement (the "Interim Loan") with Merrill Lynch Mortgage Capital, Inc. As of December 31, 2000, \$175 million was outstanding under the Interim Loan. Subsequent to December 31, 2000, the Company increased the borrowing capacity under the Interim Loan to \$250 million. During March 2001, the Company used \$235 million of the proceeds from the 2001 Loans to refinance the Interim Loan. The Interim Loan was secured by the assets of the Opryland Hotel Nashville and was due April 6, 2001. Amounts outstanding under the Interim Loan carried an interest rate of LIBOR plus an amount that increased monthly from 1.75% at inception to 3.5% by April 2001. In addition, the Interim Loan required a commitment fee of 0.375% per year on the average unused portion of the Interim Loan and a contingent exit fee of up to \$4 million, depending upon Merrill Lynch's involvement in the refinancing of the Interim Loan. The Company recognized a portion of the exit fee as interest expense in 2000. Pursuant to the terms of the 2001 Loans, the contingencies related to the exit fee were removed and no payment of these fees was required. The weighted average interest rate, including amortization of deferred financing costs, under the Interim Loan for 2000 was 21.0%. The Interim Loan required that the Company maintain certain escrowed cash balances and certain financial covenants, and imposed limits on transactions with affiliates and indebtedness.

## SECURED FORWARD EXCHANGE CONTRACT

During 2000, the Company entered into a seven-year secured forward exchange contract with an affiliate of Credit Suisse First Boston with respect to 10.9 million shares of Viacom, Inc. Class B non-voting common stock ("Viacom Stock"). The Company acquired the Viacom Stock as a result of the divestiture of KTVT-TV in Dallas-Ft. Worth to CBS in 1999. CBS merged with Viacom, Inc. in May 2000.

The seven-year secured forward exchange contract has a face amount of \$613.1 million and required contract payments based upon a stated 5% rate. The secured forward exchange contract protects the Company against decreases in the fair market value of the Viacom Stock while providing for participation in increases in the fair market value. By entering into the secured forward exchange contract, the Company realized cash proceeds of \$506.3 million, net of discounted prepaid contract payments related to the first 3.25 years of the contract and transaction costs totaling \$106.7 million. During the fourth quarter of 2000, the Company prepaid the remaining 3.75 years of contract payments required by the secured forward exchange contract of \$83.2 million. As a result of the prepayment, the Company will not be required to make any further contract payments during the seven-year term of the secured forward exchange contract. Additionally, as a result of the prepayment, the Company was released from the covenants of the secured forward exchange contract, which related to sales of assets, additional indebtedness and liens. The Company is recognizing the contract payments associated with the secured forward exchange contract as interest expense over the seven-year contract period using the effective interest method. The Company utilized \$394.1 million of the net proceeds from the secured forward exchange contract to repay all outstanding indebtedness under its 1997 revolving credit facility. As a result of the secured forward exchange contract, the 1997 revolving credit facility was terminated.

During the seven-year term of the secured forward exchange contract, the Company retains ownership of the Viacom Stock. The Company's obligation under the secured forward exchange contract is collateralized by a security interest in the Viacom Stock. At the end of the seven-year contract term, the Company may, at its option, elect to pay in cash rather than by delivery of all or a portion of the Viacom Stock.

In June 1998, the FASB issued SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities", effective, as amended, for fiscal years beginning after June 15, 2000. SFAS No. 133, as amended, establishes accounting and reporting standards for derivative instruments and hedging activities. SFAS No. 133, as amended, requires all derivatives to be recognized separately in the statement of financial position and to be measured at fair value. The Company adopted the provisions of SFAS No. 133, as amended, effective January 1, 2001. Under SFAS No. 133, components of the secured forward exchange contract are considered derivatives. The Company expects to record a gain of approximately \$12 million, net of taxes, in the first quarter of 2001 as a cumulative effect of an accounting change to record the derivatives associated with the secured forward exchange contract at fair value as of January 1, 2001. Additionally, the Company expects to record a gain of approximately \$18 million, net of taxes, in the first quarter of 2001 related to reclassifying its investment in Viacom Stock from available-for-sale to trading as defined by SFAS No. 115, "Accounting for Certain Investments in Debt and Equity Securities". In subsequent periods, the change in fair value of the derivatives and the change in fair value of the investment in Viacom Stock will be recorded as gains or losses in the Company's consolidated statement of operations.

#### OTHER LIQUIDITY AND CAPITAL RESOURCES

During 2000, the Company's capital expenditures were approximately \$232 million, including approximately \$180 million related to its new hotel construction in Florida and hotel development activities in Texas. The Company currently projects capital expenditures for 2001 of approximately \$330 million, which includes approximately \$275 million related to the Company's new hotel construction in Florida and Texas and approximately \$25 million related to the renovation program at the Opryland Hotel Nashville.

While the Company has available the balance of the net proceeds from the 2001 Loans and proceeds from the sale of the OPUBCO Acquired Companies as well as the net cash flows from operations to fund its immediate cash requirements, additional long-term financing is required to fund the Company's construction commitments related to the Opryland Hotel Florida, hotel development plans for the Opryland Hotel Texas and to fund its anticipated operating income losses on both a short-term and long-term basis.

The Company is also negotiating with potential financing sources toward providing approximately \$200 million of debt financing for the Florida hotel project. Any such financing would be secured by that project and the net proceeds restricted to funding the Florida hotel. The Company anticipates that the proceeds from this financing combined with the 2001 Loans will allow it to complete the construction of the hotel, open it on schedule in February 2002, and to provide for initial working capital. The Company is also pursuing financing alternatives for the Texas hotel project. While there is no assurance that any such financing will be secured, the Company has had preliminary discussions with certain lenders and believes it will secure acceptable funding. However, if the Company is unable to obtain any part of the financing it is seeking, or the timing of such financing is significantly delayed, it would require the curtailment of development capital expenditures to ensure adequate liquidity to fund the Company's operations.

During February 2000, the Company's Board of Directors voted to discontinue the payment of dividends on its common stock. The Company paid common stock dividends of \$26.4 million in 1999.

#### SEASONALITY

Certain of the Company's operations are subject to seasonal fluctuation. Revenues in the music business are typically weakest in the first calendar quarter following the Christmas buying season.

In June 1998, the FASB issued SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities", effective, as amended, for fiscal years beginning after June 15, 2000. SFAS No. 133, as amended, establishes accounting and reporting standards for derivative instruments and hedging activities. SFAS No. 133, as amended, requires all derivatives to be recognized separately in the statement of financial position and to be measured at fair value. The Company adopted the provisions of SFAS No. 133, as amended, effective January 1, 2001. Under SFAS No. 133, components of the secured forward exchange contract are considered derivatives. The Company expects to record a gain of approximately \$12 million, net of taxes, in the first quarter of 2001 as a cumulative effect of an accounting change to record the derivatives associated with the secured forward exchange contract at fair value as of January 1, 2001. Additionally, the Company expects to record a gain of approximately \$18 million, net of taxes, in the first quarter of 2001 related to reclassifying its investment in Viacom Stock from available-for-sale to trading as defined by SFAS No. 115, "Accounting for Certain Investments in Debt and Equity Securities". In subsequent periods, the change in fair value of the derivatives and the change in fair value of the investment in Viacom Stock will be recorded as gains or losses in the Company's consolidated statement of operations.

#### FORWARD-LOOKING STATEMENTS

This report contains statements with respect to the Company's beliefs and expectations of the outcomes of future events that are forward-looking statements as defined in the Private Securities Litigation Reform Act of 1995. These forward-looking statements are subject to risks and uncertainties, including, without limitation, the factors set forth under the caption "Risk Factors." Forward-looking statements include discussions regarding the Company's operating strategy, strategic plan, hotel development strategy, industry and economic conditions, financial condition, liquidity and capital resources, and results of operations. You can identify these statements by forward-looking words such as "expects," "anticipates," "intends," "plans," "believes," "estimates," "projects," and similar expressions. Although we believe that the plans, objectives, expectations and prospects reflected in or suggested by our forward-looking statements are reasonable, those statements involve uncertainties and risks, and we cannot assure you that our plans, objectives, expectations and prospects will be achieved. Our actual results could differ materially from the results anticipated by the forward-looking statements as a result of many known and unknown factors, including, but not limited to, those contained in this Management's Discussion and Analysis of Financial Condition and Results of Operations, and elsewhere in this report. All written or oral forward-looking statements attributable to us are expressly qualified in their entirety by these cautionary statements. The Company does not undertake any obligation to update or to release publicly any revisions to forward-looking statements contained in this report to reflect events or circumstances occurring after the date of this report or to reflect the occurrence of unanticipated events.

#### MARKET RISK

The following discusses the Company's exposure to market risk related to changes in stock prices, interest rates and foreign currency exchange rates.

**Investments** - At December 31, 2000, the Company held an investment of 11 million shares of Viacom Stock, which was acquired in 1999 as consideration in the disposal of television station KTVT. The Company entered into a secured forward exchange contract related to 10.9 million shares of the Viacom Stock. The secured forward exchange contract protects the Company against decreases in the fair market value of the Viacom Stock, while providing for participation in increases in the fair market value. At December 31, 2000, the fair market value of the Company's investment in the 11 million shares of Viacom Stock was \$514.4 million, or \$46.75 per share. The secured forward exchange contract protects the Company for market decreases below \$56.04 per share, thereby limiting the Company's market risk exposure related to the Viacom Stock. At per share prices greater than \$56.04, the Company retains 100% of the per-share appreciation to a maximum per-share price of \$75.66. For per-share appreciation greater than \$75.66, the Company participates in 25.9% of the appreciation.

**Outstanding Debt** - The Company has exposure to interest rate changes primarily relating to outstanding indebtedness under the 2001 Loans and its future financing arrangements. The terms of the 2001 Loans require the purchase of interest rate hedges in notional amounts equal to the outstanding balances of the 2001 Loans in order to protect against adverse changes in one-month LIBOR. Pursuant to these agreements, the Company has purchased instruments which cap its exposure to one-month LIBOR at 7.50%. The Company is currently negotiating with its lenders and others regarding the Company's future financing arrangements. Increases in interest rates will increase the interest expense associated with future borrowings by the Company.

Cash Balances - Certain of the Company's outstanding cash balances are occasionally invested overnight with high credit quality financial institutions. The Company does not have significant exposure to changing interest rates on invested cash at December 31, 2000. As a result, the interest rate market risk implicit in these investments at December 31, 2000, if any, is low.

Foreign Currency Exchange Rates - Substantially all of the Company's revenues are realized in U.S. dollars and are from customers in the United States. Although the Company owns certain subsidiaries who conduct business in foreign markets and whose transactions are settled in foreign currencies, these operations are not material to the overall operations of the Company. Therefore, the Company does not believe it has any significant foreign currency exchange rate risk. The Company does not hedge against foreign currency exchange rate changes and does not speculate on the future direction of foreign currencies.

Summary - Based upon the Company's overall market risk exposures at December 31, 2000, the Company believes that the effects of changes in the stock price of its Viacom Stock or interest rates could be material to the Company's consolidated financial position, results of operations or cash flows. However, the Company believes that fluctuations in foreign currency exchange rates on the Company's consolidated financial position, results of operations or cash flows would not be material.

## RISK FACTORS

WE MAY NOT BE ABLE TO IMPLEMENT SUCCESSFULLY OUR BUSINESS STRATEGY.

We have refocused our business strategy on the development of additional convention hotels in selected locations in the United States and our music, media and entertainment properties which are engaged primarily in the country and Christian music spheres. The success of our future operating results depends on our ability to implement our business strategy by completing and successfully operating the two hotels under development and further exploiting our music, media and entertainment assets. Our ability to do this depends upon many factors, some of which are beyond our control. These include:

- Our ability to finance and complete the construction of our two hotels on schedule and to achieve positive cash flow from operations within the anticipated ramp-up period.
- Our ability to hire and retain hotel management, catering and convention-related staff for our hotels.
- Our ability to find, promote and distribute new music artists.
- Our ability to develop new avenues of revenue and to exploit our music catalogs.

OUR HOTEL AND CONVENTION BUSINESS IS SUBJECT TO SIGNIFICANT MARKET RISKS.

Our ability to continue successfully to operate the Opryland Hotel Nashville and our two new hotels upon their completion is subject to factors beyond our control which could adversely impact these properties. These factors include:

- The desirability and perceived attractiveness of Nashville and the locations of our hotels under construction as tourist and convention destinations.
- Adverse changes in the national economy and in the levels of tourism and convention business that would affect our hotels.
- Increased competition for convention and tourism business in Nashville.
- Our new hotels are opening in highly competitive markets for convention and tourism business.
- Our group convention business is subject to reduced levels of demand during the year-end holiday periods, and we may not be able to attract sufficient general tourism guests to offset this seasonality.

OUR MUSIC, MEDIA AND ENTERTAINMENT ASSETS DEPEND UPON POPULAR TASTES.

The success of our operations in our music, media and entertainment division depends to a large degree on popular tastes. Changes in the level of popularity of Christian music and family value lifestyles would affect significant parts of this business. In addition, there has been a reduction in the popularity and demand for country music over recent years. A continued decline in the popularity of this genre could adversely affect our revenues and operations.

OUR BUSINESS PROSPECTS DEPEND ON OUR ABILITY TO ATTRACT AND RETAIN SENIOR LEVEL EXECUTIVES.

During 2000, we endured a significant number of departures from senior management, including the Company's President and Chief Executive Officer. Our future performance depends upon our ability to attract qualified senior executives and to retain their services. Our future financial results also will depend upon our ability to attract and retain highly skilled managerial and marketing personnel in our different areas of operation. Competition for qualified personnel is intense and is likely to increase in the future. We compete for qualified personnel against companies with significantly greater financial resources than ours.

WE REQUIRE ADDITIONAL FINANCING TO COMPLETE OUR NEW HOTEL PROJECTS.

We require additional financing to complete the construction, equipping and deployment of the Opryland Hotel Florida by its scheduled opening in February 2002 and to provide initial working capital for that hotel. We also require additional financing for our Opryland Hotel Texas project. Our ability to obtain additional debt financing for these capital projects is limited by our existing level of indebtedness and limitations on our ability to grant liens on unencumbered assets. Accordingly, it is likely that we will need to seek alternative sources of debt capital as well as equity capital. These financing efforts will be subject to market conditions prevailing from time to time as well as our financial condition and prospects. If we are unable to obtain additional financing on terms acceptable to us to complete the construction of our hotel projects as currently scheduled, our future prospects could be adversely affected in a material way.

OUR FOREIGN CABLE OPERATIONS ARE SUBJECT TO RISKS INHERENT IN INTERNATIONAL OPERATIONS.

We are engaged in cable networks in Argentina, Brazil, Mexico, Japan and Australia. We have business partners in each of these countries. Our ability to succeed in these international aspects of our operations is subject to risks inherent in international operations as well as other business risks. Some of these are:

- We do not own all the equity interests in our foreign cable operations and therefore are subject to risks inherent in dealing with business partners in foreign business and legal environments.
- The lack of overall control of our cable operations could affect our ability to successfully operate and expand our business.
- The success of our cable operations will depend on popular tastes which could vary significantly from country to country.
- There are economic and currency risks, including fluctuations in foreign currency exchange rates, potential devaluation of foreign currencies and the potential imposition of foreign exchange controls.

THE VALUE OF THE VIACOM STOCK WE OWN IS SUBJECT TO MARKET RISKS.

The shares of Viacom Stock we own represent a significant asset of the Company. However, we have no right to vote on matters affecting Viacom or to otherwise participate in the direction of the affairs of that corporation. Our investment in Viacom is subject to the risks of declines in the market value of Viacom equity securities. While we have mitigated our exposure to declines in the stock market valuation below \$56.04 per share by entering into the secured forward exchange contract described elsewhere, the value of this asset ultimately is subject to the success of Viacom and its value in the securities markets. Further, accounting principles generally accepted in the United States applicable to the treatment of this contract will require us to record, and to reflect in our consolidated statement of operations, gains or losses based upon changes in the fair value of the derivatives and the changes in the fair value of our Viacom Stock. The effect of this accounting treatment could be material to our results reflected in our consolidated financial statements for relevant periods.

WE HAVE A NUMBER OF OTHER MINORITY EQUITY INTERESTS OVER WHICH WE HAVE NO CONTROL.

We have a number of minority investments which are illiquid and over which we have no rights, or ability, to exercise the direction or control of the respective enterprises. These include our equity interests in Bass Pro, Opry Mills and the Nashville Predators. The ultimate value of each of these investments will be dependent upon the efforts of others over an extended period of time. The nature of our interests and the absence of a market for those interests restricts our ability to dispose of them.



## GAYLORD ENTERTAINMENT COMPANY AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF OPERATIONS  
 FOR THE YEARS ENDED DECEMBER 31, 2000, 1999 AND 1998  
 (AMOUNTS IN THOUSANDS, EXCEPT PER SHARE DATA)

	2000	1999	1998
	-----	-----	-----
Revenues	\$ 514,380	\$ 532,640	\$ 543,365
Operating expenses:			
Operating costs	367,886	346,412	333,967
Selling, general and administrative	161,403	138,318	123,681
Impairment and other charges	105,538	12,201	--
Restructuring charges	16,193	3,102	--
Merger costs	--	(1,741)	--
Depreciation and amortization	58,455	52,574	42,784
	-----	-----	-----
Operating income (loss)	(195,095)	(18,226)	42,933
Interest expense	(31,629)	(16,101)	(30,031)
Interest income	4,729	6,275	25,606
Other gains and losses	(4,548)	589,574	11,359
	-----	-----	-----
Income (loss) before provision (benefit) for income taxes	(226,543)	561,522	49,867
Provision (benefit) for income taxes	(73,073)	211,730	18,673
	-----	-----	-----
Net income (loss)	\$ (153,470)	\$ 349,792	\$ 31,194
	=====	=====	=====
Income per share:			
-----			
Net income (loss)	\$ (4.60)	\$ 10.63	\$ 0.95
	=====	=====	=====
Income per share - assuming dilution:			
-----			
Net income (loss)	\$ (4.60)	\$ 10.53	\$ 0.94
	=====	=====	=====

The accompanying notes are an integral part of these  
 consolidated financial statements.

## GAYLORD ENTERTAINMENT COMPANY AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS  
 DECEMBER 31, 2000 AND 1999  
 (AMOUNTS IN THOUSANDS, EXCEPT PER SHARE DATA)

	2000	1999
ASSETS	-----	-----
Current assets:		
Cash and cash equivalents - unrestricted	\$ 35,852	\$ 18,696
Cash and cash equivalents - restricted	12,667	-
Trade receivables, less allowance of \$8,452 and \$7,474, respectively	66,869	83,289
Inventories	16,893	28,527
Deferred financing costs	29,674	-
Other current assets	53,698	33,524
Total current assets	----- 215,653	----- 164,036
Property and equipment, net of accumulated depreciation	778,960	611,582
Intangible assets, net of accumulated amortization	103,792	141,874
Investments	606,006	742,155
Long-term notes receivable, net	19,284	19,715
Long-term deferred financing costs	144,998	--
Other assets	70,860	53,022
Total assets	----- \$ 1,939,553	----- \$ 1,732,384
	=====	=====
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Current portion of long-term debt	\$ 176,878	\$ 299,788
Accounts payable and accrued liabilities	151,845	128,123
Total current liabilities	----- 328,723	----- 427,911
Secured forward exchange contract	613,054	--
Long-term debt, net of current portion	20,551	10,335
Deferred income taxes	204,805	292,966
Other liabilities	43,009	38,693
Minority interest	1,546	1,320
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, \$.01 par value, 100,000 shares authorized, no shares issued or outstanding	--	--
Common stock, \$.01 par value, 150,000 shares authorized, 33,411 and 33,282 shares issued and outstanding, respectively	334	333
Additional paid-in capital	513,599	512,308
Retained earnings	197,558	351,028
Unrealized gain on investments, net	17,957	99,858
Other stockholders' equity	(1,583)	(2,368)
Total stockholders' equity	----- 727,865	----- 961,159
Total liabilities and stockholders' equity	----- \$ 1,939,553	----- \$ 1,732,384
	=====	=====

The accompanying notes are an integral part of these  
 consolidated financial statements.

## GAYLORD ENTERTAINMENT COMPANY AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS  
FOR THE YEARS ENDED DECEMBER 31, 2000, 1999 AND 1998  
(AMOUNTS IN THOUSANDS)

	2000	1999	1998
	-----	-----	-----
Cash Flows from Operating Activities:			
Net income (loss)	\$(153,470)	\$ 349,792	\$ 31,194
Amounts to reconcile net income (loss) to net cash flows provided by operating activities:			
Depreciation and amortization	58,455	52,574	42,784
(Gain) loss on divestiture of businesses	3,250	(459,307)	--
Provision (benefit) for deferred income taxes	(36,018)	176,644	20,168
Gain on equity participation rights	--	(129,875)	--
Gain on long-term note receivable	--	--	(15,000)
Gain on sale of investments	--	--	(20,118)
Write-off of Z Music note receivable	--	--	23,616
Impairment and other charges	105,538	12,201	--
Amortization of deferred financing costs	20,780	--	--
Changes in (net of acquisitions and divestitures):			
Trade receivables	19,419	11,519	(4,485)
Interest receivable on long-term note	--	--	48,385
Accounts payable and accrued liabilities	17,748	2,121	(19,521)
Other assets and liabilities	(20,400)	(9,512)	(28,782)
	-----	-----	-----
Net cash flows provided by operating activities	15,302	6,157	78,241
	-----	-----	-----
Cash Flows from Investing Activities:			
Purchases of property and equipment	(232,304)	(84,050)	(51,193)
Acquisition of businesses, net of cash acquired	(11,620)	(26,421)	(31,796)
Proceeds from sale of property and equipment	640	263	6,336
Proceeds from sale of investments	--	--	20,130
Proceeds from equity participation rights	--	130,000	--
Principal proceeds from collection of long-term note receivable	--	--	165,688
Proceeds from divestiture of businesses, net of selling costs paid	4,541	951	--
Cash received from CBS related to the Merger	--	13,155	--
Investments in, advances to and distributions from affiliates, net	(11,924)	(27,394)	(9,852)
Other investing activities	(41,856)	(23,703)	(10,783)
	-----	-----	-----
Net cash flows provided by (used in) investing activities	(292,523)	(17,199)	88,530
	-----	-----	-----
Cash Flows from Financing Activities:			
Net borrowings (payments) under revolving credit agreements	(283,406)	36,094	(134,690)
Proceeds from issuance of debt	175,500	500	500
Repayment of long-term debt	(4,788)	(9,452)	(1,547)
Cash proceeds from secured forward exchange contract	613,054	--	--
Deferred financing costs paid	(195,452)	--	--
Increase in restricted cash	(12,667)	--	--
Dividends paid	--	(26,355)	(21,332)
Proceeds from exercise of stock option and purchase plans	2,136	10,205	332
	-----	-----	-----
Net cash flows provided by (used in) financing activities	294,377	10,992	(156,737)
	-----	-----	-----
Net change in cash	17,156	(50)	10,034
Cash, beginning of year	18,696	18,746	8,712
	-----	-----	-----
Cash, end of year	\$ 35,852	\$ 18,696	\$ 18,746
	=====	=====	=====

The accompanying notes are an integral part of these consolidated financial statements.

## GAYLORD ENTERTAINMENT COMPANY AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY  
FOR THE YEARS ENDED DECEMBER 31, 2000, 1999 AND 1998  
(AMOUNTS IN THOUSANDS)

	Common Stock	Additional Paid-in Capital	Retained Earnings	Unearned Compensation	Other Comprehensive Income (Loss)	Total Stockholders' Equity
Balance, December 31, 1997	\$ 327	\$ 498,504	\$ 16,837	\$ (2,215)	\$ 2,771	\$ 516,224
Comprehensive income:						
Net income	--	--	31,194	--	--	31,194
Realized gain on investments	--	--	--	--	(2,887)	(2,887)
Foreign currency translation	--	--	--	--	(323)	(323)
						-----
Comprehensive income						27,984
Cash dividends (\$0.65 per share)	--	--	(21,332)	--	--	(21,332)
Exercise of stock options	--	332	--	--	--	332
Tax benefit on stock options	--	60	--	--	--	60
Issuance of restricted stock	1	1,538	--	(1,539)	--	--
Compensation expense	--	--	--	1,892	--	1,892
						-----
Balance, December 31, 1998	328	500,434	26,699	(1,862)	(439)	525,160
Comprehensive income:						
Net income	--	--	349,792	--	--	349,792
Unrealized gain on investments	--	--	--	--	99,858	99,858
Foreign currency translation	--	--	--	--	(359)	(359)
						-----
Comprehensive income						449,291
Cash dividends (\$0.80 per share)	--	--	(26,355)	--	--	(26,355)
CBS Merger arbitration settlement	--	--	892	--	--	892
Exercise of stock options	5	10,125	--	--	--	10,130
Tax benefit on stock options	--	1,443	--	--	--	1,443
Employee stock plan purchases	--	75	--	--	--	75
Issuance of restricted stock	--	231	--	(231)	--	--
Compensation expense	--	--	--	523	--	523
						-----
Balance, December 31, 1999	333	512,308	351,028	(1,570)	99,060	961,159
Comprehensive loss:						
Net loss	--	--	(153,470)	--	--	(153,470)
Unrealized loss on investments	--	--	--	--	(81,901)	(81,901)
Foreign currency translation	--	--	--	--	(705)	(705)
						-----
Comprehensive loss						(236,076)
Exercise of stock options	2	1,845	--	--	--	1,847
Tax benefit on stock options	--	1,000	--	--	--	1,000
Employee stock plan purchases	--	289	--	--	--	289
Issuance of restricted stock	1	2,776	--	(2,777)	--	--
Cancellation of restricted stock	(2)	(4,705)	--	4,707	--	--
Compensation expense	--	86	--	(440)	--	(354)
						-----
Balance, December 31, 2000	\$ 334	\$ 513,599	\$ 197,558	\$ (80)	\$ 16,454	\$ 727,865
	=====	=====	=====	=====	=====	=====

The accompanying notes are an integral part of these consolidated financial statements.

## GAYLORD ENTERTAINMENT COMPANY AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
(DOLLARS IN THOUSANDS, EXCEPT PER SHARE DATA)

## 1. DESCRIPTION OF THE BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES:

Gaylord Entertainment Company (the "Company") is a diversified entertainment company operating, through its subsidiaries, principally in three business segments: hospitality and attractions; music, media and entertainment; and corporate and other.

## BUSINESS SEGMENTS

## HOSPITALITY AND ATTRACTIONS

At December 31, 2000, the Company owns and operates the Opryland Hotel Nashville, the Radisson Hotel at Opryland, the General Jackson showboat and various other tourist attractions located in Nashville, Tennessee. The Opryland Hotel Nashville is owned and operated by Opryland Hotel Nashville, LLC, a wholly-owned Delaware special purpose entity. During 1998, the Company formed the Opryland Hospitality Group to expand the Opryland Hotel concept into other cities. During 1999, the Company began developing hotel projects near Orlando, Florida and Dallas, Texas. The Opryland Hotel Florida and Opryland Hotel Texas are scheduled to open in 2002 and 2003, respectively.

## MUSIC, MEDIA AND ENTERTAINMENT

At December 31, 2000, the Company owns and operates Word Entertainment ("Word"), a contemporary Christian music company, the Grand Ole Opry, the Wildhorse Saloon Nashville, Acuff-Rose Music Publishing, Pandora Investments, S.A. ("Pandora"), a Luxembourg-based company which acquires, distributes and produces theatrical feature film and television programming primarily for markets outside of the United States, and MusicCountry cable television networks operating in Asia and the Pacific Rim, and Latin America, formerly known as CMT International. In addition, the Company owns and operates three radio stations in Nashville, Tennessee. The Company acquired Gaylord Event Television, formerly Jack Nicklaus Productions, in 1999. Gaylord Event Television produces golf tournaments for television broadcast. Subsequent to December 31, 2000, the Company sold five businesses: Pandora, Gaylord Films, Gaylord Event Television, Gaylord Sports Management and Gaylord Production Company, as further discussed in Note 3. During 1999, the Company created a new division, Gaylord Digital, formed to initiate a focused Internet strategy and acquired controlling equity interests in two online operations, Musicforce.com and Lightsource.com. During 2000, the Company closed Gaylord Digital, as further discussed in Note 4. The Company divested its television station, KTVT, in Dallas-Ft. Worth in October 1999, as further described in Note 3.

## CORPORATE AND OTHER

During 1998, the Company created a partnership with The Mills Corporation to develop Opry Mills, an entertainment and retail complex, which opened in May 2000. The Company contributed land previously used for the Opryland theme park in exchange for a one-third interest in the partnership, as further described in Note 8. The Company also owns minority interests in Bass Pro, Inc. ("Bass Pro"), a leading retailer of premium outdoor sporting goods and fishing products, and the Nashville Predators, a National Hockey League professional team.

## PRINCIPLES OF CONSOLIDATION

The accompanying consolidated financial statements include the accounts of the Company and all of its majority-owned subsidiaries. All significant intercompany accounts and transactions have been eliminated in consolidation.

## CASH AND CASH EQUIVALENTS - UNRESTRICTED

The Company considers all highly liquid investments purchased with an original maturity of three months or less to be cash equivalents.

## CASH AND CASH EQUIVALENTS - RESTRICTED

Restricted cash and cash equivalents represent cash held in escrow for taxes, insurance payments and certain lines of credit. The Company is required by its interim loan agreement, as further described in Note 11, to restrict cash for tax and insurance payments.

## INVENTORIES

Inventories consist primarily of merchandise for resale and are carried at the lower of cost or market. Cost is computed on an average cost basis.

## DEFERRED FINANCING COSTS

Deferred financing costs consist of prepaid interest, loan fees and other costs of financing that are amortized over the term of the related financing, using the effective interest method. For the year ended December 31, 2000, deferred financing costs of \$20,780 were amortized and recorded as interest expense in the accompanying consolidated statements of operations.

## PROPERTY AND EQUIPMENT

Property and equipment are stated at cost. Improvements and significant renovations that extend the life of existing assets are capitalized. Interest on funds borrowed to finance the construction of major capital additions is included in the cost of each capital addition. Property and equipment are depreciated using straight-line methods over the following estimated useful lives:

Buildings	40 years
Land improvements	20 years
Attractions-related equipment	16 years
Furniture, fixtures and equipment	3-8 years
Leasehold improvements	Life of lease

Depreciation expense includes amortization of capital leases, which is computed on a straight-line basis over the term of the lease. Maintenance and repairs are charged to expense as incurred.

## INTANGIBLE ASSETS

Intangible assets consist primarily of goodwill, which is amortized using the straight-line method over its estimated useful life not exceeding 40 years. The Company continually evaluates whether later events and circumstances have occurred that indicate the remaining balance of goodwill may not be recoverable. In evaluating possible impairment, the Company uses the most appropriate method of evaluation given the circumstances surrounding the particular acquisition, which generally has been an estimate of the related business unit's undiscounted operating income before interest and taxes over the remaining life of the goodwill, as prescribed by Statement of Financial Accounting Standards ("SFAS") No. 121, "Accounting for the Impairment of Long-lived Assets and Long-lived Assets to be Disposed Of".

Amortization expense related to intangible assets for the years ended December 31, 2000, 1999 and 1998 was \$13,075, \$7,839 and \$3,823, respectively. At December 31, 2000 and 1999, accumulated amortization of intangible assets was \$13,234 and \$16,829, respectively.

## OTHER ASSETS

Other current and long-term assets at December 31 consist of:

	2000	1999
	-----	-----
Other current assets:		
Other current receivables	\$ 10,227	\$ 9,598
Federal income tax receivable	23,868	4,842
Prepaid expenses	18,680	18,042
Other current assets	923	1,042
	-----	-----
Total other current assets	\$ 53,698	\$ 33,524
	=====	=====
Other long-term assets:		
Music and film catalogs	\$ 48,325	\$ 30,344
Deferred software costs, net	12,027	11,385
Prepaid pension cost	4,814	4,403
Other long-term assets	5,694	6,890
	-----	-----
Total other long-term assets	\$ 70,860	\$ 53,022
	=====	=====

Other current receivables result primarily from non-operating income and are due within one year. Music and film catalogs consist of the costs to acquire music and film rights and are amortized over their estimated useful lives.

The Company capitalizes the costs of computer software for internal use in accordance with AICPA Statement of Position ("SOP") 98-1, "Accounting for the Costs of Computer Software Developed or Obtained for Internal Use". Accordingly, the Company capitalized the external costs to acquire and develop computer software and certain internal payroll costs during 2000 and 1999. Deferred software costs are amortized on a straight-line basis over their estimated useful life.

## PREOPENING COSTS

In accordance with AICPA SOP 98-5, "Reporting on the Costs of Start-Up Activities", the Company expenses the costs associated with start-up activities and organization costs as incurred.

## ACCOUNTS PAYABLE AND ACCRUED LIABILITIES

Accounts payable and accrued liabilities at December 31 consist of:

	2000	1999
	-----	-----
Trade accounts payable	\$ 28,902	\$ 41,705
Accrued royalties	12,065	10,161
Deferred revenues	17,324	16,992
Accrued salaries and benefits	4,562	5,306
Accrued interest payable	3,176	1,183
Property and other taxes payable	15,208	14,100
Restructuring accruals	13,109	499
Other accrued liabilities	57,499	38,177
	-----	-----
Total accounts payable and accrued liabilities	\$ 151,845	\$ 128,123
	=====	=====

Accrued royalties consist primarily of music royalties and licensing fees. Deferred revenues consist primarily of deposits on advance room bookings, advance ticket sales at the Company's tourism properties and music publishing advances.

## INCOME TAXES

In accordance with SFAS No. 109, "Accounting for Income Taxes", the Company establishes deferred tax assets and liabilities based on the difference between the financial statement and income tax carrying amounts of assets and liabilities using existing tax rates.

## MINORITY INTEREST

Minority interest relates to the interest in consolidated companies that the Company does not wholly own. The Company allocates income to the minority interest based on the percentage ownership throughout the year.

## REVENUE RECOGNITION

Revenues are recognized when services are provided or goods are shipped, as applicable. Provision for returns and other adjustments are provided for in the same period the revenues are recognized.

Effective October 1, 2000, the Company adopted the provisions of the Securities and Exchange Commission Staff Accounting Bulletin ("SAB") 101, "Revenue Recognition in Financial Statements", as amended, and certain related authoritative literature. SAB 101 is effective for all quarters beginning October 1, 2000. SAB 101 summarizes certain of the Staff's views in applying generally accepted accounting principles to revenue recognition. Accordingly, the Company classified certain amounts as revenues that historically, in accordance with industry practice, were reported as a reduction to operating expenses. To comply with the new requirements, the Company reclassified \$21,852 and \$18,890 from operating expenses to revenues for the years ended December 31, 1999 and 1998, respectively. As part of this reclassification, the Company reclassified \$12,004 and \$10,981 for the years ended December 31, 1999 and 1998, respectively, in the hospitality and attractions segment, primarily related to revenues recognized on service charges and gratuities for convention services. In addition, the Company reclassified \$9,848 and \$7,909 for the years ended December 31, 1999 and 1998, respectively, in the music, media and entertainment segment, primarily related to licensing revenues and freight charges at Word.

## STOCK-BASED COMPENSATION

SFAS No. 123, "Accounting for Stock-Based Compensation", encourages, but does not require, companies to record compensation cost for stock-based employee compensation plans at fair value. The Company has chosen to continue to account for employee stock-based compensation using the intrinsic value method as prescribed in Accounting Principles Board ("APB") Opinion No. 25, "Accounting for Stock Issued to Employees", and related Interpretations, under which no compensation cost related to employee stock options has been recognized as further described in Note 12.

## INCOME PER SHARE

SFAS No. 128, "Earnings Per Share", established standards for computing and presenting earnings per share. Under the standards established by SFAS No. 128, earnings per share is measured at two levels: basic earnings per share and diluted earnings per share. Basic earnings per share is computed by dividing net income by the weighted average number of common shares outstanding during the year. Diluted earnings per share is computed by dividing net income by the weighted average number of common shares outstanding after considering the additional dilution related to outstanding stock options, calculated using the treasury stock method. Income per share amounts are calculated as follows for the years ended December 31 (share amounts in thousands):

	2000			1999			1998		
	Income	Shares	Per Share	Income	Shares	Per Share	Income	Shares	Per Share
Net income (loss)	\$ (153,470)	33,389	\$ (4.60)	\$ 349,792	32,908	\$ 10.63	\$31,194	32,805	\$ 0.95
Effect of dilutive stock options		--			305			353	
Net income (loss) - assuming dilution	\$ (153,470)	33,389	\$ (4.60)	\$ 349,792	33,213	\$ 10.53	\$31,194	33,158	\$ 0.94

For the year ended December 31, 2000, the effect of dilutive stock options was the equivalent of 120,000 shares of common stock outstanding. These incremental shares were excluded from the computation of diluted earnings per share for the year ended December 31, 2000 as the effect of their inclusion would be anti-dilutive.

## COMPREHENSIVE INCOME

In June 1997, the Financial Accounting Standards Board ("FASB") issued SFAS No. 130, "Reporting Comprehensive Income". SFAS No. 130 requires that changes in the amounts of certain items, including gains and losses on certain securities, be shown in the financial statements as a component of comprehensive income. The Company's comprehensive income is presented in the accompanying consolidated statements of stockholders' equity.



The Company's carrying value of its debt and long-term notes receivable approximates fair value based upon the variable nature of these financial instruments' interest rates. Certain of the Company's investments are carried at fair value determined using quoted market prices as discussed further in Note 8. The carrying amount of short-term financial instruments (cash, trade receivables, accounts payable and accrued liabilities) approximates fair value due to the short maturity of those instruments. The concentration of credit risk on trade receivables is minimized by the large and diverse nature of the Company's customer base.

#### ACCOUNTING ESTIMATES

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reported period. Actual results could differ from those estimates.

#### NEWLY ISSUED ACCOUNTING STANDARD

In June 1998, the FASB issued SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities", effective, as amended, for fiscal years beginning after June 15, 2000. SFAS No. 133, as amended, establishes accounting and reporting standards for derivative instruments and hedging activities. SFAS No. 133, as amended, requires all derivatives to be recognized separately in the statement of financial position and to be measured at fair value. The Company will adopt the provisions of SFAS No. 133, as amended, effective January 1, 2001. Under SFAS No. 133, components of the secured forward exchange contract, as discussed further in Note 10, are considered derivatives. The Company expects to record a gain of approximately \$12,000, net of taxes, in the first quarter of 2001 as a cumulative effect of an accounting change to record the derivatives associated with the secured forward exchange contract at fair value as of January 1, 2001. Additionally, the Company expects to record a gain of approximately \$18,000, net of taxes, in the first quarter of 2001 related to reclassifying its investment in Viacom stock from available-for-sale to trading as defined by SFAS No. 115, "Accounting for Certain Investments in Debt and Equity Securities". In subsequent periods, the change in fair value of the derivatives and the change in fair value of the investment in Viacom stock will be recorded as gains or losses in the Company's consolidated statement of operations.

#### RECLASSIFICATIONS

Certain reclassifications of 1999 and 1998 amounts have been made to conform with the 2000 presentation. In addition, the Company has restated its reportable segments during 2000 for all periods presented based upon internal realignment of operational responsibilities in accordance with SFAS No. 131, "Disclosures about Segments of an Enterprise and Related Information".

#### 2. ACQUISITIONS:

During 2000, the Company acquired Corporate Magic, a company specializing in the production of creative events in the corporate entertainment marketplace, for \$7,500 in cash and a \$1,500 note payable. The acquisition was financed through borrowings under the Company's revolving credit agreement and has been accounted for using the purchase method of accounting. The operating results of Corporate Magic have been included in the accompanying consolidated financial statements from the date of the acquisition.

During 1999, the Company formed Gaylord Digital, its Internet initiative, and acquired 84% of two online operations, Musicforce.com and Lightsource.com, for approximately \$23,400 in cash. The parties entered into option agreements regarding the additional equity interests in the online operations. During 2000, the Company acquired the remaining 16% of Musicforce.com and Lightsource.com for approximately \$6,500 in cash. The acquisition was financed through borrowings under the Company's revolving credit agreement and has been accounted for using the purchase method of accounting. The operating results of the online operations have been included in the accompanying consolidated financial statements from the date of acquisition of a controlling interest. During 2000, the Company announced the closing of Gaylord Digital, as further discussed in Note 4.

## 3. DIVESTITURES:

Subsequent to December 31, 2000, the Company sold five businesses: Pandora, Gaylord Films, Gaylord Sports Management, Gaylord Event Television and Gaylord Production Company, to affiliates of The Oklahoma Publishing Company ("OPUBCO") for \$22,000 in cash and the assumption of approximately \$20,000 in debt. The Company does not anticipate recognizing a material gain or loss on the divestiture in 2001. OPUBCO owns a minority interest in the Company. Four of the Company's directors are also directors of OPUBCO and voting trustees of a voting trust that controls OPUBCO. Additionally, those four directors own a significant ownership interest in the Company. The operating results of the five businesses sold to OPUBCO included in the accompanying consolidated statements of operations for the years ended December 31 are as follows:

	2000 ----	1999 ----	1998 ----
Revenues	\$ 39,830 =====	\$ 17,797 =====	\$ 14,010 =====
Operating loss	\$ (17,794) =====	\$ (1,553) =====	\$ 1,572 =====

During 2000, the Company sold its KOA Campground located near the Opryland Hotel Nashville for \$2,032 in cash. The Company recognized a pretax loss of \$3,247, which is included in other gains and losses in the accompanying consolidated statements of operations.

On October 1, 1997, the Company consummated a transaction ("the Merger") with CBS Corporation ("CBS"), pursuant to which substantially all of the assets of the Company's cable networks business, consisting primarily of TNN and CMT in the United States and Canada, and certain other related businesses (collectively, the "Cable Networks Business") and its liabilities, to the extent that they arose out of or related to the Cable Networks Business, were acquired by CBS. In connection with the Merger, the Company and CBS (or one or more of their respective subsidiaries) entered into an agreement which provides, for a specified time period, that the Company will not engage in certain specified activities which would constitute competition with the Cable Networks Business and that CBS will not engage in certain activities which would constitute competition with MusicCountry.

During 1999, the Company settled the remaining contingencies associated with the Merger and received a cash payment of \$15,109 from CBS, including nonrecurring interest income of \$1,954. In addition, the Company recorded an adjustment to the net assets of the Cable Networks Business of \$892 related to the settlement of Merger-related contingencies between the Company and CBS during 1999. The Company reversed \$1,741 of the accrued merger costs based upon the settlement of the remaining contingencies associated with the Merger during 1999.

In October 1999, CBS acquired the Company's television station KTVT in Dallas-Ft. Worth in exchange for \$485,000 of CBS Series B convertible preferred stock, \$4,210 of cash and other consideration. The Company recorded a pretax gain of \$459,307, which is included in other gains and losses in the accompanying consolidated statements of operations, based upon the disposal of the net assets of KTVT of \$29,903, including related selling costs. CBS merged with Viacom, Inc. ("Viacom") in May 2000, resulting in the CBS convertible preferred stock converting into Viacom common stock, as further discussed in Note 8. The operating results of KTVT included in the accompanying consolidated statements of operations through the disposal date are as follows:

	Period Ended October 12, 1999 -----	Year Ended December 31, 1998 -----
Revenues	\$36,072 =====	\$51,636 =====
Depreciation and amortization	\$ 2,419 =====	\$ 2,232 =====
Operating income	\$ 8,372 =====	\$17,829 =====

During 1998, the Company sold its investment in the Texas Rangers Baseball Club, Ltd. for \$16,072 and recognized a pretax gain of the same amount, which is included in other gains and losses in the accompanying consolidated statements of operations.

Also during 1998, the Company recorded pretax gains totaling \$8,538, which is included in other gains and losses in the accompanying consolidated statements of operations, primarily related to the settlement of contingencies arising from the sales of television stations KHTV in Houston in 1996 and KSTW in Seattle in 1997.

#### 4. IMPAIRMENT AND OTHER CHARGES:

During 2000, the Company endured a significant number of departures from its senior management, including the Company's President and Chief Executive Officer. In addition, the Company continued to produce weaker than anticipated operating results during 2000 while attempting to fund its capital requirements related to its hotel construction project in Florida and hotel development activities in Texas. As a result of these factors, during the fourth quarter of 2000, the Company completed an assessment of its strategic alternatives related to its operations and capital requirements and developed a new strategic plan designed to refocus the Company's operations, reduce its operating losses and reduce its negative cash flows.

As a result of the Company's strategic assessment, the Company adopted a plan to divest a number of its under-performing businesses through sale or closure and to curtail certain projects and business lines that were no longer projected to produce a positive return. As a result of the completion of the strategic assessment, the Company recognized pretax impairment and other charges totaling \$105,538 during 2000 in accordance with the provisions of SFAS 121, "Accounting for the Impairment of Long-lived Assets and for Long-lived Assets to be Disposed Of", and other relevant authoritative literature. The components of the impairment and other charges for the years ended December 31 are as follows:

	2000 -----	1999 -----
Gaylord Digital	\$ 48,127	\$ --
Wildhorse Saloon near Orlando	15,854	--
Word Entertainment	8,188	--
Unison Records	4,905	12,201
Programming, film and other content	15,035	--
Other intangible assets	8,325	--
Other property and equipment	4,181	--
Other	923	--
	-----	-----
Total impairment and other charges	\$ 105,538	\$ 12,201
	=====	=====

As part of the Company's strategic assessment, the Company closed Gaylord Digital in the fourth quarter of 2000. Gaylord Digital was formed to initiate a focused Internet strategy through the acquisition of a number of websites and investments in technology start-up businesses. During 1999 and 2000, Gaylord Digital was unable to produce the operating results initially anticipated and required an extensive amount of capital to fund its operating losses, investments and technology infrastructure. As a result of the closing, the Company recorded a pretax charge of \$48,127 in 2000 to reduce the carrying value of Gaylord Digital's assets to their fair value based upon estimated selling prices. The Company sold Musicforce.com and Lightsource.com subsequent to the closure of Gaylord Digital. The Gaylord Digital charge included the write-down of intangible assets of \$25,761, property and equipment (including software) of \$14,792, investments of \$7,014 and other assets of \$560. The operating results of Gaylord Digital, excluding the effect of the impairment and other charges, for the years ended December 31 were:

	2000 -----	1999 -----
Revenues	\$ 3,938	\$ 1,562
	=====	=====
Operating loss	\$ (27,479)	\$ (7,294)
	=====	=====

During November 2000, the Company ceased its operations of the Wildhorse Saloon near Orlando. Walt Disney World Resort paid the Company approximately \$1,800 for the net assets of the Wildhorse Saloon near Orlando and released the Company from its operating lease for the Wildhorse Saloon location. As a result of this divestiture, the Company recorded pretax charges of \$15,854 to reflect the impairment and other charges related to the divestiture. The Wildhorse Saloon near Orlando charges included the write-off of equipment of \$9,437, intangible assets of \$8,124 and other working capital items of \$93 offset by the \$1,800 of proceeds received from Disney. The operating results of the Wildhorse Saloon near Orlando, excluding the effect of the impairment and other charges, for the years ended December 31 were:

	2000 -----	1999 -----	1998 -----
Revenues	\$ 4,359 =====	\$ 5,362 =====	\$ 3,413 =====
Operating loss	\$ (1,572) =====	\$ (2,846) =====	\$ (3,606) =====

The operations of Word were also reviewed during the fourth quarter of 2000 as part of the Company's strategic assessment. As a result, the Company determined that certain projects and potential transactions should be discontinued. As such, certain assets and lines of business within Word were deemed to be unrealizable and were written down to their estimated fair value, based upon projected cash flows, resulting in pretax charges of \$8,188 during the fourth quarter of 2000. The charges related to Word included the write-down of inventories of \$3,055, intangible assets of \$2,755, other assets of \$1,325 and a charge of \$1,053 for the divestiture of a record label.

During 1999, the Company recorded a pretax loss of \$12,201 related to the closing of Unison Records ("Unison"), a specialty record label of Word which dealt primarily in value-priced acoustical and instrumental recordings. The Unison closing charge is reflected as impairment and other charges in the accompanying consolidated statements of operations. The Unison closing charge includes write-downs of the carrying value of inventories, accounts receivable and other assets of \$4,270, \$3,551 and \$3,907, respectively, and other costs associated with the Unison closing of \$473. During 2000, the Company pursued the sale of the Unison business with several potential buyers. During the fourth quarter of 2000, the Company determined that the expected proceeds from future transactions to liquidate the Unison assets would be less than previously anticipated and recorded an additional asset write-down of \$4,905 to further reduce the carrying value of the accounts receivable and inventories of Unison.

The Company's strategic assessment of its programming, film and other content assets completed in the fourth quarter of 2000 resulted in pretax impairment and other charges of \$15,035 based upon the projected cash flows for these assets in the music, media and entertainment segment. This charge included music and film catalogs of \$6,990, investments of \$5,050 and other receivables of \$2,995.

During the course of conducting the strategic assessment, the Company also evaluated the goodwill and intangible assets of other businesses. These reviews indicated that certain intangible assets related to the music, media and entertainment segment were not recoverable from future cash flows based upon the Company's new strategic direction. The Company recorded pretax impairment and other charges related to intangible assets, primarily goodwill, in the music, media and entertainment segment of \$8,325 in 2000. In addition, the property and equipment of the Company was reviewed to determine whether the change in the Company's strategic direction created impaired assets. This review indicated that certain property and equipment would not be recovered by projected cash flows. The Company recorded pretax impairment and other charges related to its property and equipment of \$4,181. These charges included property and equipment write-downs in the hospitality and attractions segment of \$1,624, in the music, media and entertainment segment of \$990, and in the corporate and other segment of \$1,567.

## 5. RESTRUCTURING CHARGES:

As part of the Company's assessment of strategic alternatives discussed in Note 4, the Company recognized pretax restructuring charges of \$16,193 during 2000, in accordance with Emerging Issues Task Force Issue No. 94-3, "Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity (including Certain Costs Incurred in a Restructuring)". These restructuring charges consist of contract termination costs of \$9,987 to exit specific activities and employee severance and related costs of \$6,439 offset by the reversal of the remaining restructuring accrual from the restructuring charges taken in 1999 of \$233. The 2000 restructuring charges relate to the Company's strategic decisions to exit certain lines of business, primarily in the music, media and entertainment segment, and to implement its new strategic plan. As part of the Company's restructuring plan, approximately 375 employees were terminated or were informed of their pending termination. As of December 31, 2000, the Company has recorded cash charges of \$3,317 against the restructuring accrual. The remaining balance of the restructuring accrual at December 31, 2000 of \$13,109 is included in accounts payable and accrued liabilities in the accompanying consolidated balance sheets. The Company anticipates the completion of the restructuring during 2001.

During 1999, the Company recognized pretax restructuring charges of \$3,102 related to streamlining the Company's operations, primarily the Opryland Hotel Nashville. The restructuring charges included estimated costs for employee severance and termination benefits of \$2,372 and other restructuring costs of \$730. As of December 31, 2000, no accrual remained. As of December 31, 1999, the Company had recorded cash charges of \$2,603 against the restructuring accrual.

## 6. PROPERTY AND EQUIPMENT:

Property and equipment at December 31 is recorded at cost and summarized as follows:

	2000	1999
	-----	-----
Land and land improvements	\$ 99,587	\$ 95,509
Buildings	490,758	471,419
Furniture, fixtures and equipment	253,533	253,760
Construction in progress	225,850	60,211
	-----	-----
	1,069,728	880,899
Accumulated depreciation	(290,768)	(269,317)
	-----	-----
Property and equipment, net	\$ 778,960	\$ 611,582
	=====	=====

The increase in construction in progress during 2000 primarily relates to the costs of the Florida hotel construction and hotel development activities in Texas. Depreciation expense for the years ended December 31, 2000, 1999 and 1998 was \$39,686, \$39,844 and \$35,602, respectively. Capitalized interest for the years ended December 31, 2000, 1999 and 1998 was \$6,775, \$472 and \$0, respectively.

## 7. LONG-TERM NOTES RECEIVABLE:

During 1995, the Company sold its cable television systems (the "Systems") to CCT Holdings Corporation ("CCTH"). Net proceeds consisted of \$198,800 in cash and a 10-year note receivable with a face amount of \$165,688. The note receivable was recorded net of a \$15,000 discount to reflect the note at fair value based upon financial instruments of comparable credit risk and interest rates. The Company recorded \$24,376 of interest income related to the note receivable during 1998. As part of the sale transaction, the Company also received contractual equity participation rights equal to 15% of the net distributable proceeds, as defined, from certain future asset sales by the buyer of the Systems. During 1998, the Company received \$238,449 representing prepayment of the entire balance of the CCTH note receivable and related accrued interest. The Company recorded a \$15,000 pretax gain during 1998 related to the note receivable discount originally recorded as part of the Systems sale transaction. The gain is included in other gains and losses in the accompanying consolidated statements of operations. During 1999, the Company received cash and recognized a pretax gain of \$129,875 representing the value of the 15% contractual equity participation rights upon the sale of the Systems. The proceeds from the note receivable prepayment and the equity participation rights were used to reduce outstanding bank indebtedness.

During 1999, the Company advanced \$28,080 to Bass Pro under an unsecured note agreement, which bears interest at 8% annually and is due in 2003. Interest under this note agreement is payable annually. In the fourth quarter of 1999, Bass Pro prepaid \$18,080 of this note receivable. The Company recorded a prepayment penalty of \$1,800 as interest income related to this note agreement during 1999 in the accompanying consolidated statements of operations. In addition to the remaining note balance of \$10,000 at December 31, 2000, the Company holds a separate unsecured \$7,500 note receivable from Bass Pro, which bears interest at a variable rate and is due in 2009. Interest under the \$7,500 note receivable is payable quarterly.

During 1998, the Company recognized a pretax loss of \$23,616 related to the write-off of a note receivable from Z Music, a cable network featuring contemporary Christian music videos. The Company foreclosed on the note receivable and took a controlling interest in the assets of Z Music during the fourth quarter of 1998. Prior to the foreclosure, the Company managed the operations of Z Music, had an option to acquire 95% of the common stock of Z Music, and funded Z Music's operations through advances under the note receivable. The Company terminated the operations of Z Music during 2000.

#### 8. INVESTMENTS:

Investments at December 31 are summarized as follows:

	2000 -----	1999 -----
Viacom Class B non-voting common stock	\$ 514,391	\$ --
CBS Series B convertible preferred stock	--	648,434
Bass Pro	60,598	60,598
Other investments	31,017	33,123
	-----	-----
Total investments	\$ 606,006 =====	\$742,155 =====

The CBS Series B convertible preferred stock ("CBS Stock") was acquired during 1999 as consideration in the divestiture of television station KTVT as discussed in Note 3. CBS merged with Viacom in May 2000. Upon the merger of CBS and Viacom, CBS Stock was converted into 11,003,000 shares of Viacom Class B non-voting common stock ("Viacom Stock"). The original carrying value of the CBS Stock was \$485,000. At December 31, 2000, the Company has classified the Viacom Stock as available-for-sale as defined by SFAS No. 115, "Accounting for Certain Investments in Debt and Equity Securities", and accordingly is carrying the Viacom Stock at market value, based upon the quoted market price, with the difference between cost and market value recorded as a component of stockholders' equity, net of deferred income taxes. Effective January 1, 2001, the Company is reclassifying its investment in Viacom Stock from available-for-sale to trading in conjunction with the adoption of SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities". In subsequent periods, the change in fair value of the investment in Viacom Stock will be recorded as a gain or loss in the Company's consolidated statement of operations.

During 2000, the Company purchased additional minority investments in certain international cable operations for \$6,216 in cash. At December 31, 2000, the Company's minority investments in these international cable operations totaled \$7,755. The Company accounts for its minority investments in these international cable operations using the equity method of accounting.

During 2000 and 1999, the Company purchased minority equity investments of \$5,010 and \$6,579, respectively, in technology-based businesses related to the Company's Internet strategy. During 2000, the Company evaluated the realizability of its technology-based investments as part of its assessment of strategic alternatives resulting in impairment charges as discussed in Note 4.

The Company holds a minority interest in Bass Pro, a supplier of premium outdoor sporting goods and fishing tackle which distributes its products through retail centers and an extensive mail order catalog operation. Bass Pro completed a restructuring at the end of 1999 whereby certain assets, including a resort hotel in Southern Missouri and an interest in a manufacturer of fishing boats, are no longer owned by Bass Pro. Subsequent to the Bass Pro restructuring, the Company owns 19% of Bass Pro and accounts for the investment using the cost method of accounting. Prior to the restructuring, the Company accounted for the Bass Pro investment using the equity method of accounting through December 31, 1999.

During 1998, the Company created a partnership with The Mills Corporation to develop Opry Mills, an entertainment and retail complex, which opened in May 2000 and is located on land owned by the Company. The Company holds a one-third interest in the partnership through a non-cash capital contribution of \$2,049 reflecting the book value of the land on which Opry Mills is located. During 1999, the Company's investment in Opry Mills increased to \$5,272 at December 31, 1999 related to certain costs incurred on behalf of the Opry Mills partnership. At December 31, 2000, the Company's investment in Opry Mills is \$5,662. The Company accounts for the Opry Mills partnership using the equity method of accounting. The Company recognized consulting and other services revenues related to the Opry Mills partnership in 1999 and 1998 of \$5,000 in each year.

The Company holds a preferred minority interest investment in the Nashville Predators, a National Hockey League professional team, of \$12,000 at December 31, 2000 and 1999. The Nashville Predators investment provides an annual 8% cumulative preferred return. A director of the Company owns a majority equity interest in the Nashville Predators.

#### 9. INCOME TAXES:

The provision (benefit) for income taxes for the years ended December 31 consists of:

	2000	1999	1998
	-----	-----	-----
Current:			
Federal	\$ (37,355)	\$ 37,347	\$ (2,810)
State	300	(2,261)	1,315
	-----	-----	-----
Total current provision (benefit)	(37,055)	35,086	(1,495)
	-----	-----	-----
Deferred:			
Federal	(35,650)	148,608	19,747
State	(368)	28,036	421
	-----	-----	-----
Total deferred provision (benefit)	(36,018)	176,644	20,168
	-----	-----	-----
Total provision (benefit) for income taxes	\$ (73,073)	\$211,730	\$ 18,673
	=====	=====	=====

Provision is made for deferred federal and state income taxes in recognition of certain temporary differences in reporting items of income and expense for financial statement purposes and income tax purposes. The effective tax rate as applied to pretax income (loss) for the years ended December 31 differed from the statutory federal rate due to the following:

	2000	1999	1998
	-----	-----	-----
Statutory federal rate	35%	35%	35%
State taxes	--	3	1
Foreign losses	(2)	--	--
Non-deductible losses	(1)	--	1
	-----	-----	-----
	32%	38%	37%
	=====	=====	=====

The components of the net deferred tax liability at December 31 are:

	2000	1999
	-----	-----
Deferred tax assets:		
Amortization	\$ 7,710	\$ 2,268
Accounting reserves and accruals	32,999	18,258
Net operating loss carryforward	21,640	--
Other, net	10,829	16,271
	-----	-----
Total deferred tax assets	73,178	36,797
	-----	-----
Deferred tax liabilities:		
Depreciation	40,460	41,105
Accounting reserves and accruals	237,523	288,658
	-----	-----
Total deferred tax liabilities	277,983	329,763
	-----	-----
Net deferred tax liability	\$ 204,805	\$ 292,966
	=====	=====

Under the provisions of SFAS 109, "Accounting for Income Taxes", the Company evaluated the need for a valuation allowance related to its deferred tax assets. Based upon the expected reversal of the temporary differences, the Company concluded that a valuation allowance is not required. At December 31, 2000, the Company had a net operating loss carryforward of \$61,830, which will expire in 2020.

The tax benefits associated with the exercise of stock options reduced income taxes payable by \$1,000, \$1,443 and \$60 in 2000, 1999 and 1998, respectively, and are reflected as an increase in additional paid-in capital. The deferred income taxes resulting from the unrealized gain on the investment in the Viacom Stock are \$11,434 and \$63,576 at December 31, 2000 and 1999, respectively, and have been reflected as a reduction in stockholders' equity. The Company reached settlements of routine Internal Revenue Service audits of the Company's 1994-1995 tax returns during 1999. These settlements had no material impact on the Company's financial position or results of operations.

Net cash payments (refunds) for income taxes were approximately (\$18,500), \$30,400 and \$11,400 in 2000, 1999 and 1998, respectively.

#### 10. SECURED FORWARD EXCHANGE CONTRACT:

During 2000, the Company entered into a seven-year secured forward exchange contract with an affiliate of Credit Suisse First Boston with respect to 10,937,900 shares of Viacom Stock. The seven-year secured forward exchange contract has a face amount of \$613,054 and required contract payments based upon a stated 5% rate. The secured forward exchange contract protects the Company against decreases in the fair market value of the Viacom Stock while providing for participation in increases in the fair market value. By entering into the secured forward exchange contract, the Company realized cash proceeds of \$506,337, net of discounted prepaid contract payments related to the first 3.25 years of the contract and transaction costs totaling \$106,717. During the fourth quarter of 2000, the Company prepaid the remaining 3.75 years of contract payments required by the secured forward exchange contract of \$83,161. As a result of the prepayment, the Company will not be required to make any further contract payments during the seven-year term of the secured forward exchange contract. Additionally, as a result of the prepayment, the Company was released from the covenants of the secured forward exchange contract, which related to sales of assets, additional indebtedness and liens. The unamortized balances of these deferred financing costs are classified as current assets of \$26,865 and long-term assets of \$144,998 in the accompanying consolidated balance sheets as of December 31, 2000. The Company is recognizing the contract payments associated with the secured forward exchange contract as interest expense over the seven-year contract period using the effective interest method. The Company utilized \$394,142 of the net proceeds from the secured forward exchange contract to repay all outstanding indebtedness under its 1997 revolving credit facility. As a result of the secured forward exchange contract, the 1997 revolving credit facility was terminated.

During the seven-year term of the secured forward exchange contract, the Company retains ownership of the Viacom Stock. The Company's obligation under the secured forward exchange contract is collateralized by a security interest in the Viacom Stock. At the end of the seven-year contract term, the Company may, at its option, elect to pay in cash rather than by delivery of all or a portion of the Viacom Stock.



Under SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities", certain components of the secured forward exchange contract are considered derivatives. The Company expects to record a gain of approximately \$12,000, net of taxes, in the first quarter of 2001 as a cumulative effect of an accounting change to record the derivatives associated with the secured forward exchange contract at fair value as of January 1, 2001. In subsequent periods, the change in fair value of the derivatives will be recorded as gains or losses in the Company's consolidated statement of operations.

#### 11. DEBT:

The Company's debt outstanding at December 31 consists of:

	2000 -----	1999 -----
Interim Loan	\$ 175,000	\$ --
1997 Credit Facility	--	294,000
Capital lease obligations	6,893	8,181
Other debt	15,536	7,942
	-----	-----
Total debt	197,429	310,123
Less amounts due within one year	(176,878)	(299,788)
	-----	-----
Total long-term debt	\$ 20,551	\$ 10,335
	=====	=====

Annual maturities of debt, including capital lease obligations, are as follows:

2001	\$176,878
2002	1,474
2003	9,299
2004	1,494
2005	8,284
Years thereafter	--
	-----
Total	\$197,429
	=====

During the fourth quarter of 2000, the Company entered into a six-month \$200,000 interim loan agreement (the "Interim Loan") with Merrill Lynch Mortgage Capital, Inc. As of December 31, 2000, \$175,000 was outstanding under the Interim Loan. Subsequent to December 31, 2000, the Company increased the borrowing capacity under the Interim Loan to \$250,000. The Company used \$235,000 of the proceeds from the 2001 loans discussed below to refinance the Interim Loan during March 2001. The Interim Loan was secured by the assets of the Opryland Hotel Nashville and was due April 6, 2001. Amounts outstanding under the Interim Loan carried an interest rate of LIBOR plus an amount that increased monthly from 1.75% at inception to 3.5% by April 2001. In addition, the Interim Loan required a commitment fee of 0.375% per year on the average unused portion of the Interim Loan and a contingent exit fee of up to \$4,000, depending upon Merrill Lynch's involvement in the refinancing of the Interim Loan. The Company recognized a portion of the exit fee as interest expense in the accompanying consolidated statements of operations in 2000. Pursuant to the terms of the 2001 loans discussed below, the contingencies related to the exit fee were removed and no payment of these fees was required. The weighted average interest rate, including amortization of deferred financing costs, under the Interim Loan for 2000 was 21.0%. The unamortized balance of the deferred financing costs is classified as current assets of \$2,809.

The Interim Loan required that the Company maintain certain escrowed cash balances and certain financial covenants, and imposed limits on transactions with affiliates and indebtedness. At December 31, 2000, the Company was in compliance with all financial covenants under the Interim Loan. The Company utilized \$83,161 of the proceeds from the Interim Loan to prepay the remaining contract payments required by the secured forward exchange contract, as discussed in Note 10.

Subsequent to December 31, 2000, the Company, through special purpose entities, entered into two new loan agreements, a \$275,000 senior loan (the "Senior Loan") and a \$100,000 mezzanine loan (the "Mezzanine Loan") (collectively, the "2001 Loans") with affiliates of Merrill Lynch & Company acting as principal. The Senior Loan is secured by a first mortgage lien on the assets of the Opryland Hotel Nashville and is due in 2004. Amounts outstanding under the Senior Loan bear interest at one-month LIBOR plus 1.5% as of the closing date. The Mezzanine Loan, secured by the equity interest in the owner of the Opryland Hotel Nashville, is due in 2004 and bears interest at one-month LIBOR plus 6.0% as of the closing date. Future securitization, syndication or other transactions related to the Senior Loan and the Mezzanine Loan by the affiliates of Merrill Lynch could result in an adjustment in the interest rate spread over one-month LIBOR, not to exceed an interest rate spread of 2.0% on the Senior Loan and 8.0% on the Mezzanine Loan. At the Company's option, the 2001 Loans may be extended for two additional one-year terms beyond their scheduled maturities, subject to the Company meeting certain financial ratios and other criteria. The 2001 Loans require monthly principal payments of \$667 during their three-year terms in addition to monthly interest payments. The terms of the Senior Loan and the Mezzanine Loan require the purchase of interest rate hedges in notional amounts equal to the outstanding balances of the Senior Loan and the Mezzanine Loan in order to protect against adverse changes in one-month LIBOR. Pursuant to these agreements, the Company has purchased instruments which cap its exposure to one-month LIBOR at 7.50%. The Company used \$235,000 of the proceeds from the 2001 Loans to refinance the Interim Loan. At closing, the Company was required to escrow certain amounts, including \$20,000 related to future capital expenditures of the Opryland Hotel Nashville. The net proceeds from the 2001 Loans after refinancing of the Interim Loan, required escrows and fees were approximately \$98,000. The 2001 Loans require that the Company maintain certain escrowed cash balances and certain financial covenants, and imposes limits on transactions with affiliates and indebtedness.

In August 1997, the Company entered into a revolving credit facility (the "1997 Credit Facility") and utilized the proceeds to retire outstanding indebtedness. The lenders under the 1997 Credit Facility were a syndicate of banks with Bank of America, N.A. acting as agent. The Company utilized \$394,142 of the net proceeds from the secured forward exchange contract to repay all outstanding indebtedness under the 1997 Credit Facility. As a result of the secured forward exchange contract, the 1997 Credit Facility was terminated. The weighted average interest rates for borrowings under the 1997 Credit Facility for 2000, 1999 and 1998 were 7.3%, 6.2% and 6.6%, respectively.

Capital lease obligations relating to certain broadcast equipment require aggregate payments, including interest, of approximately \$1,900 each year. At December 31, 2000, future minimum payments for capital leases were \$8,292, including \$1,399 representing interest.

Other debt consists primarily of revolving lines of credit utilized by Pandora in the production of films. At December 31, 2000, Pandora's revolving lines of credit had \$15,036 outstanding, provide for additional borrowings of approximately \$3,165, and bear interest at LIBOR plus 1.6%. The weighted average interest rates related to Pandora's revolving lines of credit for 2000 and 1999 were 7.8% and 8.9%, respectively. Pandora had outstanding letters of credit of \$6,300 at December 31, 2000 to collateralize its obligations related to film production. The letters of credit reflect fair value as a condition of their underlying purpose. Pandora's revolving lines of credit were assumed by OPUBCO as part of Pandora's divestiture as further discussed in Note 3.

Accrued interest payable at December 31, 2000 and 1999 was \$3,176 and \$1,183, respectively, and is included in accounts payable and accrued liabilities in the accompanying consolidated balance sheets. Cash paid for interest for the years ended December 31 was comprised of:

	2000	1999	1998
	-----	-----	-----
Debt interest paid	\$ 14,599	\$ 16,392	\$ 30,217
Deferred financing costs paid	195,452	--	--
Capitalized interest	(6,775)	(472)	--
	-----	-----	-----
Cash interest paid	\$203,276	\$ 15,920	\$ 30,217
	=====	=====	=====

## 12. STOCK PLANS:

At December 31, 2000 and 1999, 2,352,712 and 2,604,213 shares, respectively, of common stock were reserved for future issuance pursuant to the exercise of stock options under stock option and incentive plans. Under the terms of these plans, stock options are granted with an exercise price equal to the fair market value at the date of grant and generally expire ten years after the date of grant. Generally, stock options granted to non-employee directors are exercisable immediately, while options granted to employees are exercisable two to five years from the date of grant. The Company accounts for these plans under APB Opinion No. 25, "Accounting for Stock Issued to Employees", under which no compensation expense for employee and non-employee director stock options has been recognized. If compensation cost for these plans had been determined consistent with SFAS No. 123, the Company's net income (loss) and income (loss) per share for the years ended December 31 would have been reduced (increased) to the following pro forma amounts:

	2000 -----	1999 -----	1998 -----
Net income (loss):			
As reported	\$ (153,470)	\$ 349,792	\$ 31,194
	=====	=====	=====
Pro forma	\$ (154,827)	\$ 347,756	\$ 29,778
	=====	=====	=====
Income (loss) per share:			
As reported	\$ (4.60)	\$ 10.63	\$ 0.95
	=====	=====	=====
Pro forma	\$ (4.64)	\$ 10.57	\$ 0.91
	=====	=====	=====
Income (loss) per share - assuming dilution:			
As reported	\$ (4.60)	\$ 10.53	\$ 0.94
	=====	=====	=====
Pro forma	\$ (4.64)	\$ 10.47	\$ 0.90
	=====	=====	=====

The fair value of each option grant is estimated on the date of grant using the Black-Scholes option pricing model with the following weighted-average assumptions used for grants in 2000, 1999 and 1998, respectively: risk-free interest rates of 5.5%, 6.5% and 5.5%; expected volatility of 38.3%, 31.0% and 26.6%; expected lives of 7.3, 7.5 and 7.1 years; expected dividend rates of 0%, 2.7% and 2.7%. The weighted average fair value of options granted was \$13.52, \$10.02 and \$9.52 in 2000, 1999 and 1998, respectively.

The plans also provide for the award of restricted stock. At December 31, 2000 and 1999, awards of restricted stock of 3,000 and 90,226 shares, respectively, of common stock were outstanding. The market value at the date of grant of these restricted shares was recorded as unearned compensation as a component of stockholders' equity. Unearned compensation is amortized over the vesting period of the restricted stock.

Stock option awards available for future grant under the stock plans at December 31, 2000 and 1999 were 2,188,780 and 852,460 shares of common stock, respectively. Stock option transactions under the plans are summarized as follows:

	2000		1999		1998	
	NUMBER OF SHARES	WEIGHTED AVERAGE EXERCISE PRICE	NUMBER OF SHARES	WEIGHTED AVERAGE EXERCISE PRICE	NUMBER OF SHARES	WEIGHTED AVERAGE EXERCISE PRICE
Outstanding at beginning of year	2,604,213	\$25.74	2,491,081	\$24.42	2,111,445	\$23.06
Granted	749,700	26.65	730,847	28.76	400,500	31.90
Exercised	(178,335)	10.36	(461,995)	21.92	(15,814)	20.96
Canceled	(822,866)	28.10	(155,720)	30.03	(5,050)	28.24
Outstanding at end of year	2,352,712	\$26.38	2,604,213	\$25.74	2,491,081	\$24.42
Exercisable at end of year	1,138,681	\$24.18	1,123,698	\$21.43	1,312,159	\$19.99

A summary of stock options outstanding at December 31, 2000 is as follows:

OPTION EXERCISE PRICE RANGE	WEIGHTED AVERAGE EXERCISE PRICE	NUMBER OF SHARES	EXERCISABLE	WEIGHTED AVERAGE REMAINING CONTRACTUAL LIFE
\$ 10.17	\$ 10.17	181,405	181,405	0.8 years
19.91-25.05	22.91	391,493	295,493	5.6 years
26.00-34.00	28.79	1,779,814	661,783	7.7 years
\$ 10.17-34.00	\$ 26.38	2,352,712	1,138,681	6.8 years

During 1999, the Company established an employee stock purchase plan whereby substantially all employees are eligible to participate in the purchase of designated shares of the Company's common stock at a price equal to the lower of 85% of the closing price at the beginning or end of each quarterly stock purchase period. The Company issued 13,666 and 3,007 shares of common stock at an average price of \$21.19 and \$25.08 pursuant to this plan during 2000 and 1999, respectively.

### 13. COMMITMENTS AND CONTINGENCIES:

Rental expense related to operating leases was \$5,405, \$5,460 and \$5,234 for 2000, 1999 and 1998, respectively. Future minimum lease commitments under all noncancelable operating leases in effect at December 31, 2000 are as follows:

2001	\$ 7,317
2002	8,093
2003	6,937
2004	6,478
2005	5,438
Years thereafter	695,050
Total	\$729,313

During 2000, the Company entered into an agreement with Warner Bros. Pictures to produce and co-finance as many as ten films over the next four years. The Company is also required to fund script purchases and development under the agreement. As part of the Company's divestiture of its film businesses as further discussed in Note 3, the Warner Bros. Pictures agreement was assumed by OPUBCO.

Additional long-term financing is required to fund the Company's construction commitments related to its hotel development projects and to fund its operating losses on both a short-term and long-term basis. While the Company is negotiating various alternatives for its short-term and long-term financing needs, there is no assurance that financing will be secured or on terms that are acceptable to the Company. Management currently anticipates securing long-term financing for its hotel development and construction projects; however, if the Company is unable to secure additional long-term financing, capital expenditures will be curtailed to ensure adequate liquidity to fund the Company's operations. Currently, the Company's management believes that the net cash flows from operations, together with the amount expected to be available from the Company's financing arrangements, will be sufficient to satisfy anticipated future cash requirements, including its projected capital expenditures, on both a short-term and long-term basis.

During 2000, the Company recorded a pretax loss of \$3,286, which is included in other gains and losses in the accompanying consolidated statements of operations, related to the settlement of Word acquisition contingencies with Word's former owner.

During 2000, the Company was notified by the utility company that provides water and sewer services to the Opryland Hotel Nashville of an assessment dating back to 1995 for unbilled services. The Company contested the assessment and settled the dispute by agreeing to pay \$2,600, which is charged to operations for the year ended December 31, 2000 in the accompanying consolidated statements of operations.

The Company was notified during 1997 by Nashville governmental authorities of an increase in appraised value and property tax rates related to the Opryland Hotel Nashville resulting in an increased tax assessment. The Company contested the increases and was awarded a partial reduction in the assessed values. During the year ended December 31, 2000, the Company recognized a pretax charge to operations of \$1,149 for the resolution of the property tax dispute.

The Company entered into a 75 year operating lease agreement during 1999 for 65.3 acres of land located in Osceola County, Florida for the development of the Opryland Hotel Florida. The lease requires annual lease payments of approximately \$873 until the completion of construction expected in 2002, at which point the annual lease payments increase to approximately \$3,200. The lease agreement provides for a 3% escalation of base rent each year beginning five years after the opening of the Opryland Hotel Florida. At the end of the 75 year lease term, the Company may extend the operating lease to January 31, 2101, at which point the buildings and fixtures will be transferred to the lessor.

During 1999, the Company entered into a construction contract for the development of the Opryland Hotel Florida. The Company expects payments of approximately \$300,000 related to the construction contract during the construction period. The Opryland Hotel Florida is scheduled to open in February 2002. At December 31, 2000, the Company has paid approximately \$144,000 related to this construction contract, which is included in property and equipment in the accompanying consolidated balance sheets.

During 1999, the Company entered into a naming rights agreement related to the Nashville Arena with the Nashville Predators. The Nashville Arena has been renamed the Gaylord Entertainment Center as a result of the agreement. A director of the Company owns a majority equity interest in the Nashville Predators. The contractual commitment requires the Company to pay \$2,050 during the first year of the contract, with a 5% escalation each year for the next 20 years. The Company is accounting for the naming rights agreement expense on a straight-line basis over the 20 year contract period. The Company recognized naming rights expense of \$3,389 for the year ended December 31, 2000 and \$1,412 during the period of 1999 subsequent to entering into the agreement, which is included in selling, general and administrative expenses in the accompanying consolidated statements of operations.

During 1998, the Company terminated an operating lease for a satellite transponder related to the European operations of MusicCountry, formerly known as CMT International. The termination of the satellite transponder lease resulted in a pretax charge of \$9,200 during 1998, which is included in other gains and losses in the accompanying consolidated statements of operations.

The Company is involved in certain legal actions and claims on a variety of matters. It is the opinion of management that such legal actions will not have a material effect on the results of operations, financial condition or liquidity of the Company.

The Company is self-insured for certain losses relating to workers' compensation claims, employee medical benefits and general liability claims. The Company has purchased stop-loss coverage in order to limit its exposure to any significant levels of self-insured claims. The Company recognizes self-insured losses based upon estimates of the aggregate liability for uninsured claims incurred using certain actuarial assumptions followed in the insurance industry or the Company's historical experience.

## 14. RETIREMENT PLANS:

The Company has a noncontributory defined benefit pension plan in which substantially all of its employees are eligible to participate upon meeting the pension plan's participation requirements. The benefits are based on years of service and compensation levels. The funding policy of the Company is to contribute annually an amount which equals or exceeds the minimum required by applicable law. During 1999, the Company amended the pension plan to revise the benefit formula related to benefit payment assumptions. Subsequent to December 31, 2000, the Company converted its defined benefit pension plan to a cash balance plan. The benefit payable to a vested participant upon retirement at age 65, or age 55 with 15 years of service, is equal to the participant's account balance, which increases based upon length of service and compensation levels. At retirement, the employee generally receives the balance in the account as a lump sum.

The following table sets forth the funded status at December 31:

	2000	1999
	-----	-----
Change in benefit obligation:		
Benefit obligation at beginning of year	\$ 56,262	\$ 46,480
Service cost	2,564	3,188
Interest cost	3,911	3,999
Amendments	--	3,111
Actuarial loss (gain)	(627)	2,552
Benefits paid	(4,501)	(3,068)
	-----	-----
Benefit obligation at end of year	57,609	56,262
	-----	-----
Change in plan assets:		
Fair value of plan assets at beginning of year	49,890	48,399
Actual return on plan assets	3,908	1,184
Employer contributions	3,241	3,375
Benefits paid	(4,501)	(3,068)
	-----	-----
Fair value of plan assets at end of year	52,538	49,890
	-----	-----
Funded status	(5,071)	(6,372)
Unrecognized net actuarial loss	7,600	8,279
Unrecognized prior service cost	2,285	2,496
	-----	-----
Prepaid pension cost	\$ 4,814	\$ 4,403
	=====	=====

Net periodic pension expense reflected in the accompanying consolidated statements of operations included the following components for the years ended December 31:

	2000	1999	1998
	-----	-----	-----
Service cost	\$ 2,564	\$ 3,188	\$ 2,124
Interest cost	3,911	3,999	3,036
Expected return on plan assets	(3,963)	(3,862)	(3,229)
Recognized net actuarial loss	107	709	--
Amortization of prior service cost	211	211	(74)
	-----	-----	-----
Total net periodic pension expense	\$ 2,830	\$ 4,245	\$ 1,857
	=====	=====	=====

The weighted-average discount rate used in determining the actuarial present value of the projected benefit obligation for 2000 and 1999 was 7.5%. The rate of increase in future compensation levels and the expected long-term rate of return on plan assets were 4% and 8%, respectively, in both 2000 and 1999. Plan assets are invested in a diverse portfolio that primarily consists of equity and debt securities.

The Company also has contributory retirement savings plans in which substantially all employees are eligible to participate. The Company contributes an amount equal to the lesser of one-half of the amount of the employee's contribution or 3% of the employee's salary. Company contributions under the retirement savings plans were \$1,615, \$1,892 and \$1,860 for 2000, 1999 and 1998, respectively.

## 15. POSTRETIREMENT BENEFITS OTHER THAN PENSIONS:

The Company sponsors unfunded defined benefit postretirement health care and life insurance plans for certain employees. The Company contributes toward the cost of health insurance benefits and contributes the full cost of providing life insurance benefits. In order to be eligible for these postretirement benefits, an employee must retire after attainment of age 55 and completion of 15 years of service, or attainment of age 65 and completion of 10 years of service.

Generally, for employees who retired prior to January 1, 1993 and who met the other age and service requirements, the Company contributes 100% of the employee and spouse's health care premium, and provides a life insurance benefit of 100% of pay up to \$50. For employees retiring on or after January 1, 1993 and who meet the other age and service requirements, the Company contributes from 50% to 90% of the health care premium based on years of service, 50% of the health care premium for the spouses of eligible retirees regardless of service, and provides a life insurance benefit of \$12.

The following table reconciles the change in benefit obligation of the postretirement plans to the accrued postretirement liability as reflected in other liabilities in the accompanying consolidated balance sheets at December 31:

	2000	1999
	-----	-----
Change in benefit obligation:		
Benefit obligation at beginning of year	\$ 15,432	\$ 22,596
Service cost	736	1,815
Interest cost	923	1,518
Actuarial gain	(3,441)	(9,872)
Contributions by plan participants	90	81
Benefits paid	(822)	(706)
	-----	-----
Benefit obligation at end of year	12,918	15,432
Unrecognized net actuarial gain	13,864	11,234
	-----	-----
Accrued postretirement liability	\$ 26,782	\$ 26,666
	=====	=====

Net postretirement benefit expense reflected in the accompanying consolidated statements of operations included the following components for the years ended December 31:

	2000	1999	1998
	-----	-----	-----
Service cost	\$ 736	\$ 1,815	\$ 1,565
Interest cost	923	1,518	1,288
Recognized net actuarial gain	(811)	(207)	(194)
	-----	-----	-----
Net postretirement benefit expense	\$ 848	\$ 3,126	\$ 2,659
	=====	=====	=====

For measurement purposes, a 10% annual rate of increase in the per capita cost of covered health care claims was assumed for 2000. The health care cost trend is projected to be 9% in 2001, decline by 1% in 2002 and then decline 0.5% each year thereafter to an ultimate level trend rate of 5.5% per year in 2007. The health care cost trend rates are not applicable to the life insurance benefit plan. The health care cost trend rate assumption has a significant effect on the amounts reported. To illustrate, a 1% increase in the assumed health care cost trend rate each year would increase the accumulated postretirement benefit obligation as of December 31, 2000 by approximately 15% and the aggregate of the service and interest cost components of net postretirement benefit expense would increase approximately 20%. Conversely, a 1% decrease in the assumed health care cost trend rate each year would decrease the accumulated postretirement benefit obligation as of December 31, 2000 by approximately 13% and the aggregate of the service and interest cost components of net postretirement benefit expense would decrease approximately 16%. The weighted-average discount rate used in determining the accumulated postretirement benefit obligation was 7.5% for 2000 and 1999.

## 16. STOCKHOLDERS' EQUITY:

Holders of common stock are entitled to one vote per share. During 2000, the Company's Board of Directors voted to discontinue the payment of dividends on its common stock. The Company paid common stock dividends of \$26,355 and \$21,332 during the years ended December 31, 1999 and 1998, respectively.

## 17. FINANCIAL REPORTING BY BUSINESS SEGMENTS:

In June 1997, the FASB issued SFAS No. 131, "Disclosures about Segments of an Enterprise and Related Information", which the Company adopted on January 1, 1998. The Company is organized and managed based upon its products and services. The following information is derived directly from the segments' internal financial reports used for corporate management purposes.

	2000 -----	1999 -----	1998 -----
Revenues:			
Hospitality and attractions	\$ 256,722	\$ 257,709	\$ 257,335
Music, media and entertainment	257,594	269,637	280,388
Corporate and other	64	5,294	5,642
Total	\$ 514,380 =====	\$ 532,640 =====	\$ 543,365 =====
Depreciation and amortization:			
Hospitality and attractions	\$ 27,149	\$ 25,515	\$ 23,835
Music, media and entertainment	25,469	20,310	13,709
Corporate and other	5,837	6,749	5,240
Total	\$ 58,455 =====	\$ 52,574 =====	\$ 42,784 =====
Operating income (loss):			
Hospitality and attractions	\$ 38,024	\$ 38,270	\$ 44,051
Music, media and entertainment	(76,269)	(16,962)	19,550
Corporate and other	(35,119)	(25,972)	(20,668)
Impairment and other charges	(105,538)	(12,201)	--
Restructuring charges	(16,193)	(3,102)	--
Merger costs	--	1,741	--
Total	\$ (195,095) =====	\$ (18,226) =====	\$ 42,933 =====
Identifiable assets:			
Hospitality and attractions	\$ 688,289	\$ 493,613	\$ 452,511
Music, media and entertainment	347,364	403,178	378,841
Corporate and other	903,900	835,593	180,640
Total	\$1,939,553 =====	\$1,732,384 =====	\$1,011,992 =====
Capital expenditures:			
Hospitality and attractions	\$ 205,186	\$ 61,362	\$ 13,924
Music, media and entertainment	19,733	17,204	32,057
Corporate and other	7,385	5,484	5,212
Total	\$ 232,304 =====	\$ 84,050 =====	\$ 51,193 =====



## 18. QUARTERLY FINANCIAL INFORMATION (UNAUDITED):

	FIRST QUARTER -----	SECOND QUARTER -----	THIRD QUARTER -----	FOURTH QUARTER -----
2000				
- - - - -				
Revenues	\$ 111,451 =====	\$ 134,391 =====	\$ 130,776 =====	\$ 137,762 =====
Depreciation and amortization	\$ 13,509 =====	\$ 14,506 =====	\$ 14,222 =====	\$ 16,218 =====
Operating loss	\$ (18,521) =====	\$ (14,877) =====	\$ (19,702) =====	\$(141,995) =====
Net loss	\$ (15,041) =====	\$ (14,243) =====	\$ (19,050) =====	\$(105,136) =====
Net loss per share	\$ (0.45) =====	\$ (0.43) =====	\$ (0.57) =====	\$ (3.14) =====
Net loss per share - assuming dilution	\$ (0.45) =====	\$ (0.43) =====	\$ (0.57) =====	\$ (3.14) =====
1999				
- - - - -				
Revenues	\$ 118,682 =====	\$ 132,841 =====	\$ 141,995 =====	\$ 139,122 =====
Depreciation and amortization	\$ 12,024 =====	\$ 12,374 =====	\$ 13,408 =====	\$ 14,768 =====
Operating income (loss)	\$ (4,648) =====	\$ 3,425 =====	\$ 2,169 =====	\$ (19,172) =====
Net income	\$ 79,792 =====	\$ 658 =====	\$ 726 =====	\$ 268,616 =====
Net income per share	\$ 2.43 =====	\$ 0.02 =====	\$ 0.02 =====	\$ 8.12 =====
Net income per share - assuming dilution	\$ 2.41 =====	\$ 0.02 =====	\$ 0.02 =====	\$ 8.05 =====

Certain of the Company's operations are subject to seasonal fluctuation. Revenues in the music business are typically weakest in the first calendar quarter following the Christmas buying season.

The Company applied the provisions of SAB 101, "Revenue Recognition in Financial Statements", as amended, and certain related authoritative literature in the fourth quarter of 2000. Accordingly, the Company classified certain amounts as revenues that historically, in accordance with industry practice, were reported as a reduction to operating expenses. All prior quarterly periods have been restated to comply with the new requirements.

During the fourth quarter of 2000, the Company recognized a pretax loss of \$105,538 representing nonrecurring impairment and other charges and pretax restructuring charges of \$16,193.

During the first quarter of 1999, the Company recognized a pretax gain of \$129,875 representing the value of the 15% contractual equity participation rights upon the sale of the Systems. During the third quarter of 1999, the Company recognized nonrecurring restructuring charges of \$3,102 and the reversal of accrued merger costs of \$1,741. During the fourth quarter of 1999, the Company recorded a pretax gain of \$459,307 related to the divestiture of television station KTVT in Dallas-Ft. Worth and a pretax loss of \$12,201 related to the closing of Unison Records.

To Gaylord Entertainment Company:

We have audited the accompanying consolidated balance sheets of Gaylord Entertainment Company (a Delaware corporation) and its subsidiaries as of December 31, 2000 and 1999, and the related consolidated statements of operations, stockholders' equity and cash flows for each of the three years in the period ended December 31, 2000. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of Gaylord Entertainment Company and subsidiaries as of December 31, 2000 and 1999, and the consolidated results of their operations and their cash flows for each of the three years in the period ended December 31, 2000 in conformity with accounting principles generally accepted in the United States.

ARTHUR ANDERSEN LLP

Nashville, Tennessee  
February 22, 2001 (except for paragraph one of Note 3  
and paragraph five of Note 11, as to which the date is  
March 27, 2001)

SUBSIDIARIES OF GAYLORD ENTERTAINMENT COMPANY  
AS OF DECEMBER 31, 2000

NAME -----	JURISDICTION OF ORGANIZATION -----
Acuff-Rose Music, Inc.	Tennessee
Acuff-Rose Music, Ltd.	England
Acuff-Rose Musikverlag GmbH	Germany
Acuff-Rose Scandia AB	Sweden
Acuff-Rose Music Publishing, Inc.	Tennessee
A Walk to Remember Productions, Inc.	California
CCK, Inc.	Texas
Celebration Hymnal, LLC	Tennessee
Corporate Magic, Inc.	Texas
Country Music Television Australia Pty. Ltd.	Australia
Country Music Television International, GmbH	Germany
Country Music Television International, Inc.	Delaware
Country Music Television International, B. V.	Netherlands
Dayspring Music, Inc.	Tennessee
Deep Indigo Productions	United Kingdom
Editions Acuff Rose France SARL	France
Gaylord Creative Group, Inc.	Delaware
Gaylord Creative Group Records, Inc.	Tennessee
Gaylord Digital, LLC	Delaware
Gaylord Event Television, Inc.	California
Gaylord Films, LLC	Delaware
Gaylord Investments, Inc.	Delaware
Gaylord Production Company	Tennessee
Gaylord Program Services, Inc.	Delaware
Gaylord Sports Management Group, LLC	Tennessee
GBRJ Music, LLC	Texas
Grand Ole Opry Tours, Inc.	Tennessee
Hickory Records, Inc.	Tennessee
Idea Entertainment, C.V.	Netherlands
Killer Golf, Inc.	California
Lightsource, LLC	Delaware
Milene Music, Inc.	Tennessee
OHN Management, Inc.	Delaware
OKC Athletic Club Limited Partnership	Oklahoma
OKC Concession Service Limited Partnership	Oklahoma
Oklahoma City Athletic Club, Inc.	Oklahoma
OLH, G.P.	Tennessee
Oleander Productions, Inc.	California
Opryland Attractions, Inc.	Delaware
Opryland Hospitality, LLC	Tennessee
Opryland Hotel Florida, L.P.	Florida
Opryland Hotel Nashville, LLC	Tennessee
Opryland Hotel Texas, LLC	Delaware
Opryland Hotel Texas, L.P.	Delaware
Opryland Productions, Inc.	Tennessee
Opryland Theatricals, Inc.	Delaware
Pandora, Inc.	California
Pandora EURL	France
Pandora Investment (SARL)	Luxembourg
Showpark Management, Inc.	Delaware
Sooner Development, LLC	California
Springhouse Music, Inc.	Tennessee
TV Force, LLC	Texas

Wildhorse Saloon Entertainment Ventures, Inc.  
Word Entertainment (Canada), Ltd.  
Word Entertainment Direct, LLC  
Word Entertainment, Ltd.  
Word Music Group, Inc.  
Word Music, Inc.  
Wordspring Music, Inc.  
Z Music Management, Inc.

Tennessee  
Canada  
Tennessee  
United Kingdom  
Tennessee  
Tennessee  
Tennessee  
Delaware

## CONSENT OF INDEPENDENT PUBLIC ACCOUNTANTS

As independent public accountants, we hereby consent to the incorporation of our reports included in this Form 10-K, into the Company's previously filed Registration Statement File Numbers 333-37051, 333-37053, 333-79323, 333-31254 and 333-40676.

ARTHUR ANDERSEN LLP

Nashville, Tennessee  
March 27, 2001