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LLC

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

In re:

REID PARK PROPERTIES, LLC,  
Debtor.

Chapter 11

Case No. 4:11-BK-15267-EWH

**WBCMT 2007-C31 SOUTH  
ALVERNON WAY, LLC'S SECOND  
NON-ADVERSE MODIFICATION TO  
FIRST AMENDED PLAN OF  
REORGANIZATION FOR DEBTOR**

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**WBCMT 2007-C31 SOUTH ALVERNON WAY, LLC'S FIRST AMENDED  
CHAPTER 11 PLAN OF REORGANIZATION OF DEBTOR**

**INTRODUCTION**

This first amended chapter 11 plan (as amended or modified hereafter in accordance with its terms, the "Plan"), dated as of December 13, 2012, is proposed by WBCMT 2007-C31 South Alvernon Way, LLC (the "Lender") for the orderly liquidation of Reid Park Properties, LLC (the "Debtor"). Reference is made to the Disclosure Statement accompanying the Plan for a discussion of the Debtor's history, business, assets, results of operations, historical financial information, projections for future operations and risk factors, a summary and analysis of the Plan, and certain related matters. The Lender is the proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code.

ALL CREDITORS OF THE DEBTOR ARE ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. SUBJECT TO CERTAIN RESTRICTIONS AND REQUIREMENTS SET FORTH IN SECTION 1127 OF THE BANKRUPTCY CODE, BANKRUPTCY RULE 3019 AND THE PLAN, THE LENDER RESERVES THE RIGHT TO ALTER, AMEND, MODIFY, REVOKE OR WITHDRAW THE PLAN PRIOR TO ITS SUBSTANTIAL CONSUMMATION.

Capitalized terms used herein shall have the meanings set forth in Article I hereof. The Lender is authorized to file the Plan for consideration by creditors, equity interest holders and other parties in interest. Claims against, and Interests in, the Debtor (other than Administrative Claims and Priority Tax Claims) are classified in Article II hereof and treated in Article III hereof.

**ARTICLE I  
DEFINITIONS, INTERPRETATION AND EXHIBITS**

Section 1.01. Definitions. Unless the context requires otherwise, the following terms shall have the following meanings whether presented in the Plan or the Disclosure Statement with initial capital letters or otherwise. As used herein:

"Administrative Claim" means a Claim for: (a) any cost or expense of administration (including, without limitation, the fees and expenses of Professionals) of the Chapter 11 Case asserted or arising under sections 503, 507(a)(1), 507(b) or 1114(e)(2) of the Bankruptcy Code including, but not limited to (i) any actual and necessary post Petition Date cost or expense of preserving Debtor's Estate or operating the business of Debtor, (ii) any post Petition Date cost, indebtedness or contractual obligation duly and validly incurred or assumed by Debtor in the ordinary course of its business, (iii) compensation or reimbursement of expenses of Professionals to the extent Allowed by the Bankruptcy Court under sections 330(a) or 331 of the Bankruptcy Code, and (iv) all Allowed Claims that are entitled to be treated as Administrative Claims pursuant to a Final Order of the Bankruptcy Court under section 546 of the Bankruptcy Code; and (b) any fees or charges assessed against Debtor's Estate under section 1930 of title 28 of the United States Code.

“Affiliate” means with respect to any Person, all Persons that would fall within the definition assigned to such term in section 101(2) of the Bankruptcy Code as if such Person was a debtor in a case under the Bankruptcy Code.

“Allowed” means, with reference to any Claim, (a) any Claim against Debtor that has been listed in its Schedules, as such Schedules may have been amended by Debtor from time to time in accordance with Bankruptcy Rule 1009, as liquidated in amount and not disputed or contingent, and with respect to which no contrary proof of claim has been filed, (b) any Claim specifically allowed under the Plan, (c) any Claim the amount or existence of which has been determined or allowed by a Final Order, or (d) any Claim as to which a proof of claim has been timely filed before the Bar Date, provided that at the time of the Effective Date the Debtor have not identified such Claim as being objectionable in part or in whole and no objection to the allowance thereof has been filed by the Claims Objection Deadline; provided, however, that the term Allowed, with reference to any Claim, shall not include (x) any unliquidated claim or (y) interest or attorneys’ fees on or related to any Claim that accrues from and after the Petition Date unless otherwise expressly provided for in the Plan.

“Allowed Claim” means a Claim that is Allowed.

“Avoidance Actions” means any and all Causes of Action which a trustee, debtor in possession, the Estate or other appropriate party in interest may assert under sections 502, 510, 541, 542, 543, 544, 545, 547, 548, 549, 550, 551, or 553 of the Bankruptcy Code (other than those which may be released or dismissed as part of and pursuant to the Plan) or under other similar or related state or federal statutes or common law, including fraudulent conveyance laws.

“Ballot” means the forms of ballots accompanying the Disclosure Statement upon which Holders of Impaired Claims and Interests entitled to vote on the Plan shall, among other things, indicate their acceptance or rejection of the Plan in accordance with the instructions regarding voting.

“Bankruptcy Code” means the Bankruptcy Reform Act of 1978, as codified in title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, as in effect on the Petition Date, together with all amendments and modifications thereto that subsequently may be made applicable to the Chapter 11 Case.

“Bankruptcy Court” means the United States Bankruptcy Court for the District of Arizona or, if such court ceases to exercise jurisdiction over these proceedings, the court or adjunct thereof that exercises jurisdiction over the Chapter 11 Case.

“Bankruptcy Rules” means: (a) the Federal Rules of Bankruptcy Procedure and the Official Bankruptcy Forms, as amended and promulgated under section 2075 of title 28 of the United States Code; (b) the Federal Rules of Civil Procedure, as amended and promulgated under section 2072 of title 28 of the United States Code; (c) any local rules applicable to the Bankruptcy Court; and (d) any standing orders governing practice and procedure issued by the Bankruptcy Court, each as in effect on the Petition Date, together with all amendments and modifications thereto that were subsequently made applicable to the Chapter 11 Case or proceedings therein, as the case may be.

“Bar Date” means the applicable bar date by which a proof of Claim must be, or must have been, Filed, as established by an order of the Bankruptcy Court.

“Business Day” means any day which is not a Saturday, a Sunday, a “legal holiday” as defined in Bankruptcy Rule 9006(a), or a day on which banking institutions in the State of Arizona are authorized or obligated by law, executive order or governmental decree to be closed.

“Cash” means money, currency and coins, negotiable checks, balances in bank accounts and other lawful currency of the United States of America and its equivalents.

“Causes of Action” means any and all actions, claims, rights, defenses, third-party claims, damages, executions, demands, crossclaims, counterclaims, suits, choses in action, controversies, agreements, promises, rights to legal remedies, rights to equitable remedies, rights to payment and claims whatsoever, whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured and whether asserted or assertable directly, indirectly or derivatively, at law, in equity or otherwise, accruing to the Debtor, including, but not limited to, the Avoidance Actions.

“Chapter 11 Case” means the case under chapter 11 of the Bankruptcy Code commenced by the Debtor in the Bankruptcy Court on the Petition Date.

“Claim” shall have the meaning set forth in section 101(5) of the Bankruptcy Code.

“Claims Objection Deadline” means the latest of: (a) 75 Days after the Effective Date; (b) 75 Days after the date on which any Claim is Filed; or (c) such other date as may be fixed by the Bankruptcy Court, whether fixed before or after the date specified in clauses (a) and (b) above.

“Class” means each class, subclass or category of Claims or Interests as classified in Article II of the Plan.

“Comfort Letter” means that certain Letter Agreement dated April 27, 2011 between Franchisor and the Lender.

“Confirmation” or “Confirmed” means the entry by the Bankruptcy Court of the Confirmation Order.

“Confirmation Date” means the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court with respect to the Chapter 11 Case within the meaning of Bankruptcy Rules 5003 and 9021.

“Confirmation Hearing” means the hearing held before the Bankruptcy Court to consider Confirmation of the Plan pursuant to sections 1128 and 1129 of the Bankruptcy Code.

“Confirmation Order” means the order entered by the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

“Creditor” means any Person that is the Holder of any Claim against any of the Debtors.

“Day(s)” means, unless expressly otherwise provided, calendar day(s).

“Debtor” shall have the meaning set forth in the Introduction.

“Deficiency Claim” means the Claim of the Lender, but only to the extent that such Claim is an Unsecured Claim as determined by 11 U.S.C. § 506(a)(1). The Deficiency Claim shall be treated as a Class 10 Claim.

“Disallowed” means, with respect to any Claim or Interest or portion thereof, any Claim against or Interest in the Debtor which: (a) has been withdrawn, in whole or in part, by agreement of the Debtor or the Lender, as applicable, and the Holder thereof; (b) has been withdrawn, in whole or in part, by the Holder thereof; or (c) has been disallowed, in whole or in part, by Final Order of the Bankruptcy Court or other court of competent jurisdiction. In each case a Disallowed Claim or a Disallowed Interest is disallowed only to the extent of disallowance or withdrawal.

“Disallowed Claim” means a Claim, or any portion thereof, that is Disallowed.

“Disallowed Interest” means an Interest, or any portion thereof, that is Disallowed.

“Disclosure Statement” means that certain Disclosure Statement filed with respect to the Plan, including all exhibits, appendices, schedules and annexes, if any, attached thereto, as submitted by the Lender, as the same may be altered, amended, supplemented or modified from time to time, and which was prepared and distributed in accordance with sections 1125 and 1126(b) of the Bankruptcy Code and Bankruptcy Rule 3018.

“Disputed” means any Claim or Interest that has been neither Allowed nor Disallowed.

“Disputed Claim” means a Claim, or any portion thereof, that is Disputed. For purposes of the Plan, a Claim that has been neither Allowed nor Disallowed shall be considered a Disputed Claim.

“Disputed Interest” means an Interest, or any portion thereof, that is Disputed. For purposes of the Plan, an Interest that has been neither Allowed nor Disallowed shall be considered a Disputed Interest.

“Effective Date” means the first Business Day following the date on which all conditions to consummation set forth in Article IX of the Plan have been satisfied or waived (if capable of being duly and expressly waived), provided that no stay of the Confirmation Order is then in effect.



“Effective Date Cash” means all of Debtor’s cash on hand as of the Effective Date.

“Entity” means any individual, corporation, limited or general partnership, joint venture, association, joint stock company, limited liability company, estate, trustee, United States Trustee, unincorporated organization, government, governmental unit (as defined in the Bankruptcy Code), agency or political subdivision thereof.

“Estate” means the estate created in the Chapter 11 Case pursuant to section 541 of the Bankruptcy Code upon commencement of the Chapter 11 Case.

“Exculpated Persons” means the Lender, the Plan Transferee, the Trust, the Trustee, and their respective master servicers, special servicers, members, affiliates, special purpose entities, bond holders, certificate holders, current and former officers, directors, employees, agents, stockholders, managers, partners, attorneys, advisors and professionals.

“File, Filed or Filing” means file, filed or filing with the Bankruptcy Court in the Chapter 11 Case.

“Final Decree” means the final decree entered by the Bankruptcy Court after the Effective Date and pursuant to section 350(a) of the Bankruptcy Code and Bankruptcy Rule 3022.

“Final Order” means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, as entered on the docket of such court, the operation or effect of which has not been stayed, reversed, vacated, modified or amended, and as to which order or judgment (or any revision, modification, or amendment thereof) of the time to appeal, petition for certiorari, or seek review or rehearing has expired and as to which no appeal, petition for certiorari, or petition for review or rehearing was filed or, if filed, remains pending; provided, however, that the possibility that a motion may be filed pursuant to Rules 9023 or 9024 of the Bankruptcy Rules or Rules 59 or 60(b) of the Federal Rules of Civil Procedure shall not mean that an order or judgment is not a Final Order.

“Franchise Agreement” means that certain Franchise License Agreement between the Debtor and HLT Existing Franchise Holding, LLC, successor in interest to Hilton Hotels Corporation, dated March 27, 2007.

“Franchisor” means HLT Existing Franchise Holding, LLC, successor in interest to Hilton Hotels Corporation, and its successors.

“Holder” means an Entity holding a beneficial interest in a Claim or Interest and, when used in conjunction with a Class or type of Claim or Interest, means a holder of a beneficial interest in a Claim or Interest in such Class or of such type.

“Hotel” means the Doubletree Hotel Tucson at Reid Park located at 445 South Alvernon Way, Tucson, Arizona.

“Impaired” means, when used with reference to a Claim or Interest, a Claim or Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

“Insider” shall have the meaning set forth in section 101(31) of the Bankruptcy Code.

“Insider Claims” means any Claim of an Insider against the Debtor, including, without limitation, any Claims of Transwest Properties, Inc. and Transwest Partners, LLC.

“Interests” means any and all equity interests, ownership interests or shares in the Debtor issued prior to the Petition Date, whether or not certificated, transferable, voting or denominated stock or a similar security, and any Claim or Cause of Action related to or arising from any of the foregoing.

“Liens” means, with respect to any asset or property (or the rents, revenues, income, profits or proceeds therefrom), and in each case, whether the same is consensual or nonconsensual or arises by contract, operation of law, legal process or otherwise: (a) any and all mortgages, liens, pledges, attachments, charges, leases evidencing a capitalizable lease obligation, conditional sale or other title retention agreement, or other security interest or encumbrance or other legally cognizable security devices of any kind in respect of any asset or property, or upon the rents, revenues, income, profits or proceeds therefrom; or (b) any arrangement, express or implied, under which any property is transferred, sequestered or otherwise identified for the purpose of subjecting or making available the same for the payment of debt or performance of any other obligation in priority to the payment of general unsecured Creditors.

“Objection” means any objection, application, motion, complaint or any other legal proceeding seeking, in whole or in part, to disallow, determine, liquidate, classify, reclassify or establish the priority, expunge, subordinate or estimate any Claim (including the resolution of any request for payment of any Administrative Claim) or Interest other than a Claim or an Interest that is Allowed.

“Person” means and includes a natural person, individual, partnership, corporation (as defined in section 101(a) of the Bankruptcy Code), or organization including, without limitation, corporations, limited partnerships, limited liability companies, general partnerships, joint ventures, joint stock companies, trusts, land trusts, business trusts, unincorporated organizations or associations, or other organizations, irrespective of whether they are legal entities, governmental bodies (or any agency, instrumentality or political subdivision thereof), or any other form of legal entities; provided, however, “Person” does not include governmental units, except that a governmental unit that (a) acquires an asset from a Person (i) as a result of the operation of a loan guarantee agreement or (ii) as receiver or liquidating agent of a Person; (b) is a guarantor of a pension benefit payable by or on behalf of the Debtor or an affiliate of the Debtor; or (c) is the legal or beneficial owner of an asset of (i) an employee pension benefit plan that is a governmental plan, as defined in section 414(d) of the Internal Revenue Code of 1986 or (ii) an eligible deferred compensation plan, as defined in section 457(b) of the Internal Revenue Code of 1986, shall be considered for purposes of section 1102 of the Bankruptcy Code to be a Person with respect to such asset or such benefit.

“Petition Date” means June 3, 2011, the date on which the Debtor filed its petition for relief commencing the Chapter 11 Case.

“Plan” means this Chapter 11 Plan dated as of December 13, 2012, including all exhibits, appendices, schedules and annexes, if any, attached hereto, as submitted by the Lender as such Plan may be altered, amended, supplemented or modified from time to time in accordance with the provisions of the Bankruptcy Code, the Bankruptcy Rules, the Confirmation Order and the terms and conditions of Section 12.03 of the Plan.

“Plan Implementation Deed” means a special warranty deed, substantially in the form set forth in the Plan Supplement, pursuant to which the Debtor shall convey the Hotel and related interests in real and personal property owned by the Debtor to the Plan Transferee on the Effective Date.

“Plan Supplement” shall mean a separate volume, to be filed with the Bankruptcy Court, including, among other documents, forms of: (a) the Plan Implementation Deed; (b) the Schedule of Assumed Contracts; and (c) the Bill of Sale. The Plan Supplement (containing drafts or final versions of the foregoing documents) shall be filed with the Bankruptcy Court as soon as practicable prior to the conclusion of the Confirmation Hearing on the Plan.

“Plan Transferee” means an Entity to be designated as grantee by the Lender to receive the Plan Implementation Deed and related assets on the Effective Date.

“Professional Fee Claim” means a claim for compensation and/or reimbursement of expenses pursuant to sections 327, 328, 330, 331, 503(b) or 506(c) of the Bankruptcy Code relating to services incurred on and after the Petition Date and prior to and including the Effective Date in connection with an application made to the Bankruptcy Court by Professionals in the Chapter 11 Case.

“Professionals” means any professional employed in this Chapter 11 Case pursuant to sections 327 or 1103 of the Bankruptcy Code or any Professional entitled to compensation pursuant to sections 327, 328, 330, 331, 503(b)(2) or (4), 506(c) or 1103 of the Bankruptcy Code.

“Property” means all assets or property of the Debtor’s Estate of any nature whatsoever, real or personal, tangible or intangible, including contract rights, accounts and Causes of Action, previously or now owned by the Debtor, or acquired by the Debtor’s Estate, as defined in section 541 of the Bankruptcy Code.

“Real Property” means the Hotel.

“Reinstated” or “Reinstatement” means: (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim so as to leave such Claim Unimpaired in accordance with section 1124 of the Bankruptcy Code; or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim to demand or receive accelerated payment of such Claim after the occurrence of a default (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code; (ii) reinstating the maturity of such

Claim as such maturity existed before such default; (iii) compensating the Holder of such Claim for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; and (iv) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitled the Holder of such Claim; provided, however, that any contractual right that does not pertain to the payment when due of principal and interest on the obligation on which such Claim is based, including, but not limited to, financial covenant ratios, negative pledge covenants, covenants or restrictions on merger or consolidation, and affirmative covenants regarding corporate existence or which prohibit certain transactions or actions contemplated by the Plan, or conditioning such transactions or action on certain factors, shall not be required to be reinstated in order to accomplish Reinstatement.

“Rejection Claims” means claims of any non-Debtor counterparty to any unexpired lease of nonresidential real property or any executory contract arising on account of the rejection of such lease or contract during the administration of this Chapter 11 Case under section 365 of the Bankruptcy Code or pursuant to the Plan.

“Releasees” means the Lender, the Plan Transferee, the Trust, the Trustee, and their respective master servicers, special servicers, members, affiliates, special purpose entities, bond holders, certificate holders, current and former officers, directors, employees, agents, stockholders, managers, partners, attorneys, advisors and professionals.

“Schedule of Assumed Contracts” means the schedule listing certain executory contracts and unexpired leases to be assumed by the Debtor and assigned to the Plan Transferee under or in connection with the Plan.

“Schedules” means the schedules of assets and liabilities and statements of financial affairs filed by the Debtor in this Chapter 11 Case, as required by section 521 of the Bankruptcy Code, as the same may have been or may be amended, modified or supplemented.

“Secured Claim” means any Claim arising before the Petition Date that is: (a) secured in whole or part, as of the Petition Date, by a Lien which is valid, perfected and enforceable under applicable law on Property in which the Debtor’s Estate has an interest and is not subject to avoidance under the Bankruptcy Code or applicable non-bankruptcy law; or (b) subject to setoff under section 553 of the Bankruptcy Code, but, with respect to both case (a) and (b), only to the extent of the value of the assets or Property securing any such Claim or the amount subject to setoff, as the case may be.

“Tax” means any tax, charge, fee, levy, impost or other assessment by any federal, state, local or foreign governmental authority, including, without limitation, income, excise, property, sales, transfer, employment, payroll, franchise, profits, license, use, ad valorem, estimated, severance, stamp, occupation and withholding tax, together with any interest, penalties, fines or additions attributable to, imposed on, or collected by any such federal, state, local or foreign governmental authority.

“Trust” means Wachovia Bank Commercial Mortgage Trust, Commercial Mortgage Pass-Through Certificates, Series 2007-C31.

“Trustee” means U.S. Bank National Association, as trustee for the registered holders of Wachovia Bank Commercial Mortgage Trust, Commercial Mortgage Pass-Through Certificates, Series 2007-C31, and any of its successors or assigns and their respective agents, attorneys, employees and representatives.

“Unclaimed Property” means any distribution of Cash or any other Property made to the Holder of an Allowed Claim pursuant to the Plan that is returned to the Lender as undeliverable and no appropriate forwarding address is received prior to the date on which the Final Decree is entered in the Chapter 11 Case, in the case of a distribution made in the form of a check, is not negotiated and no request for reissuance is made as provided for in Section 5.05 of the Plan.

“Uniform System” means the latest edition of the Uniform System of Accounts for the Lodging Industry that is published by the Hotel Association of New York City, Inc. and approved by the American Hotel & Motel Association.

“Unimpaired” means any Claim that is not Impaired within the meaning of section 1124 of the Bankruptcy Code.

“United States Trustee” means the United States Trustee appointed under section 581(a)(3) of title 28 of the United States Code to serve in the District of Arizona.

“U.S. Trustee’s Fee Claims” means any fees assessed against Debtor’s Estate pursuant to section 1930(a)(6) of title 28 of the United States Code.

Section 1.02. Rules of Interpretation. All references to “the Plan” herein shall be construed, where applicable, to include references to this document and all its exhibits, appendices, schedules and annexes, if any (and any amendments thereto made in accordance with the Bankruptcy Code). Whenever from the context it appears appropriate, each term stated in either the singular or the plural shall include the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter. The words “herein,” “hereof,” “hereto,” “hereunder,” and other words of similar import refer to the Plan as a whole and not to any particular paragraph, subparagraph, or clause contained in the Plan. The words “includes” and “including” are not limiting and mean that the things specifically identified are set forth for purposes of illustration, clarity or specificity and do not in any respect qualify, characterize or limit the generality of the class within which such things are included. The captions and headings in the Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof. Any term used in the Plan that is not defined in the Plan, either in Article I hereof or elsewhere, but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in (and shall be construed in accordance with the rules of construction under) the Bankruptcy Code or the Bankruptcy Rules (with the Bankruptcy Code controlling in the case of a conflict or ambiguity). Without limiting the preceding sentence, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply to the Plan, unless superseded herein. In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) and Section 13.18 hereof shall apply, but Bankruptcy Rule 9006(a) shall govern.

Section 1.03. Exhibits. Any Exhibits to the Plan, including the Plan Supplement, are incorporated into and are a part of the Plan as if set forth in full herein, regardless of when Filed.

## **ARTICLE II CLASSIFICATION OF CLAIMS AND INTERESTS**

Section 2.01. Generally. Pursuant to section 1122 of the Bankruptcy Code, set forth below is a designation of Classes of Claims and Interests. A Claim or an Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of the Class and is classified in a different Class to the extent the Claim or Interest qualifies within the description of that different Class. A Claim or Interest is placed in a particular Class for the purpose of receiving distributions pursuant to the Plan only to the extent that such Claim or Interest is an Allowed Claim or an Allowed Interest in that Class and such Claim or Interest has not been paid, released, settled or otherwise satisfied prior to the Effective Date.

Section 2.02. Unclassified Claims. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims are not classified and are excluded from the Classes designated in this Article II of the Plan. The treatment accorded Administrative Claims and Priority Tax Claims is set forth in Article III of the Plan.

Section 2.03. Unimpaired Classes. The Plan classifies the following Unimpaired Claims that are not entitled to vote on the Plan. Pursuant to section 1126(f) of the Bankruptcy Code, each Holder of a Claim in the following Classes is conclusively presumed to have accepted the Plan in respect of such Claims and is not entitled to vote to accept or reject the Plan:

Class 1 shall consist of all Employee Claims.

Class 3 shall consist of the Ford Motor Credit Secured Claim.

Class 4 shall consist of the TCF First Secured Claim.

Class 5 shall consist of the TCF Second Secured Claim.

Class 6 shall consist of the Toyota Motor Credit Secured Claim.

Class 7 shall consist of the PNC First Equipment Secured Claim.

Class 8 shall consist of the PNC Second Equipment Secured Claim.

Class 9 shall consist of the EZ Trading Secured Claim.

Section 2.04. Impaired Classes Entitled to Vote. The Plan classifies the following Classes as the only Impaired Classes that may receive a distribution under the Plan and that are entitled to vote to accept or reject the Plan:

Class 2 shall consist of the Lender Note A Secured Claim.

Class 10 shall consist of the General Unsecured Claims.

Section 2.05. Impaired Classes Deemed to Reject. The Plan classifies the following Impaired Classes of Claims and Interests as Impaired Classes that are not entitled to vote to accept or reject the Plan. Pursuant to section 1126(g) of the Bankruptcy Code, each Holder of a Claim or Interest in these Classes is conclusively presumed to have rejected the Plan in respect of such Claims and Interests because the Plan does not entitle the Holders of such Claims and Interests to receive or retain any property under the Plan on account of such Claims and Interests. Accordingly, Holders of such Claims and Interests are not entitled to vote to accept or reject the Plan:

Class 11 shall consist of all Insider Claims.

Class 12 shall consist of all Interests in Debtor.

Section 2.06. Bar Date for Administrative Claims. Unless otherwise ordered by the Bankruptcy Court, requests for payment of Administrative Claims must be Filed with the Bankruptcy Court and served on the Debtor, the Lender and the United States Trustee not later than thirty-five (35) days after the Effective Date (the "Administrative Claims Bar Date"). **Any Person that is required to File and serve a request for payment of an Administrative Claim and fails to timely File and serve such request, shall be forever barred, estopped and enjoined from asserting such Administrative Claim or participating in Distributions under this Plan on account thereof.** Objections to an Administrative Claim must be Filed and served on the Debtor, the Lender, the United States Trustee and the requesting party and their respective counsel, if any, not later than ninety (90) days after the Effective Date.

### ARTICLE III PROVISIONS FOR TREATMENT OF CLASSES OF CLAIMS AND INTERESTS

Section 3.01. Satisfaction of Claims. The treatment of and consideration to be received by Holders of Allowed Claims pursuant to this Article III and the Plan shall be in full satisfaction, settlement, release, extinguishment and discharge of their respective Claims against the Debtor and its Estate, except as otherwise provided in the Plan or the Confirmation Order.

Section 3.02. Unclassified Claims, Classified Unimpaired and Impaired Claims and Classified Interests. Administrative Claims and Priority Tax Claims are treated in accordance with section 1129(a)(9)(A) and section 1129(a)(9)(C) of the Bankruptcy Code, respectively. Such Claims are Unimpaired under the Plan and, in accordance with section 1123(a)(1) of the Bankruptcy Code, are not designated as Classes of Claims for purposes of this Plan and for purposes of sections 1123, 1124, 1126 and 1129 of the Bankruptcy Code. In addition, Class 1 Claims, Class 3 Claim, Class 4 Claim, Class 5 Claim, Class 6 Claim, Class 7 Claim, Class 8 Claim and Class 9 Claim are classified as Classes of Claims that are Unimpaired. In accordance with section 1126(f) of the Bankruptcy Code, the Holders of Claims in such Classes are conclusively presumed to have accepted the Plan and are not entitled to vote to accept or reject the Plan. The Class 2 Claim and the Class 10 Claims are Impaired and the Holders thereof are entitled to vote to accept or reject the Plan on account of such Allowed

Claims. The Class 11 Claims and Class 12 Interests are Impaired under the Plan and the Holders thereof will neither receive nor retain any property on account of such Claims and Interests and, pursuant to section 1126(g) of the Bankruptcy Code, Holders of such Claims and Interests are conclusively presumed to have rejected the Plan and are not entitled to vote to accept or reject the Plan on account of such Interests.

Section 3.03. Administrative Claims. Administrative Claims are Unimpaired. Each Holder of an Allowed Administrative Claim shall receive in full satisfaction, settlement, release, extinguishment and discharge of such Claim: (a) the amount of such unpaid Allowed Claim in Cash from the Effective Date Cash; or (b) such other treatment on such other terms and conditions as may be agreed upon in writing by the Holder of such Claim and the Lender or as the Bankruptcy Court may order. Distributions to each Holder of Administrative Claims shall be made on or as soon as reasonably practicable after the later of (i) the Effective Date, (ii) the date on which such Administrative Claim becomes Allowed, or (iii) a date agreed to in writing by the Lender and the Holder of such Administrative Claim.

Section 3.04. Priority Tax Claims. Priority Tax Claims are Unimpaired. Each Holder of an Allowed Priority Tax Claim shall retain its lien equal to the total principal amount of such Claim and receive deferred Cash payments totaling the full amount of such Claim plus interest at the statutory rate in equal monthly installments over a period of four (4) years from the Petition Date (provided, that the Lender may, in its sole discretion, prepay the balance of any such Allowed Priority Tax Claim at any time without penalty) in full satisfaction, settlement, release, extinguishment and discharge of such Priority Tax Claim.

Lender stipulates that the unsecured priority claim of the Arizona Department of Revenue (“ADOR”) is allowed in the amount set forth in its proof of claim and shall be paid in compliance with section 1129(a)(9)(C) of the Bankruptcy Code. Accordingly, ADOR and Lender agree that the present value of such claim on the Confirmation Date, including interest at the statutory rate, will be paid in full in equal monthly installments, commencing on the Effective Date, within forty-eight (48) months of the Petition Date. Lender’s failure to comply with the Plan provisions concerning ADOR’s claim, including but not limited to failure to make full and timely payments, shall constitute a default of the Plan. If Lender fails to cure a default within ten (10) days after written notice of the default from ADOR or its agents, the entire balance due ADOR shall be immediately due and payable. Thereupon, ADOR may enforce the entire amount of its claim, exercise any and all rights and remedies under applicable non-bankruptcy law, including but not limited to state tax collection procedures, and obtain any relief deemed appropriate by the Bankruptcy Court.

Section 3.05. Class 1: Employee Claims. Class 1 Employee Claims are Unimpaired. If the Holder an Allowed Class 1 Employee Claim is employed at the Hotel on the Effective Date, such Holder shall receive in full satisfaction, settlement, release, extinguishment and discharge of such Claim all employment benefits that accrued prior to the Petition Date in the ordinary course of their continued employment. If the Holder of an Allowed Class 1 Employee Claim is not employed at the Hotel on the Effective Date, such Holder shall receive in full satisfaction, settlement, release, extinguishment and discharge of such Claim: (a) Cash equal to the amount of such Allowed Class 1 Employee Claim from the Effective Date Cash; or (b) such other treatment on such other terms and conditions as may be agreed upon in writing by the



Holder of such Claim and the Lender. Distributions to each Holder of an Allowed Class 1 Employee Claim shall be made on or as soon as practicable after the later of (i) the Effective Date, (ii) the date that such Employee Claim becomes Allowed, or (iii) a date agreed to by the Lender and the Holder of such Class 1 Employee Claim.

Section 3.06. Class 2: Lender Note A Secured Claim. The Class 2 Lender Note A Secured Claim is Impaired. On the Effective Date, Debtor shall convey the Hotel and all related personal property to the Plan Transferee. The Allowed Class 2 Lender Note A Secured Claim shall not be discharged, but shall be assumed by the Plan Transferee on the Effective Date. The Plan Transferee shall take title to the Hotel and all related personal property subject to the Allowed Class 2 Lender Note A Secured Claim and will arrange for a professional hotel management company to continue operating the Hotel as a DoubleTree in accordance with the Comfort Letter between the Lender and Franchisor.

Section 3.07. Class 3: Ford Motor Credit Secured Claim. The Class 3 Ford Motor Credit Secured Claim is Unimpaired. The Holder of the Allowed Class 3 Ford Motor Credit Secured Claim shall receive in full satisfaction, settlement, release, extinguishment and discharge of such Claim: (a) full Reinstatement pursuant to section 1124(2) of the Bankruptcy Code of such Allowed Class 3 Ford Motor Credit Secured Claim; (b) such other treatment on such other terms and conditions as may be agreed upon in writing by the Holder of such Claim and the Lender; or (c) at Lender's sole discretion, Cash equal to the full amount of such Claim from the Effective Date Cash on the Effective Date.

Section 3.08. Class 4: TCF First Secured Claim. The Class 4 TCF First Secured Claim is Unimpaired. The Holder of the Allowed Class 4 TCF First Secured Claim shall receive in full satisfaction, settlement, release, extinguishment and discharge of such Claim: (a) full Reinstatement pursuant to section 1124(2) of the Bankruptcy Code of such Allowed Class 4 TCF First Secured Claim; (b) such other treatment on such other terms and conditions as may be agreed upon in writing by the Holder of such Claim and the Lender; or (c) at Lender's sole discretion, Cash equal to the full amount of such Claim from the Effective Date Cash on the Effective Date.

Section 3.09. Class 5: TCF Second Secured Claim. The Class 5 TCF Second Secured Claim is Unimpaired. The Holder of the Allowed Class 5 TCF Second Secured Claim shall receive in full satisfaction, settlement, release, extinguishment and discharge of such Claim: (a) full Reinstatement pursuant to section 1124(2) of the Bankruptcy Code of such Allowed Class 5 TCF Second Secured Claim; (b) such other treatment on such other terms and conditions as may be agreed upon in writing by the Holder of such Claim and the Lender; or (c) at Lender's sole discretion, Cash equal to the full amount of such Claim from the Effective Date Cash on the Effective Date.

Section 3.10. Class 6: Toyota Motor Credit Secured Claim. The Class 6 Toyota Motor Credit Secured Claim is Unimpaired. The Holder of the Allowed Class 6 Toyota Motor Credit Secured Claim shall receive in full satisfaction, settlement, release, extinguishment and discharge of such Claim: (a) full Reinstatement pursuant to section 1124(2) of the Bankruptcy Code of such Allowed Class 6 Toyota Motor Credit Secured Claim; (b) such other treatment on such other terms and conditions as may be agreed upon in writing by the Holder of such Claim

and the Lender; or (c) at Lender's sole discretion, Cash equal to the full amount of such Claim from the Effective Date Cash on the Effective Date.

Section 3.11. Class 7: PNC First Equipment Secured Claim. The Class 7 PNC First Equipment Secured Claim is Unimpaired. The Holder of the Allowed Class 7 PNC First Equipment Secured Claim shall receive in full satisfaction, settlement, release, extinguishment and discharge of such Claim: (a) full Reinstatement pursuant to section 1124(2) of the Bankruptcy Code of such Allowed Class 7 PNC First Equipment Secured Claim; (b) such other treatment on such other terms and conditions as may be agreed upon in writing by the Holder of such Claim and the Lender; or (c) at Lender's sole discretion, Cash equal to the full amount of such Claim from the Effective Date Cash on the Effective Date.

Section 3.12. Class 8: PNC Second Equipment Secured Claim. The Class 8 PNC Second Equipment Secured Claim is Unimpaired. The Holder of the Allowed Class 8 PNC Second Equipment Secured Claim shall receive in full satisfaction, settlement, release, extinguishment and discharge of such Claim: (a) full Reinstatement pursuant to section 1124(2) of the Bankruptcy Code of such Allowed Class 8 PNC Second Equipment Secured Claim; (b) such other treatment on such other terms and conditions as may be agreed upon in writing by the Holder of such Claim and the Lender; or (c) at Lender's sole discretion, Cash equal to the full amount of such Claim from the Effective Date Cash on the Effective Date.

Section 3.13. Class 9: EZ Trading Secured Claim. The Class 9 EZ Trading Secured Claim is Unimpaired. The Holder of the Allowed Class 9 EZ Trading Secured Claim shall receive in full satisfaction, settlement, release, extinguishment and discharge of such Claim: (a) full Reinstatement pursuant to section 1124(2) of the Bankruptcy Code of such Allowed Class 9 EZ Trading Secured Claim; (b) such other treatment on such other terms and conditions as may be agreed upon in writing by the Holder of such Claim and the Lender; or (c) at Lender's sole discretion, Cash equal to the full amount of such Claim from the Effective Date Cash on the Effective Date.

Section 3.14. Class 10: General Unsecured Claims. Class 10 General Unsecured Claims are Impaired. Each Holder of an Allowed Class 10 General Unsecured Claim shall receive in full satisfaction, settlement, release, extinguishment and discharge of such Claim: (a) a distribution in Cash equal to 25% of its Allowed Claim from the Effective Date Cash and, if necessary, funds provided by the Lender; and (b) pro rata distribution of net proceeds from the Avoidance Actions; or (c) such other treatment on such other terms and conditions as may be agreed upon in writing by the Holder of such Claim and the Lender. Distributions to each Holder of an Allowed Class 10 General Unsecured Claim shall be made on or as soon as practicable after the later of (i) the Effective Date, (ii) the date that such General Unsecured Claim becomes Allowed, or (iii) a date agreed to by the Lender and the Holder of such Class 10 General Unsecured Claim.

Section 3.15. Class 11: Insider Claims. The Class 11 Insider Claims are Impaired. Holders of Class 11 Insider Claims shall not receive or retain any property under the Plan on account of such Claims. On the Effective Date, all Insider Claims shall be extinguished.

Section 3.16. Class 12: Interests. The Class 12 Interests are Impaired. Holders of Class 12 Interests shall not receive or retain any property under the Plan on account of such Interests. On the Effective Date, all Interests shall be cancelled.

#### **ARTICLE IV ACCEPTANCE OR REJECTION OF THE PLAN; CRAMDOWN**

Section 4.01. Acceptance by Impaired Classes of Claims and Interests. Pursuant to section 1126(c) of the Bankruptcy Code, an Impaired Class of Claims shall have accepted the Plan if: (a) the Holders of at least two-thirds (2/3) in dollar amount of the Allowed Claims actually voting in such Class (other than Claims held by any Holder designated pursuant to section 1126(e) of the Bankruptcy Code) have timely and properly voted to accept the Plan, and (b) more than one-half (1/2) in number of the Holders of such Allowed Claims actually voting in such Class (other than Claims held by any Holder designated pursuant to section 1126(e) of the Bankruptcy Code) have timely and properly voted to accept the Plan. No Class of Insider Claims (Class 11) or Interests (Class 12) are entitled to vote on the Plan pursuant to section 1126 of the Bankruptcy Code.

Section 4.02. Voting Classes. Except as otherwise required by the Bankruptcy Code or the Bankruptcy Rules or as otherwise provided in this Section 4.02, the Holders of Claims in Classes 2 and 10 shall be entitled to vote to accept or reject the Plan in accordance with Section 4.01 of the Plan. Classes of Claims Unimpaired under the Plan (Employee Claims (Class 1), Ford Motor Credit Secured Claim (Class 3), TCF First Secured Claim (Class 4), TCF Second Secured Claim (Class 5), Toyota Motor Credit Secured Claim (Class 6), PNC First Equipment Secured Claim (Class 7), PNC Second Equipment Secured Claim (Class 8) and EZ Trading Secured Claim (Class 9)) shall not be entitled to vote to accept or reject the Plan, and shall be conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. The Class of Insider Claims (Class 11) and the Class of Interests (Class 12) that are Impaired under the Plan and whose Holders neither receive nor retain any property on account of such Claims and Interests under the Plan shall not be entitled to vote to accept or reject the Plan and shall be conclusively presumed to have rejected the Plan. Administrative Claims and Priority Tax Claims are Unimpaired and not classified under the Plan and hence are not entitled to vote to accept or reject the Plan pursuant to section 1126(g) of the Bankruptcy Code.

Section 4.03. Ballot Instructions. Each Holder of a Claim or Interest entitled to vote on the Plan will be asked to complete and return a Ballot to the Lender and the Lender will compile the votes so received. Any questions as to the validity, form, and eligibility (including time of receipt) of Ballots will be resolved by the Bankruptcy Court upon application or at the Confirmation Hearing.

Section 4.04. Cramdown. If all applicable requirements for Confirmation of the Plan are met as set forth in section 1129(a)(1) through (14) of the Bankruptcy Code except subsection (8) thereof, the Lender may request that the Bankruptcy Court confirm the Plan in accordance with section 1129(b) of the Bankruptcy Code, notwithstanding the requirements of section 1129(a)(8) thereof, on the bases that the Plan is fair and equitable, and does not

discriminate unfairly with respect to each Class of Claims or Interests that is Impaired under, and has not accepted, the Plan.

**ARTICLE V**  
**PROVISIONS GOVERNING DISTRIBUTIONS**  
**UNDER THE PLAN**

Section 5.01. Timing of Distributions. Except as specifically set forth in the Plan, distributions of Property will be made to Holders of Allowed Claims in accordance with Article III of the Plan. If a Claim is not an Allowed Claim as of the applicable distribution date, distributions will be made only if and when the Claim is Allowed, and then in accordance with Article III of the Plan and, with respect to the cure of defaults for assumed executory contracts and unexpired leases, Section 6.02 of the Plan, and in each case, subject to Article VIII of the Plan. Distributions to be made as of the Effective Date on account of Claims that are Allowed as of the Effective Date and are entitled to receive distributions under the Plan shall be made on the Effective Date or as soon as reasonably practicable thereafter.

Section 5.02. Distributions to Holders of Allowed Claims. Except as otherwise provided herein, the Lender shall make all distributions required under the Plan in a manner consistent with the Plan. On the Effective Date or as soon as is reasonably practicable thereafter, Debtor shall convey and deliver the Hotel Effective Date Cash to the Lender for the purpose of making distributions in accordance with Article III of the Plan.

Section 5.03. Delivery of Distributions. Distributions to Holders of Allowed Claims shall be made by the Lender: (a) at the last known addresses of such Holders; or (b) at the addresses set forth in any written notices of address changes delivered to the Lender. If any Holder's distribution is returned as undeliverable, no further distributions to such Holder shall be made unless and until the Lender is notified of such Holder's then current address, at which time all missed distributions shall be made to such Holder without interest.

Section 5.04. Method of Cash Distributions. Any Cash payment to be made pursuant to the Plan may be made by Cash, draft, check, wire transfer, or as otherwise required or provided in any relevant agreement or applicable law at the option of the Lender.

Section 5.05. Failure to Negotiate Checks. Checks issued in respect of distributions under the Plan shall be null and void if not negotiated within sixty (60) Days after the date of issuance. Any amounts returned to the Lender in respect of such non-negotiated checks shall be held by the Lender. Requests for reissuance for any such check shall be made directly to the issuer of the check by the Holder of the Allowed Claim with respect to which such check originally was issued. All amounts represented by any voided check will be held by the Lender until the earlier of: (a) thirty (30) days after the date on which the check is voided, or (b) the date on which the Bankruptcy Court enters the Final Decree, and all requests for reissuance by the Holder of the Allowed Claim in respect of a voided check are required to be made prior to such date. Thereafter, all such amounts shall be deemed to be Unclaimed Property, in accordance with Section 5.06 of the Plan, and all Holders of Claims in respect of void checks shall be forever barred, estopped and enjoined from asserting a claim to such funds in any manner against the Lender, the Debtor, or the Debtor's assets.

Section 5.06. Unclaimed Distributions. All Property distributed on account of Claims must be claimed prior to the date on which the Bankruptcy Court enters the Final Decree, or, in the case of a distribution made in the form of a check, must be negotiated and a request for reissuance be made as provided for in Section 5.05 of the Plan. All Unclaimed Property will be retained by and will vest in the Lender. All full or partial payments made by the Debtor and received by the Holder of a Claim prior to the Effective Date will be deemed to be payments under the Plan for purposes of satisfying the obligations of the Lender pursuant to the Plan. Nothing contained in the Plan shall require the Lender to attempt to locate any Holder of an Allowed Claim other than by reviewing the records of the Debtor and any Claims filed in the Chapter 11 Case. Pursuant to section 1143 of the Bankruptcy Code, all claims in respect of Unclaimed Property shall be deemed Disallowed and the Holder of any Claim Disallowed in accordance with this Section 5.06 will be forever barred, expunged, estopped and enjoined from asserting such Claim in any manner against the Lender, the Debtor or the Debtor's assets.

Section 5.07. Limitation on Distribution Rights. If a claimant holds more than one Claim in any one Class, all Claims of the claimant in that Class will be aggregated into one Claim and one distribution will be made with respect to the aggregated Claim.

Section 5.08. Fractional Dollars. Notwithstanding any other provision of the Plan, Cash distributions of fractions of dollars will not be made; rather, whenever any payment of a fraction of a dollar would be called for, the actual payment made shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash remains undistributed as a result of the rounding of such fraction to the nearest whole cent, such Cash shall be treated as Unclaimed Property pursuant to Section 5.07 of this Plan.

Section 5.09. Compliance With Tax Requirements. In connection with each distribution with respect to which the filing of an information return (such as an Internal Revenue Service Form 1099 or 1042) or withholding is required, the Lender shall file such information return with the Internal Revenue Service and provide any required statements in connection therewith to the recipients of such distribution or effect any such withholding and deposit all moneys so withheld as required by law. With respect to any Person from whom a tax identification number, certified tax identification number or other tax information required by law to avoid withholding has not been received by the Lender within thirty (30) Days from the date of such request, the Lender may, at its option, withhold the amount required and distribute the balance to such Person or decline to make such distribution until the information is received.

Section 5.10. De Minimis Distributions. No Cash payment of less than twenty-five (\$25.00) dollars shall be made to any Holder of an Allowed Claim on account of such Allowed Claim.

## **ARTICLE VI EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Section 6.01. Treatment of Executory Contracts and Unexpired Leases. All executory contracts and unexpired leases of Debtor shall be deemed rejected by Debtor as of the Effective Date, except for any executory contract or unexpired lease that: (a) has previously been

assumed, assumed and assigned, or rejected pursuant to an order of the Bankruptcy Court on or prior to the Confirmation Date; or (b) is listed on the Schedule of Assumed Contracts, provided, however, that the Lender shall have the right, at any time prior to the Confirmation Date, to amend the Schedule of Assumed Contracts to either (i) delete any executory contract or unexpired lease listed therein, thus providing for its rejection pursuant to this Section 6.01, or (ii) to add any executory contract or unexpired lease thereto, thus providing for its assumption and assignment pursuant to this Section 6.01.

Section 6.02. Cure of Defaults for Assumed Contracts and Leases. The cure of all defaults under executory contracts and unexpired leases to be assumed and assigned under the Plan, including the resolution of all objections to the adequacy of assurance of future performance under such contracts and leases and as to the adequacy of amounts proposed to cure defaults under such contracts and leases, shall be governed by the terms and conditions of the Plan and other orders of the Court. All such cure amounts shall be satisfied by the Lender from Effective Date Cash.

Section 6.03. Bar Date for Claims for Rejection Damages. Claims arising out of the rejection of any executory contract or unexpired lease pursuant to Article VI of the Plan must be filed with the Bankruptcy Court before the later of (a) twenty (20) Days after the Effective Date, or (b) thirty (30) Days after the entry of an order rejecting such executory contract or unexpired lease. Any Claim not filed within such time period shall be forever barred. The Lender shall have the right to object to any Claim arising out of the rejection of an executory contract or unexpired lease pursuant to the terms of Section 8.05 of this Plan.

Section 6.04. Treatment of Rejection Claims. The Bankruptcy Court shall determine any objections Filed in accordance with Section 8.05 hereof at a hearing to be held on a date to be determined by the Bankruptcy Court. Subject to any statutory limitation, including, but not limited to the limitations contained in sections 502(b)(6) and 502(b)(7) of the Bankruptcy Code, any Allowed Claims arising out of the rejection of executory contracts and unexpired leases shall be Impaired and treated as Class 10 Claims in accordance with Section 3.14 of the Plan.

## **ARTICLE VII MEANS FOR IMPLEMENTATION OF THE PLAN**

Section 7.01. Title to the Hotel. On and as of the Effective Date, title to the Hotel and all related personal property and all books and records related to the Estate shall be transferred to and vest in the Plan Transferee free and clear of Liens, claims and encumbrances, with the exception of the Allowed Class 2 Claim and the Liens associated therewith pursuant to the terms of the Plan. On the Effective Date, the Debtor shall execute and deliver to the Plan Transferee: (a) the Plan Implementation Deed, prepared properly in all respects for recordation of the transfer; and (b) all other documents contemplated under this Plan or the Plan Supplement to implement the Plan and assign the Debtor's assets to the Plan Transferee. The Debtor is hereby authorized and directed to take such steps as may be necessary or appropriate to confirm such transfer and contribution of its Property to the Plan Transferee. The Debtor is further authorized and directed to take such steps as are necessary or appropriate to confirm that the Allowed Class 2 Claim and Liens associated therewith are fully assumed by the Plan Transferee,

including execution and delivery of all documents and instructions required or appropriate under the Plan or the Plan Supplement. The Confirmation Order shall be deemed to be an Order of the Bankruptcy Court pursuant to Federal Rule of Bankruptcy Procedure 7070(a) that, among other things, directs the Debtor to execute and deliver the Plan Implementation Deed and any and all other documents necessary or appropriate to consummate or implement this Plan on behalf of the Debtor, and that furthermore, by operation of law under Federal Rule of Bankruptcy Procedure 7070(b), vests all of the Property subject to Plan Implementation Deed in the Plan Transferee.

Section 7.02. Management and Franchising of the Hotel. On and as of the Effective Date, management of the Hotel and its operations shall be vested in the Plan Transferee. The prepetition management agreement between the Debtor and its affiliate, Transwest Properties, Inc., shall be deemed rejected as of the Effective Date and the Plan Transferee shall retain a professional hotel management company to manage the Hotel. The Plan Transferee shall continue operating the Hotel as a DoubleTree in accordance with the terms of the Comfort Letter between the Lender and the Franchisor. In connection therewith, on the Effective Date the Lender will cure all monetary defaults under the Franchise Agreement from the Effective Date Cash.

Section 7.03. Application of the Effective Date Cash. On the Effective Date, the Debtor shall convey Effective Date Cash to the Lender for distribution pursuant to the terms of the Plan. The Lender shall distribute the Effective Date Cash to each Holder of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Class 3 Ford Motor Credit Secured Claim (if applicable), Allowed Class 4 TCF First Secured Claim (if applicable), Allowed Class 5 TCF Second Secured Claim (if applicable), Allowed Class 6 Toyota Motor Credit Secured Claim (if applicable), Allowed Class 7 PNC First Equipment Secured Claim (if applicable), Allowed Class 8 PNC Second Equipment Secured Claim (if applicable), Allowed Class 9 EZ Trading Secured Claim (if applicable) and Allowed Class 10 General Unsecured Claims, parties to executory contracts and unexpired leases to the extent monetary cure amounts are required to be paid to such parties in connection with the assumption or assumption and assignment of such executory contracts and unexpired leases by Plan Transferee, in accordance with Sections 3.03, 3.04, 3.05, 3.07, 3.08, 3.09, 3.10, 3.11, 3.12, 3.13, 3.14 and 6.02 of the Plan. The remaining Effective Date Cash (if any) shall then vest with the Lender.

Section 7.04. Corporate Action. The entry of the Confirmation Order shall constitute authorization for the Lender, the Plan Transferee, and the Debtor to take or to cause to be taken all limited liability company actions necessary or appropriate to consummate and implement the provisions of the Plan prior to, on, and after the Effective Date, and all such actions taken or caused to be taken shall be deemed to have been authorized and approved by the Bankruptcy Court. All such actions shall be deemed to have occurred and shall be in effect pursuant to applicable non-bankruptcy law and the Bankruptcy Code, without any requirement of further action by the members or officers of the Lender, the Plan Transferee, or the Debtor.

**ARTICLE VIII**  
**PRESERVATION OF CAUSES OF ACTION AND**  
**RIGHT TO DEFEND AND CONTEST**

Section 8.01. Preservation of Rights. Except to the extent that any Claim is Allowed during the Chapter 11 Case or expressly by this Plan or the Confirmation Order, nothing, including, but not limited to, the failure of the Debtor, the Lender or other party in interest to object to a Claim or Interest for any reason during the pendency of the Chapter 11 Case shall affect, prejudice, diminish or impair the rights and legal and equitable defenses of the Debtor or the Lender with respect to any Claim or Interest, including, but not limited to, all rights of the Debtor or the Lender to contest or defend itself against such Claims or Interests in any lawful manner or forum when and if such Claim or Interest is sought to be enforced by the Holder thereof.

Section 8.02. Rights of Action. Except as otherwise provided in the Plan or the Confirmation Order, all Causes of Action, including all Avoidance Actions, shall automatically be transferred to and become the property of the Lender. Pursuant to section 1123(b)(3) of the Bankruptcy Code, the Lender will be the representative of the Debtor's estate and will have the right to enforce and prosecute such Causes of Action and Avoidance Actions against any Entity that arose before the Effective Date other than those expressly conveyed, released or compromised as part of or pursuant to the Plan.

Section 8.03. Setoffs. Except to the extent that any Claim is Allowed, the Debtor, the Lender or the Plan Transferee, as applicable, may, but shall not be required to, set off against any Claims and the payments or distributions to be made pursuant to the Plan in respect of such Claims, any and all debts, liabilities, Causes of Action and claims of every type and nature whatsoever which the Estate, the Debtor, the Lender or the Plan Transferee may have against such Creditors, but neither the failure to do so nor the allowance of any such Claims, whether pursuant to the Plan or otherwise, shall constitute a waiver or release by the Debtor, the Lender or the Plan Transferee of any such claims or Causes of Action the Debtor or the Lender may have against such Creditors, and all such claims and Causes of Action which are not expressly released, conveyed or compromised pursuant to the Plan or Confirmation Order shall be conveyed to the Lender.

Section 8.04. No Payment or Distribution Pending Allowance. All references to Claims and amounts of Claims refer to the amount of the Claim Allowed by agreement of the Lender and the Holder of such Claim, by operation of law, by Final Order, or by this Plan. Notwithstanding any other provision in the Plan, no payment or distribution shall be made on account of or with respect to any Claim to the extent it is a Disputed Claim unless and until the Disputed Claim becomes an Allowed Claim.

Section 8.05. Resolution of Disputed Claims. Unless otherwise ordered by the Court after notice and a hearing, the Lender shall have the right, on and after the Effective Date, to File objections to Claims and shall serve a copy of each such objection upon the Holder of the Claim to which the objection is made as soon as practicable, but in no event later than the applicable Claims Objection Deadline. The foregoing deadlines may be extended by order of the Court. An objection to any Claim shall be deemed properly served on the Holder thereof if the



Lender effects service in any of the following manners: (a) in accordance with Rule 4 of the Federal Rules of Civil Procedure, as modified and made applicable by Federal Rule of Bankruptcy Procedure 7004; (b) by first class mail, postage prepaid, on the signatory on the proof of claim or other representative identified in the proof of claim or any attachment thereto; or (c) by first class mail, postage prepaid, on any counsel that has appeared on the Holder's behalf in the Chapter 11 Case.

## **ARTICLE IX CONDITIONS TO CONSUMMATION OF THE PLAN**

Section 9.01. Conditions to Effective Date. The Plan shall not be consummated, and the Effective Date shall not occur, unless and until each of the following conditions have occurred or have been duly waived (if waivable) pursuant to Section 9.02 below:

- a) the Bankruptcy Court shall have approved the information contained in the Disclosure Statement as adequate;
- b) the Confirmation Order shall have been entered and become a Final Order and shall not be stayed by order of a court of competent jurisdiction;
- c) the Bankruptcy Court shall have entered an order (contemplated to be part of the Confirmation Order), which shall have become a Final Order, authorizing and directing the Debtor to take all actions necessary or appropriate to enter into, implement, and consummate the documents created, amended, supplemented, modified or adopted in connection with the Plan;
- d) all authorizations, consents and regulatory approvals required, if any, in connection with the Plan's effectiveness shall have been obtained;
- e) the Debtor shall have executed and delivered to the Plan Transferee, in a form and substance acceptable to the Lender in its sole discretion (i) the Plan Implementation Deed, (ii) the Bill of Sale, (iii) the Assignment and Assumption Agreement, and (iv) such other documents as may be necessary to satisfy the Debtor's obligations under the Plan and the Plan Supplement;
- f) the Debtor shall have transferred to Lender the Effective Date Cash;
- g) no order of any court shall have been entered and shall remain in effect restraining the Debtor from consummating the Plan;
- h) all statutory fees then due the United States Trustee shall have been paid in full; and

- i) all other actions and documents necessary to implement the Plan as of the Effective Date shall have been effected or duly executed and delivered to the required parties.

Section 9.02. Waiver of Conditions to Consummation. The conditions to consummation in Section 9.01 (other than Sections 9.01(a) and (c)) may be waived at any time by a writing signed by an authorized representative of the Lender without notice or order of the Bankruptcy Court or any further action other than proceeding to consummation of the Plan.

Section 9.03. Effect of Failure or Absence of Waiver of Conditions Precedent to the Effective Date of the Plan. In the event that one or more of the conditions specified in Section 9.01 of the Plan have not occurred (or been waived), upon notification submitted by the Lender to the Bankruptcy Court: (a) the Confirmation Order, automatically and without further order of the Bankruptcy Court, shall be, and shall be deemed, vacated, null and void, with no force or legal effect whatsoever; (b) no distributions under the Plan shall be made; (c) all Property of the Estate shall revert in the Debtor's Estate; (d) the Debtor and all Holders of Claims and Interests shall be restored to the status quo ante as of the day immediately preceding the Confirmation Date as though the Confirmation Date never occurred; and (e) the Debtor's obligations with respect to the Claims and Interests shall remain unchanged and nothing contained herein shall constitute or be deemed a waiver or release of any Claims or Interests by or against the Debtor or any other Person or Entity or to prejudice in any manner the rights of the Debtor or any Person or Entity in any further proceedings involving the Debtor.

## **ARTICLE X EFFECTS OF CONFIRMATION**

Section 10.01. Binding Effect of Plan. The provisions of the Plan shall be binding upon and inure to the benefit of the Debtor, the Estate, the Lender, the Plan Transferee, any Holder of any Claim or Interest treated herein or any Person named or referred to in the Plan, and each of their respective heirs, executors, administrators, representatives, predecessors, successors, assigns, agents, officers and directors, and, to the fullest extent permitted under the Bankruptcy Code and other applicable law, each other Person affected by the Plan.

Section 10.02. No Discharge of the Debtor. Pursuant to section 1141(d)(3) of the Bankruptcy Code, entry of the confirmation Order will not discharge Claims against the Debtor; provided however, no Holder of a Claim or Interest may, on account of such Claim or Interest, seek or receive any payment or other distribution from, or seek recourse against, the Debtor, the Estate or the Releasees, or their respective successors, assigns or Property, except as expressly provided in this Plan.

Section 10.03. Injunction.

(a) Discharged Claims and Terminated Interests. Except as otherwise expressly provided for in the Plan or the Confirmation Order and to the fullest extent authorized or provided by the Bankruptcy Code, including sections 524 and 1141 thereof, the entry of the Confirmation Order shall, provided that the Effective Date occurs, permanently enjoin all Persons that have held, currently hold or may hold a Claim or other debt or liability that is

Impaired or an Interest or other right of an equity security holder that is Impaired or terminated pursuant to the terms of the Plan from taking any of the following actions against the Debtor, the Lender, the Plan Transferee, or their respective Property on account of any such discharged Claims, debts or liabilities or such terminated Interests or rights: (a) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind; (b) enforcing, levying, attaching, collecting or otherwise recovering in any manner or by any means, whether directly or indirectly, any judgment, award, decree or order; (c) creating, perfecting or enforcing in any manner, directly or indirectly, any Lien or encumbrance of any kind; (d) asserting any setoff, offset, right of subrogation or recoupment of any kind, directly or indirectly, against any debt, liability or obligation due to the Debtor; and (e) proceeding in any manner in any place whatsoever, including employing any process, that does not conform to or comply with or is inconsistent with the provisions of the Plan.

(b) Released Claims. As of the Effective Date, the Confirmation Order shall constitute an injunction permanently enjoining any Person that has held, currently holds or may hold a Claim, demand, debt, right, Cause of Action or liability that is released pursuant to this Section 10.03 of the Plan from enforcing or attempting to enforce any such Claim, demand, debt, right, Cause of Action or liability against (i) the Debtor, (ii) the Lender, (iii) the Plan Transferee, (iv) any Releasee, or (v) any Exculpated Person, or any of their respective Property based on, arising from or relating to, in whole or in part, any act, omission, or other occurrence taking place on or prior to the Effective Date with respect to or in any way relating to the Chapter 11 Case, all of which claims, demands, debts, rights, Causes of Action or liabilities shall be deemed released on and as of the Effective Date; provided, however, that with respect to the former directors, officers and employees of the Debtor, this injunction shall apply only to the enforcement of Claims, demands, debts, rights, Causes of Action or liabilities with respect to which such former directors, officers and employees would be entitled to indemnification from the Debtor under contract or law; and, provided further, however, that this injunction shall not apply to (a) any claims Creditors may assert under the Plan to enforce their rights thereunder to the extent permitted by the Bankruptcy Code or (b) any claims Creditors or other third parties may have against each other, which claims are not related to the Debtor, it being understood, however, that any defenses, offsets or counterclaims of any kind or nature whatsoever which the Debtor may have or assert in respect of any of the claims of the type described in (a) or (b) of this Section 10.03(b) are fully preserved.

Section 10.04. Exculpation. Neither the Lender, the Plan Transferee, the Trust, the Trustee, or any of their respective master servicers, special servicers, affiliates, special purpose entities, bond holders, certificate holders, agents, employees, representatives, financial advisors or attorneys, shall have or incur any liability to any Person, including, without limitation, any Holder of a Claim or Interest or any other party in interest, or any of their respective agents, employees, representatives, financial advisors, attorneys or affiliates or any of their successors or assigns, for any act taken or omission made in connection with, relating to, or arising out of, the Chapter 11 Case, Filing, negotiating, prosecuting, administering, formulating, implementing, confirming or consummating this Plan, or the Property to be distributed under this Plan, including all activities leading to the promulgation and confirmation of the Plan, the Disclosure Statement (including any information provided or statement made in the Disclosure Statement or omitted therefrom), or any contract, instrument, release or other agreement or document created in connection with or related to the Plan or the administration of the Debtor or

this Chapter 11 Case, provided, however, that the foregoing exculpation shall not apply to any act that is determined by a Final Order to constitute gross negligence or willful misconduct.

Section 10.05. Releases.

(a) Releases by the Debtor. Effective as of the Effective Date, and except as otherwise provided in the Plan or the Confirmation Order, for good and valuable consideration, the adequacy of which is hereby confirmed, the Debtor, in its individual capacity and as debtor in possession, will be deemed to have forever released, waived and discharged the Releasees from any and all claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities, whether for tort, contract, violations of federal or state securities laws, or otherwise, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or part on any act, omission, transaction, event or other occurrence, including actions in connection with indebtedness for money borrowed by Debtor, taking place on or prior to the Effective Date in any way relating to the Debtor, the Chapter 11 Case, or the Plan.

(b) Releases by Holders of Claims and Interests. Effective as of the Effective Date, and except as otherwise provided in the Plan or the Confirmation Order, to the fullest extent permitted under applicable law, in consideration for the obligations of the Persons set forth below under the Plan and, if applicable, the Cash, securities, contracts, releases and other agreements or documents to be delivered in connection with the Plan, each Holder of a Claim that votes in favor of the Plan, and any Affiliate of any such Holder (as well as any trustee or agent on behalf of each such Holder) shall be deemed to have forever waived, released and discharged (i) the Debtor, (ii) the Lender, (iii) the Plan Transferee, and (iv) the Releasees from any and all claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities (other than the rights of the Lender or the Plan Transferee to enforce the Plan and the contracts, instruments, releases, indentures and other agreements or documents delivered thereunder), whether for tort, contract, violations of federal or state securities laws, or otherwise, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or part on any act, omission, transaction, event or other occurrence, including actions in connection with indebtedness for money borrowed by the Debtor, taking place on or prior to the Effective Date in any way relating to the Debtor, the Chapter 11 Case, or the Plan.

Section 10.06. Other Documents and Actions. The Debtor shall be authorized and directed to execute such documents and take such other action as is necessary or appropriate to effectuate the transactions provided for or contemplated by or in the Plan.

Section 10.07. Term of Injunctions or Stays. Unless otherwise provided herein or in the Confirmation Order, all injunctions or stays provided for in the Chapter 11 Case under sections 105(a) or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

Section 10.08. Preservation of Insurance. Except as necessary to be consistent with the Plan, the Plan and the discharge provided herein shall not diminish or impair (a) the enforceability of insurance policies that may cover Claims against the Debtor or any other Person or Entity or (b) the continuation of any workers' compensation programs in effect, including self-insurance programs.

Section 10.09. Subordination Rights. Any distributions under the Plan shall be received and retained free of and from any obligations to hold or transfer the same to any other Creditor, and shall not be subject to levy, garnishment, attachment or other legal process by any Holder by reason of claimed contractual subordination rights, which rights shall be waived and the Confirmation Order shall constitute an injunction enjoining any Person from enforcing or attempting to enforce any contractual, legal or equitable subordination rights to Property distributed under the Plan, in each case other than as provided in the Plan.

Section 10.10. No Successor Liability. Except as otherwise expressly provided in the Plan, the Lender and the Plan Transferee do not, pursuant to the Plan or otherwise, assume, agree to perform, pay, or indemnify or otherwise have any responsibilities for any liabilities or obligations of the Debtor or any other party relating to or arising out of the operations of or assets of the Debtor, whether arising prior to, on, or after the Effective Date. The Lender and the Plan Transferee are not, and shall not be, successors to the Debtor by reason of any theory of law or equity, and none shall have any successor or transferee liability of any kind or character, except that the Lender and the Plan Transferee shall assume the obligations specified in the Plan and the Confirmation Order.

## **ARTICLE XI RETENTION OF JURISDICTION**

Section 11.01. Exclusive Jurisdiction of Bankruptcy Court. Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain after the Effective Date exclusive jurisdiction of all matters arising out of, arising in or related to the Chapter 11 Cases to the fullest extent permitted by applicable law, including, without limitation, jurisdiction to:

(a) classify or establish the priority or secured or unsecured status of any Claim (whether Filed before or after the Effective Date and whether or not contingent, Disputed or unliquidated) or resolve any dispute as to the treatment of any Claim pursuant to the Plan;

(b) grant or deny any applications for allowance of compensation or reimbursement of expenses pursuant to sections 330, 331 or 503(b) of the Bankruptcy Code or otherwise provided for in the Plan, for periods ending on or before the Effective Date;

(c) determine and resolve any matters related to the assumption, assumption and assignment or rejection of any executory contract or unexpired lease to which the Debtor is a party or with respect to which the Debtor may be liable, and to hear, determine and, if necessary, liquidate any Claims arising therefrom;

(d) ensure that all payments due under the Plan and performance of the provisions of the Plan are accomplished as provided herein and resolve any issues relating to distributions to Holders of Allowed Claims pursuant to the provisions of the Plan;

(e) construe, take any action and issue such orders, prior to and following the Confirmation Date and consistent with section 1142 of the Bankruptcy Code, as may be necessary for the enforcement, implementation, execution and consummation of the Plan and all contracts, instruments, releases, indentures and other agreements or documents created in connection with the Plan, including, without limitation, the Disclosure Statement and the Confirmation Order, for the maintenance of the integrity of the Plan and protection of the Lender and the Plan Transferee in accordance with sections 524 and 1141 of the Bankruptcy Code following consummation;

(f) determine and resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation, implementation or enforcement of the Plan or the Confirmation Order, including any indemnification and injunction provisions set forth in and contemplated by the Plan or the Confirmation Order, or any Entity's rights arising under or obligations incurred in connection therewith;

(g) hear any application of the Lender to modify the Plan after the Effective Date pursuant to section 1127 of the Bankruptcy Code and Section 12.03 hereof or modify the Disclosure Statement, the Confirmation Order or any contract, instrument, release, indenture or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order, or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release, indenture or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order, in such manner as may be necessary or appropriate to consummate the Plan, to the extent authorized by the Bankruptcy Code and the Plan;

(h) issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with consummation, implementation or enforcement of the Plan or the Confirmation Order;

(i) enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated;

(j) determine any other matters that may arise in connection with or relating to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture or other agreement or document created in connection with the Plan, the Disclosure Statement, or the Confirmation Order, except as otherwise provided in the Plan;

(k) determine such other matters and for such other purposes as may be provided in the Confirmation Order;

(l) hear and determine any other matters related hereto and not inconsistent with chapter 11 of the Bankruptcy Code;

(m) hear and determine disputes arising in connection with the interpretation, implementation or enforcement of the Plan;

(n) enter a Final Decree closing the Chapter 11 Case;

(o) determine and resolve any and all controversies relating to the rights and obligations of the Lender or the Plan Transferee in connection with the Chapter 11 Case;

(p) allow, disallow, determine, liquidate or estimate any Claim, including the compromise, settlement and resolution of any request for payment of any Claim, the resolution of any Objections to the allowance of Claims and to hear and determine any other issue presented hereby or arising hereunder, including during the pendency of any appeal relating to any Objection to such Claim (to the extent permitted under applicable law);

(q) permit the Lender to recover all assets of the Debtor and Property of its Estate, wherever located;

(r) hear and determine any motions or contested matters involving taxes, tax refunds, tax attributes and tax benefits and similar or related matters with respect to the Debtor or its Estate arising prior to the Effective Date or relating to the period of administration of the Chapter 11 Case, including, without limitation, matters concerning federal, state and local taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;

(s) hear and determine any motions, applications, adversary proceedings, contested matters and other litigated matters pending on, Filed or commenced after the Effective Date that may be commenced by the Lender thereafter, including Avoidance Actions, proceedings with respect to the rights of the Lender to recover Property under sections 542, 543 or 553 of the Bankruptcy Code, or proceedings to otherwise collect or recover on account of any claim or Cause of Action that the Debtor may have had; and

(t) hear any other matter not inconsistent with the Bankruptcy Code.

Section 11.02. Failure of Bankruptcy Court to Exercise Jurisdiction. If the Bankruptcy Court abstains from exercising or declines to exercise jurisdiction over any matter arising under, arising in or related to the Debtor, including with respect to the matters set forth above in Section 11.01 hereof, this Article XI shall not prohibit or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such subject matter.

## **ARTICLE XII MISCELLANEOUS PROVISIONS**

Section 12.01. Withdrawal of the Plan. The Lender reserves the right, at any time prior to Confirmation of the Plan, to withdraw the Plan. If the Plan is withdrawn, the Plan shall be null and void and have no force and effect. In such event, nothing contained herein shall be deemed to constitute a waiver or release of any claims by the Lender or any other Person or to prejudice in any manner the rights of the Lender or any Person in any further proceedings involving the Debtor.

Section 12.02. Final Order. Except as otherwise expressly provided in the Plan, any requirement in the Plan for a Final Order may be waived by agreement of the Lender and the Plan Transferee upon written notice to the Bankruptcy Court. No such waiver shall prejudice the right of any party in interest to seek a stay pending appeal of any order that is not a Final Order.

Section 12.03. Modification of the Plan. The Lender may alter, amend or modify the Plan in accordance with section 1127 of the Bankruptcy Code or as otherwise permitted at any time prior to the Confirmation Date. After the Confirmation Date and prior to the substantial consummation of the Plan, and in accordance with the provisions of section 1127(b) of the Bankruptcy Code and the Bankruptcy Rules, the Lender or the Plan Transferee may, so long as the treatment of Holders of Claims or Interests under the Plan is not adversely affected, institute proceedings in the Bankruptcy Court to remedy any defect or omission or to reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order and any other matters as may be necessary to carry out the purposes and effects of the Plan; provided, however, prior notice of such proceedings shall be served in accordance with Bankruptcy Rules 2002 and 9014.

Section 12.04. Business Days. If any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

Section 12.05. Severability. Should the Bankruptcy Court determine, prior to the Confirmation Date, that any provision of the Plan is either illegal on its face or illegal as applied to any Claim or Interest, such provision shall be unenforceable as to all Holders of Claims or Interests or to the specific Holder of such Claim or Interest, as the case may be, as to which such provision is illegal. Unless otherwise determined by the Bankruptcy Court, such a determination of unenforceability shall in no way limit or affect the enforceability and operative effect of any other provision of the Plan. The Lender reserves the right not to proceed with Confirmation or consummation of the Plan if any such ruling occurs.

Section 12.06. Governing Law. EXCEPT TO THE EXTENT THAT THE BANKRUPTCY CODE OR BANKRUPTCY RULES OR OTHER FEDERAL LAWS ARE APPLICABLE, AND SUBJECT TO THE PROVISIONS OF ANY CONTRACT, INSTRUMENT, RELEASE, INDENTURE OR OTHER AGREEMENT OR DOCUMENT ENTERED INTO IN CONNECTION WITH THE PLAN, THE CONSTRUCTION, IMPLEMENTATION AND ENFORCEMENT OF THE PLAN AND ALL RIGHTS AND OBLIGATIONS ARISING UNDER THE PLAN SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ARIZONA, WITHOUT GIVING EFFECT TO CONFLICTS-OF-LAW PRINCIPLES WHICH WOULD APPLY THE LAW OF A JURISDICTION OTHER THAN THE STATE OF ARIZONA.

Section 12.07. Payment of Statutory Fees. All U.S. Trustee's Fee Claims, as determined, if necessary, by the Bankruptcy Court at the hearing pursuant to section 1128 of the Bankruptcy Code, shall be paid on or before the Effective Date by the Debtor.



Section 12.08. Post-Confirmation Operating Reports. The Lender shall file quarterly operating reports until such time as a Final Decree or other order is entered under section 350(a) of the Bankruptcy Code closing the Chapter 11 Case.

Section 12.09. Notices. Any notice required or permitted to be provided under this Plan to the Lender, or any request for information with respect to the Plan, shall be in writing and served by either (a) certified mail, return receipt requested, postage prepaid, (b) hand delivery or (c) reputable overnight delivery service, freight prepaid, to be addressed as follows:

WBCMT 2007-C31 South Alvernon Way, LLC  
c/o LNR Property, LLC  
1601 Washington Ave., Suite 700  
Miami Beach, FL 33139  
Attn: Jason Nick  
Email: jnick@lnrproperty.com

With a copy to:

Perkins Coie LLP  
131 S. Dearborn St., Ste. 1700  
Chicago, Illinois 60603  
Attn.: David M. Neff  
Email: dneff@perkinscoie.com

Section 12.10. Filing of Additional Documents. On or before substantial consummation of the Plan, the Debtor shall issue, execute, deliver, and File with the Bankruptcy Court or record any agreements and other documents, and take any action as may be necessary or appropriate to effectuate, consummate and further evidence the terms and conditions of the Plan.

Section 12.11. Section 1125 of the Bankruptcy Code. The Lender has, and upon Confirmation of the Plan shall be deemed to have, solicited acceptances of the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code and (b) the Lender (and its Affiliates, special servicer, officers, directors, employees, consultants, agents, advisors, members, attorneys, accountants, financial advisors, other representatives and Professionals) have participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code in any offer, issuance, sale, and purchase of any securities offered and sold under the Plan, and are not, and on account of any such offer, issuance, sale, solicitation, and/or purchase will not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or any offer, issuance, sale, or purchase of any securities offered and sold under the Plan.

Section 12.12. Section 1146 Exemption. To the fullest extent permitted under section 1146(a) of the Bankruptcy Code, the issuance, transfer or exchange of any security under the Plan, if any, or the execution, delivery or recording of an instrument of transfer under the Plan, or the revesting, transfer or sale of any real or other Property of or to the Debtor, the Lender or the Plan Transferee, shall not be taxed under any state or local law imposing a stamp

tax, transfer tax or similar tax or fee. Consistent with the foregoing, each recorder of deeds or similar official for any county, city or governmental unit in which any instrument hereunder is to be recorded shall, pursuant to the Confirmation Order, be ordered and directed to accept such instrument, without requiring the payment of any documentary stamp tax, deed stamps, stamp tax, transfer tax, mortgage recording tax, intangible tax or similar tax.

Section 12.13. Time. Unless otherwise specified herein, in computing any period of time prescribed or allowed by the Plan, the day of the act or event from which the designated period begins to run shall not be included. The last day of the period so computed shall be included, unless it is not a Business Day, in which event the period runs until the end of next succeeding day that is a Business Day. Otherwise, the provisions of Bankruptcy Rule 9006 shall apply.

Section 12.14. No Attorneys' Fees. No attorneys' fees will be paid by the Lender with respect to any Claim or Interest except as expressly specified herein or by order of the Bankruptcy Court.

Section 12.15. No Injunctive Relief. No Claim or Interest shall under any circumstances be entitled to specific performance or other injunctive, equitable or other prospective relief.

Section 12.16. No Admissions or Waivers. Notwithstanding anything herein to the contrary, nothing contained in the Plan shall be deemed an admission or waiver by the Lender with respect to any matter set forth herein, including, without limitation, liability on any Claim or Interest or the propriety of any classification of any Claim or Interest.

Section 12.17. Entire Agreement. The Plan sets forth the entire agreement and undertakings relating to the subject matter hereof and supersedes all prior discussions and documents. The Lender shall not be bound by any terms, conditions, definitions, warranties, understandings, or representations with respect to the subject matter hereof, other than as expressly provided for herein or as may hereafter be agreed to by the parties in writing.

Section 12.18. Waiver. The Lender reserves the right to waive any provision of this Plan to the extent such provision is for the sole benefit of the Lender or the Plan Transferee.

Section 12.19. Bar Date for Professionals. Applications for compensation for services rendered and reimbursement of expenses incurred by Professionals from the Petition Date through the Effective Date shall be Filed no later than sixty (60) Days after the Effective Date or such later date as the Bankruptcy Court approves. Applications that are not timely Filed will not be considered by the Court.

**CONFIRMATION REQUEST**

The Lender hereby requests confirmation of the Plan pursuant to section 1129(a) or section 1129(b) of the Bankruptcy Code.

Dated: December 13, 2012

**WBCMT 2007-C31 South Alvernon Way,  
LLC, an Arizona limited liability company**

By: LNR Partners, LLC, a Florida limited liability company, its manager

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

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

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