

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(Greenbelt Division)

In re :
: SWAGAT HOTELS, LLC : Case No. 16-24255-WIL
: Chapter 11
Debtors. :

**MOTION FOR ORDER (A) AUTHORIZING SALE
OF CERTAIN REAL PROPERTY FREE AND CLEAR OF
ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS;
(B) APPROVING AGREEMENT OF SALE; AND (C) GRANTING RELATED RELIEF**

COMES NOW, the Debtor-in-Possession, Swagat Hotels, LLC (“Swagat” or the “Debtor”) by and through undersigned counsel, Cohen Baldinger & Greenfeld, LLC and hereby moves this Court for entry of an order (a) pursuant to 11 U.S.C. §363(f), Fed. R. Bankr. P. 6004 and Local Rule 6004-1, authorizing the Debtor to sell certain improved commercial real property along with furniture, fixtures and equipment used in connection with the real property free and clear of all liens, claims, encumbrances and interests; (b) approving that certain Agreement of Sale (defined below); and (c) granting related relief (the “Motion”), and, in support thereof, states as follows:

Jurisdiction

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§157 and 1334. Venue of this case and the Motion in this district is proper pursuant to 28 U.S.C. §§1408 and 1409.
2. This matter is a core proceeding within the meaning of 28 U.S.C. §157(b)(2)(A), (M), (N) and (O).
3. The statutory predicates for the relief sought herein are 11 U.S.C. §§363, 365,

Rules 2002, Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Rules 6004-1 and 6006-1.

Factual Background

4. The Debtor commenced this case on October 27, 2016⁷ (the “Petition Date”), by the filing of a Voluntary Petition for Relief pursuant under Chapter 11 of Title 11 of the United States Bankruptcy Code (the “Bankruptcy Code”).

5. At all times relevant hereto, the Debtor has continued in possession of its property and the management of its affairs as Debtor-in-Possession pursuant to §§1107 and 1108 of the Bankruptcy Code.

A. The Debtor’s Property

6. Swagat owns and operates improved commercial real property commonly known as 2704 Deep Creek Drive, McHenry, Maryland (the “Property”), at which it operates a hotel trading as the Quality Inn - McHenry.

7. Swagat is also the owner of certain personal property, such as beds, dressers, televisions, linens, and other items used in connection with the Debtor’s ownership, maintenance or operation its hotel operations at the Property (the “Personalty”, and the Personalty and the Property are collectively referred to herein as the “Assets”).

8. By this Motion, Swagat seeks approval to sell the Assets to 2704 Positive Associates, LP, a Pennsylvania limited partnership (the “Purchaser”).

B. The Secured Claims

9. The Property is encumbered by the following secured claims:

1st Priority Lien: PHG McHenry (“PHG”) (principal)	\$ 2,546,063
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(est. accrued interest) \$ 372,265
 \$ 2,918,328

2nd Priority Lien: Maryland Dept. of Labor, Licensing and Reg. \$ 7,630.00

3rd Priority Lien: Maryland Comptroller of the Treasury \$ 36,034.00

10. In addition to the foregoing secured creditors, Swagat is indebted to Garrett County, Maryland on account of real property taxes in the estimated amount of one hundred eleven thousand fifty-one dollars (\$111,051.00).

C. The Marketing Process

11. Pursuant to an Order of this Court entered on April 10, 2017, the Debtor retained HREC Investment Advisors (“HERC”) to market the Assets for sale. HREC engaged in an aggressive marketing campaign, and the highest and best offer obtained for the Assets through those marketing efforts was one million three hundred dollars (\$1,300,000.00).

12. As described above, due to the extensive marketing efforts and negotiations between the Debtor and the Purchaser, the Debtor does not believe that further marketing efforts will yield a higher and better offer and that the Court should approve the Agreement of Sale without delay.

D. The Agreement of Sale

13. On or about September 11, 2017, the Debtor entered into an Agreement of Sale with 2704 Positive Associates, LP (the “Purchaser”), to sell the Assets, titles and interests for one million four hundred thousand dollars (\$1,400,000.00) (the “Agreement of Sale”). A copy of the Agreement of Sale is attached hereto and made a part hereof as Exhibit “A”.

14. The Purchaser has completed its due diligence, and as a result thereof it has

entered into a Amendment to the Agreement dated October 12, 2017, which reduced the sales price to one million three hundred thousand dollars (\$1,300,000.00). A copy of the Amendment to Hotel Purchase and Sale Agreement is attached hereto and made a part hereof as Exhibit "B".

15. Bankruptcy Court approval remains as a condition of closing.

16. The sale of the Assets will result in insufficient funds to pay lien holders in full.

17. The Purchaser is not an insider of the Debtor and shall have no successor or vicarious liabilities of any kind or character whether known or unknown as of the Closing Date.

E. Relief Requested

18. Swagat requests approval to sell the Assets, and to enter into the Agreement of Sale with the Purchaser, as amended, whereby the Purchaser will acquire the Assets pursuant to Sections 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 6004 and 6006 and Local Rules 6004-1 and 6006-1.

19. The Debtor asserts that the Assets were fully marketed and the purchase price to be paid by the Purchaser under the Agreement of Sale is fair and reasonable and reflects the highest and best value for the Assets.

F. The Agreement of Sale

20. The following is a summary of the salient terms of the Agreement of Sale:

Assets to be Sold: At the Closing, Swagat shall transfer to the Purchaser, free and clear of all liens, claims, interests, and encumbrances of every kind, all of the Assets, including, without limitation, the Property and the Personalty.

Purchase Price: Purchaser agrees to pay to the Swagat, and Swagat agrees to accept payment of one million three hundred thousand dollars (\$1,300,000.00)(the

“Purchase Price”).

Deposit: As of the date of this Motion, Purchaser has deposited twenty-five thousand dollars (\$25,000.00) with its title company who shall hold the deposit in accordance with the terms of the Agreement.

No Assumed Liabilities: Purchaser shall not assume any of the Swagat’s debts, liabilities and other obligations with respect to the Assets and Swagat shall continue to be responsible for such liabilities, other than (I) those arising after the Closing under any contract that Purchaser specifically assumes under the Agreement; and (ii) other liabilities, if any, specified in the Agreement of Sale.

Use of Sale Proceeds: The Sale Proceeds will be used to pay secured creditors in order of the priority of liens as such liens existed as of the Petition Date.

Relief from Bankruptcy Rule 6004(h): Pursuant to Bankruptcy Rules 7062, 9014, and 6004(h), the Debtor seeks authority for the Sale Order to be effective immediately upon entry.

G. Authority to Sell

21. The Sale is supported by sound business judgment and should be approved.

22. Pursuant to §363(b)(1) of the Bankruptcy Code, after notice and a hearing the debtor-in-possession may use, sell or lease property of the estate other than in the ordinary course of business. This Court has held that transactions should be approved under §363(b)(1) of the Bankruptcy Code when they are supported by a sound business reason. *In re Naron & Wagner, Chartered*, 88 B.R. 85, 87 (Bankr. D. Md. 1988). See also *Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983); *In re Chateaugay*

Corp., 973 F.2d 141 (2d Cir. 1992); *In re Gulf State Steel, Inc. of Alabama*, 285 B.R. 497, 514 (Bankr. N.D. Ala. 2002). In reviewing such a proposed transaction, courts should give substantial deference to the business judgment of the debtor-in-possession. See e.g., *Esposito v. Title Inc. Co. of Pa. (In re Fernwood Mkts)*, 73 B.R. 616, 621 n.2 (Bankr.E.D. Pa. 1987).

23. The sale serves a sound business purpose and should be approved. The Debtor submits, based on the exercise of its business judgment, that the terms of the Agreement of Sale are fair and reasonable. Further, the sale of the Assets pursuant to §363 of the Bankruptcy Code will return a greater benefit to the Debtor's estate and its respective creditors than any of the alternatives, including a sale at a later date or foreclosure. The proposed prompt sale under §363 has the advantage of allowing the Assets to be sold intact, thereby allowing the Debtor to receive a purchase price that reflects its enterprise value despite the Debtor's Chapter 11 filing.

25. Unless the Debtor is able to consummate the sale through the process described herein, the Personalty and the Property could be subject to a forced liquidation. Thus, approval of the sale provides the Debtor the ability to maximize the value of the aforesaid through an orderly court-monitored sale process and minimize the Debtor's need to incur further additional debt and administrative expenses by continuing to operate the business of the hotel. Accordingly, the Debtor believes that the sale is the best way, at this time, to maximize the value of the estate.

26. Based on the foregoing, the Debtor submits that the sale is in the best interest of the Debtor, its estate and creditors, and is based upon sound, reasoned and informed business judgment warranting this Court's approval. See *In re Naron & Wagner, Chartered*, 88 B.R. at 87; *In re Lionel Corp.*, 722 F.2d at 1071; *In re Gulf State*, 285 B.R. at 514

H. The Sale Price is Fair and Reasonable

24. The proposed sale to the Purchaser reflects the highest and best price for the Assets that the Debtor has been able to secure to date. Indeed, as discussed above, the Debtor entered into marketing process and, only after extensive marketing was the Debtor able to secure a buyer for the Assets. The Agreement of Sale is the product of those negotiations. As a result of those efforts, the Debtor believes the sale and the purchase price provide for fair and reasonable consideration to be received for the Assets.

I. The Sale Terms Were Negotiated in Good Faith

25. The Agreement of Sale is the product of good faith, arm's length negotiations between the Debtor and the Purchaser and is on commercially reasonable terms. The Debtor and the Purchaser, and their respective professionals, negotiated the terms of the Agreement of Sale over the course of several months. The Purchaser is not affiliated with the Debtor or any associated entity. All negotiations were undertaken in good faith and in compliance with the Bankruptcy Code. Accordingly, the Debtor requests a finding that the transaction contemplated by the Agreement of Sale is (a) subject to the protections afforded to "good faith" purchasers under §363(m) of the Bankruptcy Code, and (b) not subject to avoidance under §363(n) of the Bankruptcy Code.

J. The Sale Should be Free and Clear of All Liens, Claims, Encumbrances and Interests

26. Pursuant to §363(f) of the Bankruptcy Code, the debtor-in-possession may sell property free and clear of any interest in such property of an entity other than the estate if (1) permitted under applicable non-bankruptcy law, (2) the party asserting such interest consents, (3) the interest is a lien and the purchase price of the property is greater than the aggregate amount of

all liens on the property, (4) the interest is subject of a bona fide dispute, or (5) the party asserting the interest could be compelled, in a legal or equitable proceeding, to accept a money satisfaction for such interest.

27. Section 363(f) of the Bankruptcy Code is stated in the disjunctive. See *In re Elliot*, 94 B.R. 343, 345 (E.D. Pa. 1988) (noting that Section 363(f) is written in the disjunctive, accordingly courts may approve sales free and clear provided at least one of the subsections is met). Thus, it is only necessary for the Debtor to satisfy one of the five conditions of §363(f).

28. The Debtor believes it will be able to satisfy at least one of the elements of §363(f) of the Bankruptcy Code. Moreover, any lien, claim, encumbrance or interest in the Assets that exists immediately prior to the closing of the proposed sale will attach to the sale proceeds with the same validity, priority, force and effect as it has at such time.

K. CONCLUSION

29. The Debtor believes that the proposed sale is in the best interest of the creditors of the bankruptcy estate.

30. In the event the Agreement of Sale does not close, the Debtor, through its Court approved broker, intends to continue to market the Assets for sale.

31. Notwithstanding the foregoing, the Debtor will continue to market the Assets and attempt to solicit higher and better offers through and until approval of the Agreement of Sale by the Court.

WHEREFORE, Debtor, Swagat Hotels, LLC respectfully moves for the entry of an Order substantially in the form attached hereto:

A. Approving the Agreement of Sale;

B. Authorizing the sale of the Assets free and clear of all liens, encumbrances, or interests of any party;

C. Authorizing the Debtor to take any all actions and to execute any and all documents necessary and appropriate to effectuate and consummate the terms of said sale of the Assets free and clear of all liens, encumbrances, or interests, including without limitation, executing a deed conveying the interests of the Debtor to the Purchaser;

D. Finding that the Purchaser is a good faith purchaser and is protected by the provisions of Section 363(m) of the Bankruptcy Code;

E. Finding that the sale of the Assets free and clear of all liens, claims, encumbrances, or interests of any party constitutes a transfer under a plan pursuant to §1146(a); and

F. Granting such other and further relief as is just.

Respectfully submitted,

COHEN BALDINGER & GREENFELD, LLC

By: /s/ Steven H. Greenfeld

Steven H. Greenfeld, Bar No. 30332
2600 Tower Oaks Boulevard
Suite 103
Rockville, MD 20852
(301) 881-8300
Email: steveng@cohenbaldinger.com
Counsel for the Debtor-in-Possession

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of October 2017, reviewed the Court's CM/ECF system and it reports that an electronic copy of the foregoing Motion, along with a copy of the proposed Order, will be served electronically via the Court's CM/ECF system on the following:

Jeanne M. Crouse, Esq.
Office of the U.S. Trustee

William L. Hallam, Esq.

Daniel Isaac Prywes, Esq.

Bonnie Y. Rothell, Esq.

Lisa Wolgast, Esq.

I HEREBY FURTHER CERTIFY that on the 17th day of November 2017, a copy of the foregoing Motion, along with a copy of the proposed Order was also mailed, first class mail, postage prepaid to:

All creditors and parties-in-interest
per the Court's mailing matrix, a
copy of which is attached hereto and
made a part hereof.

/s/ Steven H. Greenfeld
Steven H. Greenfeld

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(Greenbelt Division)

In re :
: SWAGAT HOTELS, LLC : Case No. 16-24255-WIL
: Chapter 11
Debtors. :

**NOTICE OF MOTION FOR ORDER (A) AUTHORIZING
SALE OF CERTAIN REAL PROPERTY FREE AND CLEAR OF
ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS;
(B) APPROVING AGREEMENT OF SALE; AND (C) GRANTING RELATED RELIEF**

Please take notice that the Debtor-in-Possession, Swagat Hotels, LLC, doing business as the Quality Inn - McHenry, by and through counsel, Cohen Baldinger & Greenfeld, LLC and pursuant to Section 363 of the Bankruptcy Code, has filed a Motion to Sell Property Free and Clear of Liens and Encumbrances (the “Motion”) and an Application to Compensate Real Estate Agent (the “Application”). Unless objection or request for hearing is filed regarding the Motion or Application with the Clerk of the Bankruptcy Court and served upon the undersigned, the Trustee will proceed to sell property of the bankruptcy estate as enumerated in the Attached Motion for Order (A) Authorizing Sale of Certain Real Property Free and Clear of All Liens, Claims, Encumbrances and Other Interests; (B) Approving Agreement of Sale; and (C) Granting Related Relief (the “Motion”). The proposed sale will not generate any proceeds for the distribution to unsecured creditors of the bankruptcy estate. A copy of the Motion is attached hereto and made a part hereof as Exhibit “A”.

It is the belief of the Debtor, that the proposed sale is in the best interest of the estate and the proposed purchase price is fair and reasonable and in accordance with the present market for said property. **Any objections to the Debtor’s proposed sale should be filed, in writing, and in accordance with Local Rule 19, with a copy to the undersigned, with the United States Bankruptcy Court for the District of Maryland, 6500 Cherrywood Lane, Greenbelt, Maryland 20770, no later than November 7, 2017. If objections are timely filed, or if the**

Court deems that a hearing is necessary, such hearing will be conducted on November 17, at 2:00pm in Courtroom 3-C. If no timely objections are filed, the Court may grant the requested relief without the necessity of a hearing.

Respectfully submitted,

COHEN BALDINGER & GREENFELD, LLC

By: /s/ Steven H. Greenfeld

Steven H. Greenfeld, Esq. (#06744)
2600 Tower Oaks Blvd., Suite 103
Rockville, MD 20852
(301) 881-8300
Counsel for the Trustee

COPY

HOTEL PURCHASE AND SALE AGREEMENT

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HOTEL PURCHASE AND SALE AGREEMENT

THIS HOTEL PURCHASE AND SALE AGREEMENT (the "Agreement") is made this 11th day of September 2017, (the "Agreement Date") by Swagat Hotels, LLC ("Seller") and 2704 Positive Associates, LP, a Pennsylvania limited partnership, or its assignee ("Purchaser").

RECITALS:

A. Seller is the fee owner of that certain parcel of land (together with the improvements, attachments and appurtenances and rights thereto or thereunto belonging) legally and particularly described in Exhibit A and commonly referred to as the Quality Inn Deep Creek, McHenry, Maryland (the "Hotel") and the owner of the Fixtures and Tangible or Intangible Personal Property used in connection with the operation, ownership and maintenance of the Hotel, Operating Equipment, Consumables and Miscellaneous Hotel Assets (all as hereinafter included in the definition of Property).

B. The Hotel's facilities include guest and public facilities consisting of seventy-five (75) guest room, managers apartment, administrative offices, service areas and Property.

C. Seller desires to sell, and Purchaser desires to purchase, the Property upon and subject to the terms and conditions hereinafter set forth.

D. Seller is subject to a certain Chapter 11 Bankruptcy filed in the United States Bankruptcy Court, District of Maryland (Greenbelt), No. 16-24255 docketed to Closing pursuant to this Agreement will not occur until and unless Seller provides to Purchaser a final unappealed Order of the Bankruptcy Court approving the sale of the Property pursuant to the terms of this Agreement, free and clear of all liens and encumbrances, after due notice to all known creditors and relevant governmental entities.

AGREEMENTS:

NOW, THEREFORE, in consideration of the foregoing promises, the receipt and sufficiency of which are acknowledged, intending to be legally bound hereby, the respective representations, warranties, agreements, covenants and conditions herein contained, and other

good and valuable consideration, Seller and Purchaser agree as follows:

ARTICLE I
DEFINITIONS AND REFERENCES

Definitions. As used herein, the following terms shall have the respective meanings indicated below:

Accountants: As defined in Section 8.5(b).

Affiliate: With respect to a specific entity, any natural person or any firm, corporation, partnership, association, trust or other entity which, directly or indirectly, controls, or is under common control with, the subject entity, and with respect to any specific entity or person, any firm, corporation, partnership, association, trust or other entity which is controlled by the subject entity or person. For purposes hereof, the term "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any such entity or the power to veto major policy decisions of any such entity, whether through the ownership of voting securities, by contract or otherwise.

Agreement: This Hotel Purchase and Sale Agreement, including the Exhibits.

Bookings: Contracts for the use or occupancy of guest rooms and meeting and banquet facilities of the Hotel.

Closing: As defined in Section 6.1.

Closing Statements: The Closing Statements required under the provisions of Section 8.5.

Compensation: The direct salaries and wages paid to, or accrued for the benefit of, any Employee, incentive compensation, vacation pay, severance pay, employer's contributions under F.I.C.A., unemployment compensation, workers' compensation, or other employment taxes, and payments under Employee Benefit Plans (as hereinafter defined).

Consumables: All engineering, maintenance and housekeeping supplies, including soap, cleaning materials and matches; stationery and printing; and other supplies of all kinds, in each case whether partially used, unused or held in reserve storage for future use in connection with the maintenance and operation of the Hotel, which are on hand on the date hereof, subject to such depletion and restocking as shall occur and shall be made in the normal course of business

but in accordance with present standards, excluding, however, (i) Operating Equipment (as hereinafter defined) and (ii) all items of personal property owned by guests or employees or persons other than Seller or any affiliate of Seller furnishing services to the Hotel.

Cut-off Time: Date/Time of the Closing Date.

Department: MD SDAT

Deposit: As defined in Section 3.2.

Documents: Reproducible copies of all plans, specifications, drawings, blueprints, surveys, environmental reports, AutoCAD files, permits, zoning rights and variances and other documents which Seller has in its possession, or has a right to, as the same relate to the Real Property, including, but not limited to, those relating to any prior or ongoing construction or rehabilitation of the Real Property.

Employee(s): All persons employed by Seller and/or an Affiliate pursuant to Employment Contracts.

Employee Benefit Plans: All employee benefit plans, as that term is defined in Section 3(2)(a) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") including "multi-employer pension plans" as defined in Section 3(37) of ERISA, and each other employee benefit plan or program (including welfare benefit plans as defined in Section 3(1) of ERISA) to which Seller contributes on behalf of any of the Employees. All information and documentation concerning employees and employee benefit plans shall be provided to Purchaser in writing within five (5) business days of execution and distribution of this Agreement.

Employment Contract(s): Those contracts and agreements, oral or written, with all or any of the executives, staff and employees of Seller and/or an Affiliate for work in or in connection with the Hotel including, but not limited to, individual employment agreements, union agreements, employee handbooks, group health insurance plans, life insurance plans and disability insurance plans (other than Employee Benefit Plans). A listing of employees, compensation, agreed term of employment and any employment contract or written documentation memorializing the employment shall be provided to Purchaser in five (5) business days of the distribution of the fully executed Agreement.

Environmental Laws: As defined in Section 5.1(u).

Environmental Study: As defined in Section 4.3.

Escrow: The escrow created for the purpose of facilitating the transactions contemplated hereby pursuant to the Escrow Instructions (as defined herein).

Escrow Agent: The escrow agent will be J. Gregory Law Firm, LC, 5000 Thayer Center, Oakland, MD 21550.

Escrow Instructions: The escrow instructions to be executed and delivered by the parties (or their respective attorneys who are hereby authorized by the parties to execute same) and the Title Company, as escrowee.

Excluded Assets: The following: (i) those assets, if any, listed in Exhibit B hereto owned and to be retained by Seller or Affiliates of Seller; and (ii) except as provided to the contrary in Section 16.1(f) hereof, all records, files and proprietary operating manuals in the Hotel.

Excluded Permits: Permits and licenses required for the ownership and operation of the Hotel which, under applicable law, are nontransferable and are also listed in Exhibit B – Excluded Assets.

Final Closing Statement: The Final Closing Statement required under the provisions of Section 8.5.

Fixtures and Tangible Personal Property: All fixtures, furniture, furnishings, fittings, equipment, cars, trucks, machinery, apparatus, signage, appliances, draperies, carpeting and other articles of personal property now located on the Real Property and used or useable in connection with any part of the Hotel, subject to such depletions, resupplies, substitutions and replacements as shall occur and be made in the normal course of business but in accordance with present standards excluding, however: (i) Consumables; (ii) Operating Equipment; (iii) equipment and property leased pursuant to Hotel Contracts (as hereinafter defined); and (iv) Improvements (as hereinafter defined).

FIRPTA Certificate: As defined in Section 16.1(m).

Hazardous Material: As defined in Section 5.1(u).

Holdback: As defined in Section 14.4.

Hotel: The hotel referred to in the Recitals.

Hotel Contracts: All service, maintenance, purchase orders, leases and other contracts or agreements, including equipment leases capitalized for accounting purposes, and any amendments thereto, with respect to the ownership, maintenance, operation, provisioning or equipping of the Hotel, or any of the Property, as well as written warranties and guarantees relating thereto, if any, including, but not limited to, those relating to heating and cooling equipment and/or mechanical equipment, but exclusive, however, of (i) insurance policies, (ii) the Bookings, (iii) the Space Leases (as hereinafter defined), (iv) the Employment Contracts and (v) the Employee Benefit Plans. A listing and copy of all contracts shall be provided to Purchaser within five (5) business days of distribution of this executed Agreement. Seller shall provide Purchaser a copy of its current Franchise Agreement, although any obligations under the Franchise Agreement shall be that of Seller and Purchaser shall have no interest or rights therein whatsoever.

Hotel Names: All names or other identifications used in connection with the operation of the Hotel. A listing and copy of all contracts shall be provided to Purchaser within five (5) business days of distribution of this executed Agreement.

Impositions: All taxes and other governmental charges of any kind whatsoever that at any time may be assessed or levied against or with respect to the Property, or any part thereof or any interest therein, including, without limitation, all general and special real estate taxes and assessments or taxes assessed specifically in whole or in part in substitution of general real estate taxes or assessments; any taxes levied upon or with respect to the revenue, income or profits of Seller from all or any part of the Property which, if not paid, will become a lien on all or any part of the Property, or a lien or charge on the rents, revenues or receipts therefrom; all assessed ad valorem taxes; all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Property and all assessments and other charges made by any governmental agency for improvements that may be secured by a lien on the Property.

Improvements: The buildings, structures (surface and sub-surface) and other improvements, including such fixtures as shall constitute real property, located on the Land.

Inspection Period: As defined in Article IV.

Intangible Personal Property. (to be provided/discussed)

Land: The parcel of real estate described in Exhibit A hereto, together with all rights, title and interest, if any, of Seller in and to all land lying in any street, alley, road or avenue, open or proposed, in front of or adjoining said Land, to the centerline thereof, and all right, title and interest of Seller in and to any award made or to be made in lieu thereof and in and to any unpaid

award for the damage to said Land by reason of change of grade of any street.

Legal Requirements: All laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all governments and governmental authorities having jurisdiction of the Hotel (including, for purposes hereof, any local Board of Fire Underwriters and the operation thereof).

Material Bookings: All Bookings with respect to guest rooms, any contract for one(1) or more room(s) per night. A listing and copy of all bookings with relevant information shall be provided to Purchaser within five (5) business days of distribution of this executed Agreement.

Material Contracts: All Hotel Contracts which cannot be cancelled by thirty (30) days' or less notice without penalty or premium payment. A listing and copy of all contracts shall be provided to Purchaser within five (5) business days of distribution of this executed Agreement or place any financial liability upon Purchaser without Purchaser's written consent, which consent shall not be unreasonably withheld, delayed or conditioned. Seller shall promptly provide any hotel contracts to Purchaser entered into during the Inspection Period or thereafter prior to Closing.

Miscellaneous Hotel Assets: All contract rights, leases, concessions, trademarks, logos, copyrights, assignable warranties and other items of intangible personal property relating to the ownership or operation of Hotel, but such term shall not include (i) Permits (to the extent assignable) (as hereinafter defined); (ii) books and records (except as provided in Section 16.1(f)); (iii) receivables; (iv) refunds, rebates or other claims, or any interest thereon, for periods or events occurring prior to the Cut-off Time; (v) utility and similar deposits; (vi) prepaid insurance or other prepaid items; or (vii) prepaid license and permit fees; except to the extent that Seller receives a credit on the Closing Statement for any such item or matter. Miscellaneous Hotel Assets shall include the aggregate face amount of Qualifying Receivables (as hereinafter defined) notwithstanding that, pursuant to Section 8.1(a) Seller shall receive a credit on the Closing Statements therefor in an amount less than the aggregate face amount thereof.

Obligations: All payments required to be made and all representations, warranties, covenants, agreements and commitments required to be performed under the provisions of this Agreement by Seller or Purchaser, as applicable.

Operating Equipment: All equipment, whether in use or held in reserve storage for future use, in connection with the operation of the Hotel, which are on hand on the date hereof, subject to such depletion and restocking as shall be made in the normal course of business but in accordance with present standards. A listing of such Operating Equipment shall be provided to

Purchaser within five (5) days of distribution of this executed Agreement.

Par: As defined in Section 5.1(j).

Permits: All licenses, franchises and permits, certificates of occupancy, authorizations and approvals used in or relating to the ownership, occupancy or operation of any part of the Hotel, including, without limitation, those necessary for the sale and on-premises consumption of food, liquor and other alcoholic beverages to be included within Permits the existing storm water management plan for the hotel/real estate and all approvals, permits related thereto. A listing of such Permits/approvals shall be provided to Purchaser within five (5) business days of distribution of this executed Agreement.

Permitted Exceptions: Any liens, encumbrances, restrictions, exceptions and other matters specified in Exhibit C to which title to the Property may be subject on the Closing Date and are acceptable to Purchaser and its title insurer.

Personal Property: All of the Property other than the Real Property.

Preliminary Closing Statement: The Preliminary Closing Statement required by Section 8.5.

Property: (i) The Real Property; (ii) the Fixtures and Tangible Personal Property, Intangible Property (collectively "Property") as hereinafter defined; (iii) the Operating Equipment; (iv) the Consumables; (v) the transferable right, title and interest of Seller in, to and under the Hotel Contracts and Spaces Leases; (vi) the Bookings; (vii) the Permits (other than Excluded Permits); (viii) the Hotel Names; (ix) the Documents; and (x) all other Miscellaneous Hotel Assets; provided, however, that Property shall not include the Excluded Assets.

Proratable Compensation: Compensation exclusive of severance pay and Employee Benefit Plans.

Purchase Price: As defined in Section 3.1.

Qualifying Receivables: Guest ledger receivables (i) incurred in the ordinary course of business in accordance with the Hotel's credit policies consistently applied, or (ii) otherwise approved in writing by Purchaser prior to the Closing Date, but exclusive of any receivables for house accounts, or resulting from payment by check.

Real Property: The Land together with the Improvements located on the Land and all

rights and appurtenances thereto

Retained Employees: As defined in Section 13.1.

Searches: As defined in Section 6.3(c)

Section 1445: As defined in Section 16.1(m).

Software Program: The software programs for accounting functions for the general ledger, accounts payable, accounts receivable and payroll for the Hotel.

Space Leases: All leases, licenses, concessions and other occupancy agreements, and any amendments thereto, whether or not of record, for the use or occupancy of any portion of the Real Property excluding, however, Bookings.

Space Lessee: Any person or entity entitled to occupancy of any portion of the Real Property under a Space Lease.

Submittals: As defined in Section 4.1.

Submitted Financial Statements: Those financial statements of the Hotel identified in Exhibit D hereto.

Survey: The survey, documents and inspections for the Property prepared in accordance with Section 6.3(a).

Terminated Employees: As defined in Section 13.1.

Title Commitment: The commitment for title insurance issued in accordance with Section 6.3(b).

Title Company:

Title Defect: A lien, claim, charge, security interest or encumbrance other than a Permitted Exception.

Title Documents: As defined in Section 6.3.

Title Papers: As defined in Section 6.3(b).

Title Policy: As defined in Section 7.1(e).

UCC: The Uniform Commercial Code in effect in 2017

Violation: Any condition with respect to the Property which constitutes a violation of any Legal Requirements.

Bankruptcy Case: Seller's chapter 11 bankruptcy case pending in the Bankruptcy Court as Case No. 16-24255-WIL.

Bankruptcy Code: 11 U.S.C. § 101 *et seq.*

Bankruptcy Court: The United States Bankruptcy Court for the District of Maryland, Greenbelt Division.

References. Except as otherwise specifically indicated, all references to Section and Subsection numbers refer to Sections and Subsections of this Agreement, and all references to Exhibits refer to the Exhibits attached hereto. The words "hereby," "hereof," "herein," "hereto," "hereunder," "hereinafter," and words of similar import refer to this Agreement as a whole and not to any particular Section or Subsection hereof. The word "hereafter" shall mean after, and the term "heretofore" shall mean before, the date of this Agreement. Captions used herein are for convenience only and shall not be used to construe the meaning of any part of this Agreement.

ARTICLE II

SALE AND PURCHASE

Sale and Purchase. Seller hereby agrees to sell (or to cause to be sold) to Purchaser, and Purchaser hereby agrees to purchase from Seller, the Property on the terms and subject to the conditions of this Agreement. During the term of this Agreement until such time as the Property is sold, Seller agrees to remove the Property from the market and not to show the Property or negotiate with any other party regarding the purchase of the Property. Seller furthermore during the term of this Agreement agrees not to make any changes of a material nature to the Property or incur any liabilities that would be the responsibility of Purchaser other than in the ordinary course of business without Purchaser's written consent including entry into any Material Contracts without Purchaser's written consent as hereinafter defined, shall not be unreasonably withheld, delayed or conditioned.

Bankruptcy Court Approval. This Agreement is expressly contingent upon the timely entry of the Bankruptcy Court's approval of this Agreement, sale of the Property and

Personal Property free and clear of all liens and containing an approved distribution of proceeds. The closing date shall be extended for a period up to ninety (90) days after the date of such agreement if needed to obtain such Order. Closing shall be held within seven (7) days of receipt of the Order in such event. If the Order is not obtained within such additional period of time either party may terminate the Agreement by written notice whereupon all deposits shall be returned to Purchaser and neither party shall have any further obligation to the other hereunder.

Seller's Lender Approval. Seller has requested short sale approval from its Lender. This Agreement is expressly contingent on the approval of Seller's Lender. This approval must be furnished in writing to Purchaser no later than one (1) week prior to the close of the Inspection Period, as hereinafter defined.

Bulk Sales Act. Seller and Buyer shall comply with the provisions of the Maryland Bulk Sales Act. Seller shall provide an affidavit as to existing creditors by an authorized officer of Seller as appropriate to effectuate compliance with the Act. Seller shall assist Buyer as necessary to give proper notice of this transaction to the Maryland Retail Sales Tax Division, Maryland Department of Employment, and other relevant governmental agencies.

Effective Date. This Agreement shall not become effective until counter-signed by both parties.

ARTICLE III **PURCHASE PRICE**

Purchase Price; Allocation Thereof. The purchase price ("Purchase Price") for the Property shall be One Million Four Hundred Thousand Dollars (\$1,400,000.00). The Purchase Price shall be allocated in accordance with the values reasonably attributable to the components of the Property as set forth in Exhibit E hereto. The Purchase Price is based on the condition of the Property which is to purchase in an "As Is, Where Is" condition with no warranties either expressed or implied other than such representation or warranties as specifically contained in this Agreement.

Deposit. Concurrently herewith, Purchaser is depositing the sum of Twenty-Five Thousand Dollars (\$25,000.00) (the "Initial Deposit") with the Purchaser's Title Company to secure performance of Purchaser's Obligations hereunder. The Initial Deposit shall be held by the Title Company in a non-interest bearing account until Closing at which time the Initial Deposit shall be paid as a credit against the Purchase Price. Except as hereinafter provided, if the transaction contemplated hereby does not close because of an uncured default by Purchaser hereunder, the parties agree that the deposits shall be delivered to Seller as Seller's sole and exclusive liquidated damages, which amount the parties agree is a reasonable sum considering all

of the circumstances existing on the date of this Agreement, including, without limitation, the relationship of such sum to the amount of harm to Seller that reasonably could be anticipated, Seller's anticipated use of the proceeds of sale, and the fact that proof of actual damages would be impossible to determine. Notwithstanding the foregoing, if the transaction contemplated hereby does not close and Purchaser shall not have defaulted hereunder, the Initial Deposit and the Further Deposit, shall be returned promptly to Purchaser and Purchaser shall be entitled to pursue against Seller specific performance as its only remedy. The Initial Deposit shall become firm and non-refundable to the Purchaser at the conclusion of the Inspection Period provided Purchaser does not terminate the Agreement on or before that date. At the end of the Inspection Period, provided Purchaser does not terminate this Agreement for good cause or any cause whatsoever in Purchaser's sole discretion, Purchaser shall make an additional deposit of \$75,000 (the "Further Deposit") with the Title Company under the same terms and conditions as hereinabove provided with regard to the Initial Deposit and such shall also become firm and non-refundable to the Purchaser absent Seller's default, failure of Bankruptcy Court approval, or failure of Purchaser's lender approval.

Payment of Balance of Purchase Price. The balance of the Purchase Price, subject to prorations and adjustments as provided in Section 8.1, shall be paid on the Closing Date by wire transfer of immediately collectible funds, first, if necessary, to the Title Company and then to an account specified by Seller, against delivery of instruments of transfer and the other documents specified in Section 7.1.

No Assumption of Seller's Obligations. Except as specifically provided herein to the contrary, Purchaser shall not assume, or become obligated with respect to, any Obligation of Seller, including, but not limited to, the following:

(a) Obligations of Seller now existing or which may arise prior to the Closing Date with respect to include any accounts payable or other payables or obligations however termed;

(b) Obligations prior to the Closing Date of any term, covenant or provision of any Employee Benefit Plan, Employment Contract, Hotel Contract or Space Lease;

(c) Obligations of Seller now existing or which may hereafter exist by reason of or in connection with any alleged misfeasance or malfeasance by Seller in the conduct of its business, and with respect to any tort liability;

(d) Obligations to Employees with respect to any Compensation (or pursuant to any Employment Contract or Employee Benefit Plan); and

(e) Obligations of Seller incurred in connection with or relating to the transfer of the Property pursuant to this Agreement, including, without limitation, any federal, state or local income, sales, bulk sales tax liability, transfer or other tax incurred by reason of said transfer, all of which shall be the sole responsibility of Seller except the transfer tax, if any, imposed by McHenry, Maryland or Garrett County which shall be equally divided between the parties. Seller must comply at its expense with any and all Maryland bulk sales taxes and regulations. Such may include, dependent upon the advice of Purchaser's title company, Seller shall establish escrow account and/or personal guarantees regarding such tax liability.

ARTICLE IV **INSPECTION PERIOD**

Inspection Period. The Purchaser shall have a period (the "Inspection Period") of not more than thirty (30) days following Purchaser's receipt of a fully executed Agreement and receipt of all documents hereinafter to be provided within five (5) business days of agreement, execution and distribution to Purchaser. Purchaser will immediately confirm in writing when all Submittals and other information required to be provided is received so that the commencement date of the Inspection Period is memorialized during which Purchaser shall at its own expense, have full access and authority to enter upon the Hotel's property upon reasonable advance notice to Seller for the purpose of inspecting any books and records of the Hotel and/or conduction whatever investigations and/or inquiries Prospective Purchaser deems reasonably necessary to conduct a full and complete investigation of the title to and condition of all real and personal property used in the operation and maintenance of the Hotel and to fairly evaluate the value of the Hotel.

Submittals to Purchaser. Seller, at its expense, shall use commercially reasonable efforts to deliver within five (5) business days of Seller's receipt of fully executed Agreement and evidence of submittal to the Purchaser's Title Company of the Initial Deposit, Seller at its expense shall deliver true and correct copies of the following (the "Submittals"):

(a) the Permits, Hotel Contracts, Employment Contracts, Employee Benefit Plans, a summary of the amounts, dates and creditworthiness of Material Bookings (whether for periods before or after the Closing Date), Space Leases and notices of Violations (if any) listed in Exhibits F, G, H, I, J and K, respectively;

(b) a descriptive summary of the manner in which all Bookings are made, whether oral or written, with or without deposits or firm or contingent commitments for reservations, along with a copy of the written agreements or confirmation letters used in

connection with the Bookings; a descriptive summary of all pending or threatened litigation listed in Exhibit L;

(c) the most recent real estate and personal property tax statements for the Property;

(d) all Documents listed in Exhibit M, including, but not limited to, the plans and specifications;

(e) the most current inventory of all Fixtures and Tangible and Intangible Personal Property, Operating Equipment and Consumables;

(f) all other documents or instruments of record relating to the Property available to Seller;

(g) copies of all financial reports prepared by the accountant for Seller for the fiscal year of Seller for the five (5) years preceding the date hereof ("Submitted Financial Statements");

(h) identification and disposition of all sales tax liabilities for federal income tax, sales tax and all other taxes from 2010 to the present;

(i) schedule of repairs – cost trackers and/or paid receipts or a GIA 702 form;

(j) information reflecting the insurance loss history of the Property for the period from 2014 to the present and copies of all insurance policies relating to the Property; and other documents in Seller's possession, relating to the Property or investigation of the Property, including, without limitation, relating to the environment, health and/or safety or hereinbefore and hereinafter generally identified and agreed to be provided.

Review. Until closing, Purchaser may review the Submittals and shall have the right to enter upon the Real Property to inspect the Property and to conduct non-invasive tests and investigations at its sole cost and expense, except as provided herein. Purchaser shall be responsible for any damage caused by such tests and investigations, except to the extent relating to pre-existing conditions (except to the extent aggravated by the tests or inspections). Seller shall cooperate with Purchaser, or its agents, in arranging such inspections. Without limitation of the foregoing, Purchaser or Purchaser's accountants or both may review the Submitted Financial Statements and, in connection therewith, Seller shall supply such documentation as Purchaser or Purchaser's accountants may reasonably request to facilitate such review. Purchaser shall conduct

all such inspections and reviews in confidence and so as not to interfere unreasonably with the operation of the Hotel. During this time, Purchaser may conduct an environmental investigation of the Property including, without limitation, relating to the environment, health and/or safety, at Seller's sole cost and expense, to be conducted by an environmental engineering firm selected by Purchaser (the "Environmental Study").

Purchaser's Acceptance or Rejection. If, in its sole and absolute discretion, Purchaser accepts the condition of the Property, it shall give Seller written notice of such acceptance before the close of business on the 30th business day at the end of the Inspection Period. If Purchaser shall give Seller a notice of disapproval before the Closing Date this Agreement shall be deemed terminated and the Deposit shall be returned to Purchaser and neither party shall have any further Obligation or liability to the other party hereunder. The parties hereto acknowledge that Purchaser has incurred substantial costs in connection with the negotiation and execution of this Agreement, will incur additional substantial costs in conducting the inspections contemplated by this Agreement and would not have entered into this Agreement without the availability of the Inspection Period. Therefore, the parties agree that adequate consideration exists to support the Obligations of the parties hereunder, even before expiration of the Inspection Period.

ARTICLE V REPRESENTATIONS AND WARRANTIES

Representations and Warranties of Seller. Seller hereby represents and warrants the following to Purchaser:

(a) **Due Organization.** Subject to the entry of a Court order of Approval, this Agreement has been duly authorized by all requisite action on the part of Seller. Subject to the entry of a Court order, the execution and delivery of this Agreement, and the consummation of the transactions contemplated hereby, except as otherwise provided herein, do not require the consent or approval of any governmental authority, nor shall such execution and delivery result in a breach or Violation of any Legal Requirement, or constitute a default (or an event which with notice and passage of time, or both, will constitute a default) under any contract or agreement to which Seller or an Affiliate is a party or by which it or the Property is bound.

(b) **Title to Hotel/Real Property.** Seller 's interest in the Hotel/Real Property is good and marketable title in fee simple and is insurable at regular rates by nationally recognized title insurer company authorized to do business in the State of Maryland.

(c) **Title to Personal Property.** Seller has good and marketable title to the Personal

Property free and clear of all liens and obligations, subject only to the Permitted Exceptions. All items of Personal Property have been fully paid for to the extent that normal business practice permits, except those items which are subject to installment payments and with respect to which there are no installments due which are delinquent. Seller shall provide a listing of personal property that is not fully paid for with copies of all documents relating thereto at the same time all other Submittals are to be provided to Purchaser.

(d) **Permits.** (i) Exhibit F identifies all existing Permits and is complete and correct in all material respects; (ii) such Permits constitute all of the Permits currently necessary for the ownership and operation of the Hotel, (iii) to Seller's knowledge, no default has occurred in the due observance or condition of any Permit which has not been heretofore corrected; and (iv) all Permits (except those Permits which are designated Excluded Permits in Exhibit F) are assignable to Purchaser.

(a) **Hotel Contracts.** Exhibit G identifies all Hotel Contracts and the information noted therein is complete and correct in all material respects. Except as disclosed in Exhibit G, there is no default under any Hotel Contract. Seller has provided (or will provide during the Inspection Period) true and correct copies of all Hotel Contracts to Purchaser. All Hotel Contracts shall be terminated by Seller on or prior to the date of Closing, unless Purchaser shall have elected by written notice to Seller prior to the expiration of the Inspection Period to assume any of the Hotel Contracts, in which case Seller shall transfer such Hotel Contracts to Purchaser at Closing.

(b) **Hotel Names.** Exhibit O hereto identifies all Hotel Names and is complete and correct in all respects. Seller has not received any notice that the use of such Hotel Names infringes on the rights of a third party. It is understood that the application for any franchise (use or name, etc.) is the responsibility of the Purchaser, and any expense regarding such application and cost associated with obtaining the franchise including product improvement plan will be borne by the Purchaser. Seller makes no warranty with regard to the Name or the Franchise.

(c) **Commissions.** Except as may be disclosed in Exhibits G or J and other than in the ordinary course of business in connection with Bookings for which Seller shall disclose and detail in the exhibits, there are no commissions or referral fees relating to the Hotel currently outstanding, nor will there be any such commissions or referral fees outstanding, on or before the Closing Date. All commission agreements shall be listed and provided in writing to Purchaser at the same time all Submittals are to be provided.

(d) **Impositions.** (i) all Impositions due and payable as of the date of this Agreement in

connection with the operation of the Hotel have been paid, unless the same is listed in Exhibit N hereto; (ii) in connection therewith, Seller (or its agents or employees on Seller's behalf) has filed all tax returns and reports required to be filed by it as of the date of this Agreement with all taxing authorities requiring the same; and (iii) Exhibit N accounts for all accrued, but unpaid, Impositions. Seller will provide evidence that all such taxes have been filed, accepted and paid. With regard to any taxes due or that may be due post-closing to include any bulk sales taxes, such shall be addressed by Bankruptcy Court Order and/or appropriate indemnities and/or escrows shall be established.

(e) **Fixtures, Tangible Personal Property.** Each guest room contains a complete set of furniture and furnishings appropriate for a guest room of a luxury hotel, including, but not limited to, at least one (1) color television set and two (2) telephone. The quantities of Fixtures and Tangible Personal Property, Consumables and Operating Equipment in the Hotel, including physical reserves, are sufficient for the proper and efficient operation of the Hotel in accordance with the standards of operation heretofore maintained by Seller. Seller shall continue to maintain the same at a level consistent with the average maintenance for the twelve (12) months preceding the date hereof ("Par") and in any event, as to Operating Equipment, not less than as follows:

(i) Three (3) Par on all room linens and towels;

(f) **Submitted Financial Statements.** The Submitted Financial Statements for the Hotel (which shall include the income of restaurants, bars, retail rental space and garage portions of the Hotel, if any) fairly present the results of operation of the Hotel for the periods indicated, and were prepared in accordance with generally accepted hotel accounting principles applied on a consistent basis, and, to Seller's best knowledge, there has been no material adverse change in the results of the operations of the Hotel since the statement dated for the period ended December 31, 2014 to December 31, 2016 provided by Frank, Storm & Company, the certified public accountants who prepared the Submitted Financial Statements, shall certify the amount of the net income of the Hotel for the year ended December 31, 2014 to December 31, 2016, which net income shall be income after all fixed and operating expenses, but before debt service or depreciation. Such certification shall be done in accordance with generally accepted hotel accounting principles consistently applied by such accountants in preparation of such financial statements and shall be delivered to Purchaser at least ten (10) days before the expiration of the Inspection Period. Seller shall also provide any and all financial statements, in any form, prepared by its accountant or otherwise for the period following December 31, 2016 through the date of this Agreement with five (5) business

days of Seller's receipt of the fully executed Agreement.

- (g) **Material Bookings**. Exhibit I identifies all Material Bookings for periods from and after the day which is twenty-five (25) days after the date hereof. The representation and warranty made by Seller in this subsection shall not be deemed to be, in any manner, a guarantee of any Bookings, or of the income potential represented thereby.
- (h) **Pending Litigation**. With the exception of Seller's Chapter 11, there are no actions, suits or proceedings, pending or threatened against Seller or affecting any of Seller's rights, in each case, with respect to the Property, at law or in equity, or before any federal, state, municipal or other governmental agency or instrumentality, which might result in any order, injunction, decree or judgment having an adverse effect on the Hotel or the Property, nor is Seller aware of any facts which to its knowledge might result in any action, suit or proceedings. Except as noted in Exhibit K, the Hotel complies with all Legal Requirements. Except as noted in Exhibit K, Seller has not received any notice of any Violation of a Legal Requirement which has not been heretofore corrected. Prior to the Closing Date, any uncured Violations listed in Exhibit K and any other Violations that arise shall be cured by Seller at its sole expense.
- (i) **Condemnation**. There are no pending, or, to the knowledge of Seller, threatened, condemnation proceedings or condemnation actions against the Real Property or any of the rights-of-way located adjacent thereto.
- (j) **Zoning**. The Land is currently zoned for its present use.
- (k) **Assessments**. No governmental assessment for sewer, sidewalk, water, paving, electrical, power or other improvements is pending or threatened, except as may be set forth in Exhibit C.
- (l) **Labor Disputes**. During the three (3) years preceding the date hereof, the Property has not experienced any labor disputes or labor trouble other than routine grievances or organizational efforts, none of which have had a material adverse effect on the operations of the Property.
- (m) **Employees**. Exhibit H is a complete list of all Employees with their salaries, positions and terms of employment; and (i) except as set forth on Exhibit H, Seller is not a party to any Employment Contract and no union is presently serving as collective bargaining agent for any Employees; (ii) to the best of Seller's knowledge, no union presently is conducting or planning to conduct an organizational campaign for any Employees; and

(iii) with the exception of the Employee Benefit Plans listed in Exhibit P, there is no pension, profit-sharing, bonus or other employee benefit plan relating to current or past Employees. All Employees are “at will” employees and can be terminated without notice unless specifically identified in detail in said exhibit. All employment contracts or writings of any type, sort or kind shall be furnished with the other Submittals required. Seller must have complete and accurate records as per the labor laws to make sure all records are in order, including an Employment application for all staff currently on payroll. All 1099s must also be supported by adequate documentation of company, and contractor’s insurance certificate.

- (n) **Utilities**. All utility equipment and facilities required for the operation and use of the Hotel are located on the Property and all agreements for providing utilities are with direct providers.
- (o) **Material Changes**. There are no facts or circumstances not disclosed to Purchaser of which Seller has knowledge, which have or could have a material adverse effect upon the Hotel. Seller agrees to notify Purchaser immediately of such facts or circumstances if it becomes aware of the same.
- (p) **Environmental Matters**. Prior to and during Seller's ownership of the Property, (i) no Hazardous Materials have been located on the Property in violation of applicable Environmental Laws (as defined below) or have been released in, on, under or from the Property; (ii) no underground storage tanks have been located on the Property; (iii) the Property has never been used as a dump for waste material (iv) no mold or other adverse air-quality conditions exist in the Property; and (iv) the Property and its prior uses comply with, and at all times have complied with, any applicable governmental law, regulation or requirement relating to environmental, health and/or safety matters or Hazardous Materials (“Environmental Laws”).

The term Hazardous Materials shall mean and include the following, including mixtures thereof: any hazardous substance, pollutant, contaminant, waste, by-product or constituent regulated under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq.; oil, petroleum products and any derivative thereof, and natural gas, natural gas liquids, liquefied natural gas and synthetic gas usable for fuel; pesticides regulated under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136 et seq.; asbestos and asbestos-containing materials, PCBs and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; source material, special nuclear material, by-product material and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act or the Nuclear Waste Policy Act of 1982;

chemicals subject to the OSHA Hazard Communication Standard, 29 C.F.R. { 1910.1200 et seq.; and industrial process and pollution control wastes, whether or not hazardous within the meaning of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.

Additionally, but not in lieu of Seller's affirmative undertakings set forth herein, Seller agrees to indemnify, defend and hold harmless Purchaser and its affiliates from and against any and all debts, liens, claims, causes of action, administrative orders and notices, costs (including, without limitation, response and/or remedial costs personal injuries, losses, damages, liabilities, demands, interest, fines, penalties and expenses, including reasonable attorneys' fees and expenses, consultants' fees and expenses, court costs and all other out-of-pocket expenses, suffered or incurred by Purchaser or its affiliates) as a result of (i) the inaccuracy or breach of any such representation or warranty, or (ii) any matter, condition or act involving Environmental Laws or Hazardous Materials which existed on or arose prior to the Closing Date and which failed to comply with the Environmental Laws in effect as of the Closing Date or any existing common law theory based on nuisance or strict liability in existence as of the Closing Date, regardless of whether or not Seller had knowledge of same as of the Closing Date.

(v) **Hotel Names.** Exhibit O identifies all Hotel Names which are used in the business of operating the Hotel and is complete and correct in all material respects.

(w) **Software.** Exhibit G identifies all of the Software used in connection with the ownership and operation of the Hotel. Seller is the owner or licensee of the Software and, except as listed in Exhibit G, the Software and all rights thereunder are transferable to Purchaser without restriction.

(x) **Documents.** Exhibit M is a list of all of the Documents; Seller knows of no other document or instrument relating to the Hotel, or the ownership or operation thereof of any nature, type or kind.

(y) **Pension Plan.** This transaction will constitute a "complete withdrawal," as that term is defined in Section 4203 of the Employee Retirement Income Security Act of 1974, as amended, by Seller from the multi-employer pension plan identified in Exhibit P hereto.

(z) **Seller's Knowledge.** For the purposes of this Section 5.1, the phrases "to the best of Seller's knowledge," "to Seller's knowledge" and similar phrases shall imply a reasonable investigation by Seller and its agents.

Except as specifically set forth herein or in the documents to be delivered pursuant hereto, Seller has not made and does not make or give any warranties or representations.

Representations and Warranties of Purchaser. Purchaser hereby represents and warrants the following to Seller:

(a) **Authority.** Purchaser has all requisite power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby pursuant to the terms and conditions hereof.

(b) **No Conflict.** The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not conflict with, breach, result in a default under, or violate any commitment, document or instrument to which Purchaser is a party or by which it is bound.

Purchaser is not relying on any warranty or representation made by any person acting on Seller's behalf as to the physical condition, past or future income, expenses or operations of the Hotel or any other matter or thing affecting or related to the Property, except as disclosed in this Agreement, in the Submittals and otherwise in the documents and instruments provided by Seller to Purchaser.

Duration of Representations and Warranties. All representations and warranties contained in Sections 5.1 and 5.2 shall be deemed restated on and as of the Closing Date and shall survive the Closing.

ARTICLE VI **CLOSING MATTERS**

Closing. The closing of the transaction contemplated hereby (the "Closing") shall take place at the offices of the Title Company on or before fifteen (15) days after the end of the Inspection Period (the "Closing Date") to be specified by written notice from Purchaser to Seller or ten (10) days following the issuance of Bankruptcy Court Order permitting sale of a property to Purchase free and clear of all liens in accord with approved Court distribution of proceeds, whichever shall last occur but not later than ninety (90) days from the date of this Agreement.

The Closing shall be affected pursuant to the Escrow Instructions.

(a) Seller and Purchaser shall each pay fifty percent (50%) of the charges of the Title Company. Seller and Purchaser shall each pay fifty percent (50%) of the transfer and recordation taxes associated with the Closing. Purchaser will bear the cost of all environmental studies, engineering reports and appraisals. Purchaser and Seller which each pay for their own respective

attorney's fees.

(i) **Survey, Title Commitment and Searches.** Purchaser shall bear the cost of any survey, Title Commitment and Survey associated with the Purchase and with any loan undertaken by the Purchaser. Seller, however, shall provide Purchaser the other Submittal copies of any and all surveys, plans or drawings concerning the Hotel and Property and its possession.

(b) **Title Commitment.** A Title Commitment for an ALTA Form B Owner's Title Policy issued by the Title Company in the amount One Million Eight Hundred Thousand Dollars (\$1,800,000.00) showing title to the Real Property in Seller, subject only to the Permitted Exceptions, containing full extended coverage over all general exceptions, a 3.1 zoning endorsement (amended to include parking location, survey and contiguity endorsements, an endorsement that the real estate tax bills for the Property do not include taxes pertaining to other real estate, and such other endorsements as may be reasonably requested by Purchaser, and dated after the date hereof. Seller shall also deliver full and legible copies of all documents ("Title Papers") referred to in the Title Commitment.

(c) **Searches.** UCC, judgment and tax lien searches in the names of Seller covering a date not earlier than seven (7) days prior to the date hereof (the "Searches") showing no Title Defect as to the Property unless the same is to be paid by Seller and released at or prior to Closing.

(d) **Defects.** With respect to the Title Documents required to be provided, as aforesaid, if the same shall reflect any facts that would result in a Title Defect, Seller shall have thirty (30) days from the expiration of the Inspection Period within which to cure or remove the Title Defect. Seller shall be obligated to remove mortgages, deeds of trust and other liens or encumbrances of a definite and ascertainable amount, which the parties agree may be removed by the use of the proceeds of sale at Closing as provided in Section 6.3(e) below. In the alternative, Seller may make arrangements satisfactory to the Title Company for the cure (including insurance over) or removal of record of any such Title Defect. If any such Title Defect is not cured or otherwise provided for as aforesaid on or prior to the Closing Date, Purchaser shall either: (i) terminate this Agreement, in which event (hereinafter referred to as "Election No. 1") the Initial Deposit and the Further Deposit, shall be returned to Purchaser and the parties shall have no further Obligation or liability to each other hereunder; or (ii) accept the Title Commitment, Survey or Searches as is, with the right, however, to deduct the amount of Title Defects represented by liens or encumbrances of a definite or ascertainable amount from the Purchase Price payable at Closing (hereinafter referred to as "Election No. 2"). Title Defects which are acceptable as part of Election No. 2 shall thereupon be deemed to be Permitted Exceptions and Exhibit C shall be amended, if necessary, to include such additional Permitted

Exceptions. Election No. 2 shall be made by Purchaser giving Seller written notice thereof within five (5) business days after notice of Seller's inability to cure or remove the Title Defect and in the absence of notice of Election No. 2 within such five (5) day period, Purchaser shall be deemed to have elected Election No. 1. In the event Purchaser elects Election No. 1 and a Title Defect was created or suffered by Seller, Purchaser shall be paid by Seller the actual costs of Purchaser's investigation to include reasonable attorney's fees actually incurred, not to exceed Zero Dollars (\$0.00) in addition to recovery of the Deposit.

(e) **Removal of Liens**. Seller will seek agreement from Lender to sell the property for less than the outstanding mortgage in exchange for the removal of the Lender's lien. This Agreement is contingent on the Lender's acceptance of the short-sale of the Property.

(f) **Escrow**. This Agreement shall not be merged into the Escrow Instructions but the Escrow Instructions shall be deemed auxiliary to this Agreement and, as between the parties hereto, the provisions of this Agreement shall govern and control.

(g) **Bankruptcy Court Order**. This Agreement shall furthermore be subject to payment of entry to final unappealable Order from the Bankruptcy Court approving this sale free and clear of all liens and encumbrances and approvals specific distribution of sale proceeds.

ARTICLE VII **CLOSING DELIVERIES**

Seller's Deliveries. At Closing, Seller shall deliver, or cause to be delivered to Purchaser, the following, each of which shall be in form and substance acceptable to counsel for Purchaser and, in the case of documents of transfer or conveyance, shall be accepted or consented to by all parties required to make such transfer or conveyance effective:

(a) a recordable special warranty deed from Seller to Purchaser subject only to the Permitted Exceptions;

(b) a Bill of Sale, with special covenants of title, transferring to Purchaser all of Seller's right, title and interest in and to each and every item of Fixtures and Tangible Personal Property, Documents, Consumables and Operating Equipment to be transferred hereunder subject only to Permitted Exceptions, and with respect to any vehicles included therein, such separate forms of assignment as are required to be filed with any governmental agency to effect such change in registration of ownership;

(c) all of the Bookings, Hotel Contracts, Space Leases, Permits and other tangible

Miscellaneous Hotel Assets, together with an assignment conveying and transferring to Purchaser all of Seller's right, title and interest in, to and under the Bookings, Hotel, Contracts, Space Leases, Permits (other than Excluded Permits) and all other Miscellaneous Hotel Assets;

- (d) the certificates referred to in this Agreement hereof;
- (e) an ALTA Form B Owner's Title Insurance Policy, issued in exact conformity with the Title Commitment, in favor of Purchaser, by the Title Company, in the amount of the Purchase Price, showing good and marketable fee simple title in the Real Property, to be vested in Seller, subject only to Permitted Exceptions (the "Title Policy");
- (f) a FIRPTA Certificate;
- (g) appropriate instruments conveying or transferring Seller's right, title and interest in and to the Software and all other Intangible Property to Purchaser;
- (h) Affidavit of Title for the Real Property, in customary form;
- (i) a certification of the representation and warranty of Seller contained in Section 5.1(u) and indemnification from Seller to Purchaser for any costs, expenses, liabilities or losses which result from any inaccuracy or breach thereof and a certification by Seller that any clean-up required or recommended by the Environmental Study has been completed in accordance with the recommendations of the Environmental Study;
- (j) a Bulk Sales Stop Order from the Department dated not earlier than fifteen (15) days before the Closing Date, and a full release of Claims from the Department with respect to all debts owned by Seller;
- (k) appropriate assignments of the insurance policies designated by Purchaser to be assigned to Purchaser at Closing, if any;
- (l) evidence of termination of the Terminated Employees;
- (m) the opinion of Seller's counsel as provided by Section 10.1(c);and
- (n) certification of the Department of Water and Sanitation for the City of McHenry that there are no outstanding water and/or sewer charges for the Hotel;
- (o) the Preliminary Closing Statement; and

- (p) State of Maryland, County of Garrett transfer tax declarations.
- (q) A copy of the sale Order issues by the Bankruptcy Court.

Purchaser's Deliveries. At the Closing, Purchaser shall cause to be delivered to Seller that portion of the Purchase Price required to be paid pursuant to this Agreement and Court Order. .

Concurrent Transactions. All documents or other deliveries required to be made by Purchaser or Seller at Closing, and all transactions required to be consummated concurrently with Closing, shall be deemed to have been delivered and to have been consummated simultaneously with all other transactions and all other deliveries, and no delivery shall be deemed to have been made, and no transaction shall be deemed to have been consummated, until all deliveries required by Purchaser, or its designee, and Seller shall have been made, and all concurrent or other transactions shall have been consummated.

Further Assurances. Seller and Purchaser, at the Closing, or at any time or from time to time thereafter, upon request of either party, will execute such additional instruments, documents or certificates as either party deems reasonably necessary in order to convey, assign and transfer the Property to Purchaser hereunder.

Possession. Possession of the Property shall be delivered at Closing. Excluded shall be removed from the Hotel by Seller, at its expense, on, or within thirty (30) days after, the Closing Date. Seller, at its expense, shall make all repairs necessitated by such removal but shall have no obligation to replace any Excluded Asset so removed. Seller further represents that there are no leases of any type or form, other than rental agreements to be assigned and assumed by Purchaser whatsoever provided to Purchaser at commencement of the Inspection Period.

ARTICLE VIII

ADJUSTMENTS AND PRORATIONS; CLOSING STATEMENTS

Adjustments and Prorations. The following matters and items shall be apportioned between the parties hereto or, where appropriate, credited in total to a particular party, as of the Cut-off Time as provided below:

- (a) **Qualifying Receivables; Trade Accounts Payable.** Qualifying Receivables and trade accounts payable shall be identified as of the Cut-off Time. Purchaser is purchasing Qualifying Receivables and is assuming trade accounts payable. Seller shall receive a credit

equal to ninety-five percent (95%) of Qualifying Receivables as of the Cut-off Time. Purchaser shall receive a credit for all trade accounts payable as of the Cut-off Time. Notwithstanding the foregoing, each party shall receive a credit equal to one-half of the amount of transient guest room rentals for the full night which begins on the day immediately preceding the Closing Date. Purchaser will honor, for its account, the terms and rates of all pre-closing reservations confirmed by Seller for dates after the Closing Date. Any pre-closing down payments made to Seller on confirmed reservations for dates after the Closing Date will be credited to Purchaser at the Closing. Any post-closing down payments made to Seller on confirmed reservations for dates after the Closing Date will be forwarded to Purchaser upon receipt.

(b) **Taxes and Assessments**. All ad valorem taxes, special or general assessments, personal property taxes, attorneys' fees directly related to the reduction of taxes or assessments, water and sewer rents, rates and charges, vault charges, canopy permit fees, and other municipal permit fees shall be apportioned between the parties. If the amount of any such item is not ascertainable on the Closing Date, the credit therefor shall be based on one hundred ten percent (110%) of the most recent available bill and shall be prorated upon receipt of the actual tax bill. Purchaser shall not be responsible for any attorney's fees without express written approval thereof.

(c) **Utility Contracts**. Telephone and telex contracts and contracts for the supply of heat, steam, electric power, gas, lighting and any other utility service shall be apportioned between the parties, with Seller receiving a credit for each deposit, if any, made by Seller as security under any such public service contracts if the same is transferable and provided such deposit remains on deposit for the benefit of Purchaser. Where possible, cut-off readings will be secured for all utilities on the Closing Date.

(d) **Hotel Contracts**. Any amounts prepaid or payable under any Hotel Contracts. All security deposits held by Seller shall be transferred to Purchaser and all obligations with respect to such security deposits shall be assumed by Purchaser. Such approval indicated herein of this sale, this transaction does not include the Purchaser or assignment or transfer in any way of Seller's current franchise with Choice Hotels or any obligations related thereto.

(e) **License Fees**. Fees paid or payable for Permits (other than Excluded Permits) shall be apportioned between the parties.

(f) **Hotel Matters**.

(i) Advance payments, if any, under Bookings for Hotel facilities;

- (ii) Coin machine, telephone, washroom and checkroom income; and
- (iii) Commissions to credit and referral organizations.
- (iv) Booking refunds and chargebacks.

(g) **Insurance.** Prepaid premiums for policies of insurance shall be apportioned between the parties. Seller shall assign such of its policies of insurance for the Property which has been designated by Purchaser to be assigned to Purchaser as of the Closing Date.

(h) **Employment Contracts.** Seller shall be responsible for, and shall pay when due, all Compensation of Terminated Employees. Seller shall be responsible for, and shall pay when due, all Compensation of Retained Employees, other than Proratable Compensation, until the Cut-off Time. Proratable Compensation of Retained Employees shall be prorated as of the Cut-off Time. Purchaser assumes no Employment Contracts but shall be responsible for, and shall pay when due, all Proratable Compensation of Retained Employees to the extent it receives a credit therefor in the Closing Statement. Purchaser assumes no obligation with respect to any Employee Benefits all of which, together with any sums due any Terminated Employee as a consequence of the termination of his employment, shall be the responsibility of Seller.

(i) **Consumable Items.** The cost of any Consumables or Operating Equipment which are at a level below the level required to be maintained under this Agreement shall be credited to Purchaser. The parties agree ~~the level should be~~ *to number prior to end of*

Inspection Period. BL. PM

(j) **Other.** Such other items as are provided for in this Agreement or as are normally prorated and adjusted in the sale of a hotel, including, without limitation, all petty cash funds and cash in house banks, and all deposits and prepaid items which inure to the benefit of the Purchaser.

Payment. Any net credit due to Seller as a result of the adjustments and prorations shall be paid in cash at the time of Closing.

Receivables. Purchaser is not purchasing any of the receivables of the Hotel, other than the Qualifying Receivables referred to above. Seller shall be solely responsible for the collection of such accounts receivable. If Purchaser shall receive any payment made on any unpurchased accounts receivable within ninety (90) days after the Closing Date, it shall promptly remit such payment to Seller. With regard to any collection made from any person or entity who is indebted to the Hotel both with respect to accounts receivable accruing prior to the Closing Date and to the accounts receivable accruing subsequent to the Closing Date, such collection shall be applied

as designated by the payor, but if there is no designation, then any such collections received within ninety (90) days after the Closing Date shall be applied first to the indebtedness accrued prior to the Closing Date, but thereafter, any such collections shall be applied first to the payment in full of any amounts due to Purchaser on accounts accruing subsequent to the Closing Date.

Accounts Payable. Purchaser is assuming trade accounts payable only for consumable items at the level agreed by amendment to this Agreement and entered into prior to the end of inspection, otherwise all accounts payable shall be the responsibility of the Seller and shall be addressed and paid at Closing from Seller's funds.

Closing Statements.

(a) **Preparation.** Each party shall cause its designated representatives to enter the Hotel only at reasonable times and without unreasonably interfering with operations, both before and after the Closing Date, for the purpose of making such inventories, examinations and audits of the Hotel, and of the books and records of the Hotel, as they deem necessary to make the adjustments and prorations required under this Article 8, or under any other provisions of this Agreement. Based upon such inventories, examinations and audits, at the Closing, the representatives of the parties shall jointly prepare and deliver to each party a Preliminary Closing Statement which shall show the net amount due either to Seller or Purchaser as a result thereof, and such net amount will be added to, or subtracted from the payment of the cash balance of the Purchase Price to be paid to Seller pursuant to this Agreement hereof. Within thirty (30) days following the Closing Date, Seller and Purchaser shall agree on a Final Closing Statement setting forth the final determination of all items to be included on the Closing Statements. The net amount due Seller or Purchaser, if any, by reason of adjustments in the Preliminary Closing Statement as shown in the Final Closing Statement, shall be paid in cash by the party obligated therefor within ten (10) days following the date of the Final Closing Statement.

(b) **Disputes.** In the event the representatives of the parties are unable to reach agreement with respect to preparation of the Preliminary Closing Statement then, except as hereinafter provided, the disputed amount shall be held in the Escrow, pending agreement of the parties or the determination of the Accountants (as defined herein) and the Closing shall occur. Purchaser shall be required to deposit in the Escrow any additional sum of the disputed amount which it may be required to pay. In the event of a dispute regarding the amount of the payment required to be made by Purchaser pursuant to this Agreement hereof involving more than five thousand Dollars (\$5,000) in the aggregate, Purchaser may elect to postpone the Closing, for a period not to exceed sixty (60) days pending resolutions by the Accountants. Any such dispute shall survive and shall be subject to later resolution pursuant to this Section 8.5. In the event the representatives of the parties are unable to reach agreement with respect to the Closing

Statements, the parties shall submit their dispute to a firm of independent certified public accountants of recognized standing in the hotel industry (the "Accountants") and the determination of such firm shall be conclusive on both parties hereto.

(c) **Period for Recalculation.** Notwithstanding the foregoing, if at any time within six (6) months following the Closing Date, either party discovers any items which should have been included in the Closing Statements but were omitted therefrom, then such items shall be adjusted in the same manner as if their existence had been known at the time of the preparation of the Closing Statements. The foregoing limitations shall not apply to any items which, by their nature, cannot be finally determined within the periods specified.

ARTICLE IX **CONDITIONS TO SELLER'S OBLIGATIONS**

Conditions. Seller's obligation to close hereunder shall be subject to entry of the Sale Order by the Bankruptcy Court and the occurrence of each of the following conditions, any one or more of which may be waived by Seller in writing (but which waiver shall not apply to entry of the Sale Order):

(a) **Purchaser's Compliance with Obligations.** Purchaser shall have complied with all Material Obligations required by this Agreement to be complied with by Purchaser.

(b) **Truth of Purchaser's Representations and Warranties.** The representations and warranties of Purchaser contained in this Agreement were true in all material respects when made, and are true in all material respects on the Closing Date (or any deferred Closing Date) and Seller shall have received a certificate to that effect signed by an authorized agent of Purchaser.

(c) **Opinion of Purchaser's Counsel.** Purchaser shall have delivered to Seller a favorable written opinion of counsel in connection with this transaction, dated the Closing Date, as to (i) the power and authority of Purchaser to execute and deliver this Agreement, (ii) the due authorization, execution and delivery by Purchaser of this Agreement, and (iii) the legality, validity and, as to Purchaser, the binding effect of this Agreement (subject to the effect of bankruptcy and similar laws affecting the enforcement of creditors' rights generally and to the discretion of a court of equity to enforce equitable remedies).

Failure of Conditions. If any of the conditions enumerated in this Section, despite Purchaser's reasonable good faith efforts are not timely fulfilled, such shall not constitute a default and Seller may terminate this Agreement and all deposits shall be returned to Purchaser

whereupon neither party shall have any further legal obligation to the other hereunder. .

ARTICLE X
CONDITIONS TO PURCHASER'S OBLIGATIONS

Conditions. Purchaser's obligation to close hereunder shall be subject to the occurrence of each of the following conditions, any one or more of which may be waived by Purchaser in writing.

(a) **Seller's Compliance with Obligations.** Seller shall have complied with all Obligations required by this Agreement to be complied with by Seller.

(b) **Truth of Seller's Representations and Warranties.** The representations and warranties of Seller contained in this Agreement were true in all material respects when made, and are true in all material respects on the Closing Date (or any deferred Closing Date) and Purchaser shall have received a certificate signed by each of the Beneficiaries to that effect.

(c) **Opinion of Seller's Counsel.** There shall have been delivered to Purchaser a favorable opinion of, counsel to Seller in connection with this transaction, dated the Closing Date as to (i) the power and authority of Seller to execute and deliver this Agreement; (ii) the due authorization, execution and delivery by Seller of this Agreement and all other documents required to be executed and delivered by Seller pursuant to Section 7 hereof; and (iii) the legality, validity and, as to Seller, the binding effect of this Agreement and all other documents required to be executed and delivered by Seller pursuant to Section 7 hereof (subject in each case to the effect of bankruptcy and similar laws affecting creditors' rights generally and to the discretion of a court of equity to enforce equitable remedies).

(d) **Obtaining of Excluded Permits.** Purchaser shall have obtained (or otherwise assured itself of the availability of in its own or its designee's name), all Permits of the type designated as Excluded Permits in Exhibit F, except liquor licenses and permits, necessary for the operation of the Hotel. Purchaser agrees to use commercially reasonable efforts (and Seller, at Purchaser's expense, agrees to cooperate fully with Purchaser in such regard) to obtain all such Excluded Permits.

(e) **Governmental Approvals.** Except as provided to the contrary in subsection (d) above, if this transaction, or any part or parts hereof, or the consummation of any of the transactions herein contemplated, shall require authorization or approval of any governmental agency having jurisdiction, all such authorizations and approvals shall have been obtained and shall be in full force and effect on and as of the Closing Date. Seller agrees to use its

commercially reasonable efforts and all due diligence to cause such authorizations or approvals to be obtained, and Purchaser agrees to cooperate with Seller in all reasonable respects with respect thereto, but at the sole cost and expense of Seller. If such authorizations and approvals shall not have been obtained on or prior to the last day for Closing hereinabove provided, the Closing Date may be deferred, at the election of Purchaser, for an additional period of time, not to exceed fifteen (15) days, as shall be necessary to obtain any authorizations or approvals not then obtained.

(f) **Estoppel Certificates: Hotel Contracts.** Purchaser shall notify Seller, in writing at least thirty (30) days prior to the Closing Date, of the Material Contracts for which Purchaser requires estoppel certificates. Each of said estoppel certificates shall be in writing from the parties to such Material Contract stating that such Material Contract is in full force and effect, has not been amended or modified except as therein indicated, that such party consents to the assignment to Purchaser and that no party is then in default under such Material Contract (or if any default is known to exist, or would arise with the giving of notice or the passage of time, stating the nature of such default). The estoppel certificates herein referred to shall be in form and substance reasonably satisfactory to Purchaser and dated not more than thirty (30) days prior to the Closing Date.

(g) **No Pending Adverse Litigation.** On the Closing Date, other than the Bankruptcy case, there shall not then be pending or, to the knowledge of either Purchaser or Seller, threatened, any litigation, administrative proceeding, investigation or other form of governmental enforcement, or executive or legislative proceeding which, if determined adversely, would restrain the consummation of any of the transactions herein referred to, declare illegal, invalid or non-binding any of the covenants or obligations of the parties herein, or have a material and adverse effect on the operations or cash flow of the Hotel, or materially and adversely affect the value of the Property or the ability of Purchaser, after the Closing, to operate the Hotel in the manner contemplated hereby, other than those matters previously disclosed and approved by Purchaser.

(h) **Entry of the Sale Order.** Entry of the Sale Order by the Bankruptcy Court.

Failure of Conditions. If any of the conditions enumerated in this Section are not fulfilled despite the reasonable good faith efforts of Seller and absent waiver by Purchaser, then the sole remedy of Purchaser shall be to terminate this Agreement whereupon all deposits shall be returned to Purchaser and neither party shall have any further Obligations or liability hereunder unless the failure to fulfill such condition constitutes, or results from, either (i) a material breach of an express representation or warranty made by Seller hereunder, or (ii) a

material default of an express covenant made by Seller hereunder, in which event Purchaser shall be entitled to pursue against Seller any and all remedies available to Purchaser, at law or in equity.

ARTICLE XI
ACTIONS AND OPERATIONS PENDING CLOSING

Actions and Operations Pending Closing. Seller agrees that after the expiration of the Inspection Period and the Closing Date:

(a) Except as may be provided to the contrary in Section 5.1(i) hereof, the Hotel will continue to be operated and maintained substantially in accordance with present standards.

(b) Seller will not enter into any new Material Contract or Space Lease, or cancel, modify or renew any existing Material Contract, without the prior written consent of Purchaser, which consent shall not be unreasonably withheld. If Purchaser fails to respond to a request for consent within ten (10) business days after receipt of such request, such consent shall be deemed given.

(c) Seller shall have the right, without notice to or consent of Purchaser, to make Bookings in the ordinary course of business, at no less than the Hotel's standard rates including customary discounted rates. Additionally, Seller agrees to entertain in good faith Purchaser's suggestions relating to the policy of the Hotel with respect to future Bookings and extensions of credit.

(d) Seller shall use commercially reasonable efforts to preserve in force all existing Permits and to cause all those expiring to be renewed prior to the Closing Date. If any such Permit shall be suspended or revoked, Seller shall promptly so notify Purchaser and shall take all measures necessary to cause the reinstatement of such Permit without any additional limitation or condition.

(e) Seller shall notify Purchaser orally and in writing promptly if Seller becomes aware of any transaction or occurrence prior to the Closing Date which would make any of the representations or warranties of Seller contained in Section 5.1 not true in any material respect.

(f) Seller will maintain in effect all policies of casualty and liability insurance, or similar policies of insurance, with the same limits of coverage which it now carries with respect to the Hotel.

(g) Seller will not dispose of any of the Property, except in the ordinary course of business and in accordance with this Agreement.

(h) Seller shall allow Purchaser and its agents or representatives to inspect the Property, and all books and records relating thereto, at such times as Purchaser may reasonably request, provided such inspection does not unreasonably interfere with the continued operation of the Hotel in the ordinary course of business. Purchaser shall also have the right to have, and Seller shall provide accommodations for, a full-time on-site representative to observe the operations of the Hotel. Such accommodations shall be rent-free except for those nights when all other guest rooms at the Hotel are fully occupied, in which event Purchaser shall reimburse Seller for such nights at the Hotel's lowest corporate rate for such accommodations. Purchaser agrees that the results of all such observations will be treated as confidential, and Purchaser shall not disclose the same to any other person or entity except for Purchaser's counsel, accountants, and other agents or representatives consulted in connection with the acquisition of the Hotel. In the event that the sale is not consummated, any and all reports, and financial and operating information obtained by Purchaser or its representatives shall be returned to the Seller.

ARTICLE XII

CASUALTIES AND TAKINGS

Casualties.

(a) If any damage to the Property shall occur prior to the Closing Date by reason of fire, windstorm, hail, explosion or other casualty, and if, in Purchaser's reasonable judgment, the cost of repairing such damage will exceed two hundred fifty thousand Dollars (\$250,000) Purchaser may elect to: (i) terminate this Agreement by giving written notice to Seller in which event the Deposit, shall be returned to Purchaser and neither party shall have any further Obligations or liability whatsoever to the other hereunder or (ii) receive an assignment of all of Seller's rights to any insurance proceeds (including business interruption proceeds) relating to such damage and acquire the Property without any adjustment in the Purchase Price, provided that, in such latter event, Seller shall pay to Purchaser the amount of any deductible under applicable insurance policies. In such event of any casualty and Purchaser wishes to proceed with the sale and have confirmation from the insurance carrier of acceptance and valuation of a claim.

(b) If, in the reasonable business judgment of the insurance adjuster or other representative of the insurer of the Property, the cost of repairing such damage will not Exceed two hundred fifty thousand Dollars (\$250,000) the transactions contemplated hereby shall close without any adjustment in the Purchase Price, Purchaser shall receive an assignment of all of

Seller's rights to any insurance proceeds (including business interruption proceeds) and Seller shall pay to Purchaser the amount of any deductible under applicable insurance policies. In such event of any casualty and Purchaser wishes to proceed with the sale and have confirmation from the insurance carrier of acceptance and valuation of a claim.

Takings. In the event of the actual or threatened taking (either temporary or permanent) in any condemnation proceedings by exercise of right of eminent domain, of all or any part of the Real Property, between the date hereof and the Closing Date, and if, in Purchaser's reasonable judgment, such taking will result in the inability to conduct the operations of the Hotel substantially in accordance with the present standards, Purchaser may elect to:

(i) terminate this Agreement by giving written notice to Seller, in which event the Deposit, shall be returned to Purchaser and neither party shall have any further Obligations or liability whatsoever to the other hereunder or (ii) receive an assignment of all of Seller's rights to any condemnation award relating to such taking and acquire the Property without any adjustment in the purchase price.

ARTICLE XIII **EMPLOYEES**

Employees, Compensation and Indemnification. Purchaser shall have the continuing right to review all employment records and files of, and to interview, Employees. At least fourteen (14) days prior to the Closing Date, Purchaser shall identify those Employees to whom it does not intend to offer continued employment at the Hotel. Such Employees, together with those electing to transfer, as aforesaid, are referred to herein as "Terminated Employees." All other Employees are referred to herein as "Retained Employees." Seller shall terminate its employer-employee relationship with all Terminated Employees, other than those electing to transfer as aforesaid, as of the Cut-off Time. Purchaser agrees to offer new employment agreements to all Retained Employees, for such terms and upon such conditions as Purchaser may determine in its absolute discretion. With the exception of Proratable Compensation of Retained Employees, which Purchaser agrees to pay when due, Seller shall be solely responsible for all Compensation and other liabilities with respect to Employees and liabilities and obligations to Employees pursuant to any Employment Contract. Purchaser shall not be responsible for any such liability or obligations and Seller agrees to indemnify and hold Purchaser harmless from and against any such liability or obligations. All Compensation (other than Proratable Compensation of Retained Employees obligations, liabilities and claims (including any under the Fair Labor Standards Act)) to or by any Employee of Seller arising or occurring prior to the Cut-off Time shall be the responsibility of Seller. Purchaser shall not be responsible for any liability or obligations thereof and Seller agrees to indemnify and hold

Purchaser harmless from and against same. To the extent Purchaser receives a credit therefor on the Closing Statement, Purchaser agrees to indemnify and hold Seller harmless from and against any liability or obligations with respect to Proratable Compensation of Retained Employees. Purchaser shall not assume or be liable upon any Employment Contract of Seller.

Vacation Pay. Seller shall be solely responsible for all incentive pay and vacation pay for Terminated Employees, other than those electing to transfer as aforesaid, and shall provide Terminated Employees, other than those electing to transfer as aforesaid, with the vacation pay they have earned, or the pro rata part of the vacation pay they would have earned upon the anniversary date of their employment, as of the Closing Date.

ARTICLE XIV INDEMNITIES

Seller's Indemnity. Seller agrees to indemnify, defend (with Purchaser having the right to retain counsel for the purpose of participating in such defense), at its sole cost and expense) and hold Purchaser harmless against and with respect to the following:

(a) except to the extent that Purchaser receives a credit therefor on the Closing Statement, any and all obligations, liabilities, claims, accounts, demands, liens or encumbrances, whether direct or contingent and no matter how arising, in any way related to the Property and arising or accruing on or before the Closing Date or in any way related to or arising from any act, conduct, omission, contract or commitment of Seller or any predecessor in interest of Seller, at any time or times on or before the Closing Date (including, but not limited to, any damage to property or injury to or death of any person or referred to in Section 13.1 above); without limitation on the generality of the foregoing, Seller indemnifies Purchaser from any claim or judgment under any lawsuit or proceeding filed or pending prior to the Closing Date against the Property, or any part thereof, and any costs or expenses (including reasonable attorneys' fees) heretofore or hereafter incurred in connection with any such lawsuit or proceeding;

(b) any loss or damage to Purchaser resulting from any inaccuracy in or breach of any representation or warranty of Seller or resulting from any breach or default by Seller of any Obligation of Seller under this Agreement; and

(c) all costs and expenses, including reasonable attorneys' fees, related to any actions, suits or judgments incident to any of the foregoing.

Purchaser's Indemnity. Purchaser agrees to indemnify, defend (with Seller having the right to retain counsel for the purpose of participating in such defense, at its sole cost and

expense and hold Seller harmless against and with respect to the following:

(a) any loss or damage to Seller, subsequent to the Closing Date, resulting from any inaccuracy in or breach of any representation or warranty of Purchaser under this Agreement;

(b) any injury to person or property causing any loss or damage to Seller resulting from or arising out of work performed by Purchaser pursuant to Section 11 prior to Closing Date;

(c) any and all damage to Seller resulting from or arising out of Purchaser's operation of the Property after the Closing Date and not due to any condition existing prior to the Closing Date not disclosed in writing by Seller; and

(d) all costs and expenses, including reasonable attorneys' fees, related to any actions, suits or judgments incident to any of the foregoing.

Notice of Claims. Seller and Purchaser, as applicable, shall promptly notify the other in the event any claim is made against Seller or Purchaser as to which the other party has agreed to indemnify and the indemnitor shall thereupon undertake to defend and hold the indemnitee saved and harmless therefrom. A failure of the parties seeking indemnification to timely provide written notice to the other for whom indemnification is sought if such notice is delayed or late notice adversely affects or precludes an adequate in full defense of the claim this indemnification may be limited or consider waived.

ARTICLE XV **DEFAULT**

Default by Purchaser. If Purchaser fails to perform any of the material terms of this Agreement, all Deposits paid to Escrow Agent, regardless of whether such sum is hereinbefore identified as refundable, shall be paid to and retained by Seller as Seller's sole remedy as liquidated damages and not as a penalty for Purchaser's default. It is noted that failure to obtain fulfillment and contingencies is not a default unless such failure is caused by the intentional acts of Purchaser or failure of Purchaser to pursue in good faith commercially reasonable actions to obtain satisfaction of the contingencies. Seller and Purchaser agree that the damages resulting from Purchaser's failure to consummate this transaction would be very difficult to measure and such sum held by the Escrow Agent is agreed to and acceptable to Seller as full liquidated damages and not as a penalty.

Default by Seller. In accordance with this Agreement, in the event that Seller fails to perform any material terms or conditions of this Agreement and fails to cure same after due notice, Purchaser shall have the right to receive a return of any all Deposits, notwithstanding anything to

the contrary in this Agreement and even if such Deposits defined as non-refundable, and/or Purchaser shall be entitled to specific performance to include any costs, expenses or amounts required to be expended by Purchaser in obtaining title to the Property and perform Seller's obligations. If Purchaser determines that specific performance is not practical or legally available to Purchaser, Purchaser shall have the right to seek monetary damages from Seller permitted by law or equity including all reasonable attorneys' fees and costs (to include costs of litigation, discovery and expert fees and costs, where applicable).

Notice of Default. In the event either party reasonably believes the other party to be in default, prior to default occurring written notice shall be provided by the non-defaulting party to the other and there shall be a period of no less than ten (10) business days from receipt of notice to cure said default prior to default.

ARTICLE XVI **NOTICES**

15.1 **Notices.** Except as otherwise provided in this Agreement, all notices, demands, requests, consents, approvals and other communications (herein collectively called "Notices") required or permitted to be given hereunder, or which are to be given with respect to this Agreement, shall be in writing and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, or by overnight express courier, postage prepaid, addressed to the party to be so notified as follows:

If intended for Seller, to:	Swagat Hotels, LLC 2704 Deep Creek Dr. McHenry, MD 21541
With copies to:	Rena L. Strauss, Esq. Grant, Riffkin & Strauss, P.C. 15204 Omega Drive, Ste. 210 Rockville, Maryland 20850
If intended for Purchaser, to:	2704 Positive Associates, LP 1518 E. Chocolate Ave. Hershey, PA 17033
With copies to:	Brett M. Woodburn, Esq. Caldwell & Kearns PC

3631 N. Front St.
Harrisburg, PA 17110

Notice mailed by registered or certified mail shall be deemed received by the addressee three (3) days after mailing thereof. Notice personally delivered shall be deemed received when delivered. Notice mailed by overnight express courier shall be deemed received by the addressee two (2) days after mailing thereof. Either party at any time may change the address for notice to such party by mailing a Notice as aforesaid.

ARTICLE XVII
ADDITIONAL COVENANTS

Additional Covenants. In addition, the parties agree as follows:

(a) **Expenses.** Seller shall be responsible for the payment of all sales, income, bulk sales transfer, use and the State of Maryland tax. Purchaser and Seller shall split transfer and recordation taxes, and all escrow fees. Purchase shall pay for all title insurance premiums and charges for the issuance of the Title Policy for the payment of all recording fees, one hundred percent (100%) of any money lender's escrow fee. The fees and expenses of Seller's designated representatives, accountants and attorneys shall be borne by Seller, and the fees and expenses of Purchaser's designated representatives, accountants and attorneys shall be borne by Purchaser.

(b) **Brokerage.** Other than Seller's separate obligation to Ketan Patel, Seller's Broker, to whom only Seller shall owe a commission, Seller and Purchaser each hereby represent and warrant to the other that, neither has dealt with any broker or finder in connection with the transaction contemplated hereby, and each hereby agrees to indemnify, defend and hold the other harmless against and from any and all manner of claims, liabilities, loss, damage, attorneys' fees and expenses, incurred by either party and arising out of, or resulting from, any claim by any such broker or finder in contravention of its representation and warranty herein contained

(c) **Guest Baggage.** All baggage of guests who are still in the Hotel on the Closing Date, which has been checked with or left in the care of Seller shall be inventoried, sealed and tagged jointly by Seller and Purchaser on the Closing Date. Purchaser hereby indemnifies Seller against any claims, losses or liabilities in connection with such baggage arising out of the acts of omissions of Purchaser after the Closing Date. Seller hereby indemnifies Purchaser against any claim, losses or liabilities with respect to such baggage arising out of the acts or omissions of Seller prior to the Closing Date.

(d) **Safe Deposits.** Immediately after the Closing, Seller shall send written notice to

guests or tenants or other persons who have safe deposit boxes, advising of the sale of the Hotel to Purchaser and requesting immediate removal of the contents thereof or the removal thereof and concurrent re-deposit of such contents pursuant to new safe deposit agreements with Purchaser. Seller, at its own expense, shall have a representative present when the boxes are opened, in the presence of a representative of the Purchaser. Purchaser shall not be liable or responsible for any items claimed to have been in such boxes unless such items are so removed and re-deposited, and Seller agrees to indemnify and hold harmless Purchaser from and against any such liability or responsibility.

(e) **Tax Appeal Proceedings.** Seller shall be entitled to receive and retain the proceeds from any tax appeals or protests for tax fiscal years prior to the tax fiscal year in which the Closing Date occurs. In the event an application to reduce real estate taxes is filed for the period during which Seller was the owner of the Real Property, Seller shall be entitled to a re-proration of real estate taxes upon receipt of and based upon the reduction. Purchaser shall pay its pro rata share of the reasonable attorneys' fees directly related to the reduction as and when due which shall not exceed, in any event, the sums due for the current tax year's pro rated between the parties. Seller shall continue to process any pending appeals or protests with respect to the tax fiscal year in which the Closing Date occurs, and the net proceeds from any such proceedings, after payment of attorneys' fees, will be prorated between the parties, when received, as of the Closing Date.

(f) **Books and Records.** The transaction contemplated hereby includes the books and records of Seller (except those relating to performance of employees) pertaining strictly to the business of the Hotel. Purchaser covenants and agrees that such books and records will remain in the Hotel for examination and audit by Seller and its agents after the Closing as provided in this clause (f). Books and records not pertaining strictly to the business of the Hotel may be removed by Seller within a reasonable time after the Closing Date. Purchaser agrees to preserve all books and records, files and correspondence, for at least five (5) years after the Closing Date, and not to destroy or dispose of the same, for at least five (5) years after the Closing Date. Purchaser agrees to provide access to Seller and its representatives, to such books, records, files and correspondence at all reasonable times.

(g) **Hart-Scott-Rodino Act.** If it shall be determined that the within transaction is subject to the reporting requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. { 18(a) (1976) as amended (the "Hart Act") then notwithstanding anything to the contrary contained in Section 10.1(e) hereof, each party shall forthwith proceed to make the necessary filings, and take all other actions necessary to comply with the Hart Act and the rules and regulations thereunder. If such requirements have not been fulfilled by the Closing Date, then the Closing Date shall be adjourned until such requirements have been fulfilled, but not

more than sixty (60) days. If such requirements have not been fulfilled prior to the expiration of such sixty (60) day period, Seller or Purchaser, by notice to the other, may terminate this Agreement in which event the Deposit, and all interest earned thereon, shall be returned to Purchaser and neither party shall have any further Obligation or liability to the other party hereunder.

(h) **Survival of Covenants.** The representations, warranties, obligations, covenants, agreements, undertakings and indemnifications of Seller contained herein shall survive the Closing.

(i) **Purchaser's Investigation and Inspections.** Any investigation or inspection conducted by Purchaser, or any agent or representative of Purchaser, pursuant to this Agreement, in order to verify independently Seller's satisfaction of any conditions precedent to Purchaser's Obligations hereunder or to determine whether Seller's warranties are true and accurate, shall not affect (or constitute a waiver by Purchaser of) any of Seller's Obligations hereunder or Purchaser's reliance thereon.

(j) **Construction.** This Agreement shall not be construed more strictly against one party than against the other, merely by virtue of the fact that it may have been prepared primarily by counsel for one of the parties, it being recognized that both Purchaser and Seller have contributed substantially and materially to the preparation of this Agreement.

(k) **Publicity.** All notice to third parties and all other publicity concerning the transactions contemplated hereby shall be jointly planned and coordinated by and between Purchaser and Seller. None of the parties shall act unilaterally in this regard without the prior written approval of the other; however, this approval shall not be unreasonably withheld or delayed.

(l) **License Agreement.** Note that there are no transferrable Franchises or Licenses. Any application for any franchise is the responsibility of the Purchaser and any expense regarding such application and cost associated with obtaining the franchise including product improvement plan will be borne by the Purchaser. Seller must provide Purchaser appropriate documentation signed by Seller's Franchisor which releases Purchaser from any liability regarding said franchise.

(m) **General.** This Agreement may be executed in any number of counterparts, each of which shall constitute an original but all of which, taken together, shall constitute but one and the same instrument. This Agreement (including all exhibits hereto) contains the entire

agreement between the parties with respect to the subject matter hereof, supersedes all prior understandings, if any, with respect thereto and may not be amended, supplemented or terminated, nor shall any Obligation hereunder or condition hereof be deemed waived, except by a written instrument to such effect signed by the party to be charged. This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland. The warranties, representations, agreements and undertakings contained herein shall not be deemed to have been made for the benefit of any person or entity, other than the parties hereto and their permitted successors and assigns. Seller has no right to assign its rights or to delegate its duties hereunder. Captions used herein are for convenience only and shall not be used to construe the meaning of any part of this Agreement.

(n) **Right to Cure.** In the event either party reasonably believes the other party to be in default, prior to default occurring written notice shall be provided by the non-defaulting party to the other and there shall be a period of no less than ten (10) business days to cure said default prior to default.

(o) **Time of the Essence.** Time for the Closing and all matters referred to or for the performance of any obligations of this Agreement are hereby agreed to be of the essence.

(p) **Headings.** The headings used in this Agreement are used for administrative purposes and do not constitute matters to be considered and construed in the terms of the Agreement.

(q) **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, transfers and assigns.

(r) **Time Measurement.** The time period provided in this Agreement shall end on a Saturday, Sunday or federal holiday shall extend to 5:00 p.m. of the next full business day.

(s) **Amendment.** This Agreement shall not be altered, amended, changed or modified unless in writing by the parties hereto.

(t) **Non-Waiver.** Failure of either party to insist upon strict compliance of the other with regard to any terms, covenants, or conditions shall not be deemed to waive such terms, conditions and covenants unless otherwise provided herein.

(u) **Governing Law.** With regard to the real estate, this Agreement shall be governed and construed in accord with the laws of the State of Maryland. Otherwise, this Agreement shall

be governed by and construed in accord with the laws of the Commonwealth of Pennsylvania as applicable to contracts.

(v) **Severability.** If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement remain valid, binding and enforceable.

(w) **FIRPTA and State Taxes.**

(i) Seller agrees to furnish Purchaser with an executed Certification in the form attached hereto as Exhibit R ("FIRPTA Certificate") and such other evidence as Purchaser may reasonably request, to establish that Seller is not a foreign person for the purpose of Section 1445 of the Internal Revenue Code of 1986, as amended ("Section 1445"). In the event that Seller does not furnish such Certification or a qualifying statement for the U.S. Treasury Department that the transaction is exempt from the withholding requirements of Section 1445, Seller agrees that the Escrowee shall be directed to pay such amount required by law to the Internal Revenue Service in accordance with the laws and regulations regarding the withholding requirements of Section 1445.

(ii) Seller shall notify the Department and the Maryland Department of Labor of the pending sale on or before thirty (30) days after expiration of the Inspection Period and shall deliver copies of such notices to Purchaser pursuant to Section 15.1 hereof. The parties shall withhold in the Holdback any amounts required by the Department or the Department of Labor until the appropriate agency furnishes Seller and Purchaser with a letter advising that all sales and income taxes and contributions for unemployment compensation due to the State of Maryland from the Seller have been paid and releasing Purchaser from any withholding requirements or the period of time to furnish such letter in accordance with the applicable statutes of the State has expired, whichever is earlier.

(x) **Other Documents.** The parties mutually agree to cooperate in the execution of any other documents reasonably requested to advance and/or properly complete the transactions and the respective obligations of each party.

IN WITNESS WHEREOF, the parties hereto have executed or caused this Agreement to be executed, all as of the day and year first above written.

SELLER:

SWAGAT HOTELS, LLC,
a Maryland Limited Liability Company

By: ABC [Signature]

Its: General Partner

PURCHASER:

2704 POSITIVE ASSOCIATES, LP,
A Pennsylvania limited partnership

By: Sai Blessing Hospitality, LLC,
its general partner

By: Paritosh Mehta, Authorized Member
Paritosh Mehta, Authorized Member

EXHIBIT A

LEGAL DESCRIPTION OF THE LAND

Property Address: 2704 Deep Creek Drive, McHenry, MD 21541
Property Tax ID: 18-055228

First: BEGINNING at an iron pin being the Southeast corner of Parcel #1, and running with the Northeast margin of Old Route 219, South 43° 53' 30" East 71.89 feet to an iron pin, then South 58° 15' 15" East 88.30 feet to an iron pin, then North 31° 05' East 227.20 feet to an iron pin standing on the Southwest margin of a 74-foot right-of-way (measured from the centerline of road) of new U.S. Route 219, then running with the said Southwest margin, North 58° 55' West 158.75 feet to an iron pin, the Northeast corner of Parcel #1, then with the boundary between Parcels 1 and 2, South 31° 05' West 209.50 feet to the point of beginning, containing 0.8 acres more or less.

Second: BEGINNING at an iron pipe standing 19 feet Northeast of the centerline of old Route 219, said pipe being a common corner between Oscar and Flora Savage and the 0.75-acre deed to David E. Bowman and recorded in Liber 394, folio 457, one of the Land Records of Garrett County, Maryland running then with the Northeast margin of old Route 219, South 39° 02' 30" East 131.60 feet to an iron pipe, then South 43° 53' 30" East 47.70 feet to an iron pin, then North 31° 05' East 209.50 feet to an iron pin on the Southwest margin of a 74-foot right of way (measured from centerline of road) of new Route 219 then with said Southwest margin, North 58° 55' West 211.25 feet to an iron pipe, then with the boundary between Oscar Savage and David Bowman, South 18° 25' West 162.91 feet to the point of beginning, containing 0.8 acre, more or less.

Third: BEGINNING at a iron pin standing Northeast 19 feet from the centerline of old Route 219, said pin being the Southeast corner of Parcel #2 and running with the Northeast margin of Old Route 219, South 68° 29' 15" East 75.33 feet to an iron pin, then South 72° 58' 30" East 101.40 feet to an iron pin, also the Southwest corner of the 1.25 acres deeded to Gary King and Debra King and recorded in Liber 387, folio 769, one of the Land Records of Garrett County, Maryland, then with the boundary between the King-Savage properties, North 14° 29' 30" East 197.92 feet to a stake and stone pile set on the Southwest margin of a 74-foot right-of-way (measured from centerline) of New U.S. Route 219, then running with said margin, North 58° 55' West 115.50 feet to an iron pin, the Northeast corner of Parcel #2, then with boundary between Parcels 2 and 3, South 31° 05' West 227.50 feet to the point of beginning, containing 0.7 acres more or less.

EXCEPTING, however, that portion, if any, of the above-described real estate which was heretofore conveyed to the State of Maryland for use of the State Roads Commission, by deed dated April 7, 1967 and recorded in Liber No. 278, folio 348, one of the Land Records of Garrett County, Maryland, as shown on Plat number's 21545, 21546 and 31723, filed in the Plat Case File Numbers 204, 203, and 189 in the Office of the Clerk of the Circuit Court for Garrett County, Maryland.

EXHIBIT B

EXCLUDED ASSETS

**[LIST ASSETS (REAL, PERSONAL, FIXTURES, TANGIBLES AND INTANGIBLES)
TO BE RETAINED BY SELLER PER TERMS OF HOTEL PURCHASE AND SALE
AGREEMENT TO WHICH THIS EXHIBIT B IS ATTACHED]**

FRANCHISE AGREEMENT WITH QUALITY/CHOICE HOTELS EXCLUDED

Four vending machines are owned by LJ Vending and are not part of the hotel property.

EXHIBIT C

PERMITTED EXCEPTIONS

[LIST ALL LIENS, ENCUMBRANCES, RESTRICTIONS AND OTHER MATTERS AFFECTING TITLE TO THE PROPERTY, WHETHER CURRENTLY REFLECTED ON THE TITLE INSURANCE COMMITMENT OR POLICY FOR THE PROPERTY, WHICH ARE DEEMED ACCEPTABLE UNDER THE HOTEL PURCHASE AND SALE AGREEMENT TO WHICH THIS EXHIBIT C IS ATTACHED]

Nothing on current policy.

EXHIBIT D

SUBMITTED FINANCIAL STATEMENTS

**[ATTACH CURRENT FINANCIAL STATEMENTS AND RECORDS OF THE HOTEL
(TO BE) DELIVERED BY SELLER TO PURCHASER]**

To the extent not previously provided, all the materials, tax returns, responses to inquiries and documentation as set forth in the Agreement.

EXHIBIT E

ALLOCATION OF PURCHASE PRICE

The Purchase Price is allocated for accounting and tax purposes as set forth below. These valuations and allocations constitute fair market value of each category of assets and constitute the value of each category in filing all tax returns and preparing financial statements. Should a taxing authority propose a different allocation or valuation, each party shall allow the other party to participate in any controversy at its expense and the parties shall each exercise their best efforts to sustain the allocations and valuations set forth below.

The parties hereto agree that, upon closing hereunder, the Purchase Price shall be allocated to the components of the Property as follows:

Land	\$200,000.00
Building	\$700,000.00
FF&E	\$300,000.00
Land Improvements	\$200,000.00
Total	\$1,400,000.00

All parties must sign Tax Form 8594.

EXHIBIT F

PERMITS

[LIST ALL PERMITS, LICENSES, FRANCHISES, CONSENTS, AUTHORIZATION AND APPROVALS USED IN THE OWNERSHIP AND OPERATION OF THE HOTEL – EXCLUDE ANY SUCH NON-ASSIGNABLE OR TRANSFERABLE PERMITS]

Note that there are no transferrable Franchises or Licenses. Any application for any franchise is the responsibility of the Purchaser and any expense regarding such application and cost associated with obtaining the franchise including product improvement plan will be borne by the Purchaser.

Food and Beverage License Permit for Breakfast
Outdoor Pool Permit

EXHIBIT G

HOTEL CONTRACTS AND COMMISSIONS

**[LIST ALL EXISTING CONTRACTS TO BE TRANSFERRED TO PURCHASER AND
(MATERIAL) COMMISSIONS DUE]**

None

EXHIBIT H

EMPLOYEE AND EMPLOYMENT CONTRACTS

**[LIST ALL INDIVIDUAL OR GROUP EMPLOYMENT AGREEMENTS,
COLLECTIVE BARGAINING AND LABOR UNION AGREEMENTS]**

None

EXHIBIT I

MATERIAL BOOKINGS

[LIST ALL PENDING CONTRACTS]

None. Other future bookings can be confirmed via Choice (franchise).

To be provided to Purchaser current future bookings five (5) business days after signing of the Agreement and supplemented thereafter as reasonably requested prior to closing

EXHIBIT J

SPACE LEASES AND COMMISSIONS

**[LIST EXISTING KIOSK AND SPACE LEASES, OCCUPANCY AGREEMENTS AND
LICENSES AND COMMISSION ARRANGEMENTS AND AGREEMENTS]**

LJ Vending provides four machines in hotel. They collect 100% of revenues. Can be terminated at any point.

EXHIBIT J-1

SPACE LESSEE ESTOPPEL LETTER

**[ATTACH COPY OF FORM OF ESTOPPEL LETTER FROM LESSEES, TENANTS,
LICENSEES AT THE HOTEL TO BE DELIVERED BY SELLER TO PURCHASER AT
OR PRIOR TO CLOSING]**

None.

EXHIBIT K

NOTICES OF VIOLATIONS

**[LIST ALL NOTICES (WRITTEN OR ORAL) RECEIVED FROM ANY
GOVERNMENTAL AGENCY, INSURANCE COMPANY OR PRIVATE PARTY
REFLECTING OR ASSERTING ANY VIOLATIONS]**

None.

EXHIBIT L

PENDING OR THREATENED LITIGATION

**[DESCRIBE ALL PENDING LITIGATION AND ANY THREATS
OF LITIGATION OR ACTION RECEIVED WITH RESPECT TO THE HOTEL, ITS
OWNERSHIP, OPERATION OR SALE]**

None.

EXHIBIT M

DOCUMENTS

[LIST DOCUMENTS PER DELIVERY REQUIREMENTS SET FORTH IN THE HOTEL PURCHASE AND SALE AGREEMENT TO WHICH THIS EXHIBIT MIS ATTACHED AS MODIFIED PER SPECIFIC TERMS OF TRANSACTION]

To be provided by Seller's attorney, within five (5) business days after execution of the Agreement.

EXHIBIT N

IMPOSITIONS

[LIST ALL APPLICABLE TAXES AND FEES BY CATEGORY]

6% sales tax

6% occupancy tax

EXHIBIT O

HOTEL NAMES

**[LIST ALL HOTEL NAMES USED IN THE OPERATION OF THE HOTEL AND TO
BE TRANSFERRED TO PURCHASER]**

**None. Just Quality Inn but that is dependent on buyer and if he plans to continue the flag.
Also not up to seller.**

EXHIBIT P

EMPLOYEE BENEFIT PLANS

**[LIST ALL EMPLOYEE BENEFIT, RETIREMENT, INSURANCE AND WELFARE
PLANS]**

None

EXHIBIT Q

ESCROW INSTRUCTIONS

[SEE ATTACHED]

To be provided by Seller's attorney in a timely manner. Escrow being held by Purchaser's Title Agent, J. Gregory Law Firm, LC.

SAMPLE FORM

TITLE PROFORMA

To be provided prior to closing inspection period.

EXHIBIT R

FIRPTA CERTIFICATE

[SEE ATTACHED]
FIRPTA AFFIDAVIT

Section 1445 of the Internal Revenue Code provides that a transferee of a United States real property interest must withhold tax if the transferor is a foreign person. For U.S. tax purposes (including Section 1445 of the Code), the owner of a disregarded entity (which holds legal title to a U.S. real property interest under local law) will be the transferor of the property and not the disregarded entity. To inform the transferee that withholding of tax is not required upon the disposition of a United States real property interest by ____, a(n) _____ undersigned hereby certifies the following on behalf of Seller: (“Seller”), the

1. Seller is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations); and

2. Seller is not a disregarded entity as defined in Section 1.1445-2(b)(2)(iii) of the Income Tax Regulations; and

3. Seller’s U.S. employer tax identification number is __; and

4. Seller’s office address is _____.

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

[signature page follows]

[signature page for FIRPTA]

The undersigned declares that she/he has examined this certification and to the best of her/his knowledge and belief it is true, correct and complete, and she/he further declares that she/he has authority to sign this document on behalf of Seller.

Dated: _____, 2017

SELLER:

By: _____ Name: _____

Title: _____

STATE OF _____ §
§ COUNTY OF _____ §

I, _____ a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that _____, the _____ of _____, personally known to me, appeared before me this day in person and severally acknowledged that in such capacity he/she signed and delivered the said Instrument as his/her free and voluntary act and as the free and voluntary act and deed of said trust, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this _____ day of _____, 2017.

Notary Public

My Commission expires:

AMENDMENT TO HOTEL PURCHASE AND SALE AGREEMENT

This Amendment to Hotel Purchase and Sale Agreement (the "Agreement") is made this ___ day of October 2017 by and between Swagat Hotels, LLC ("Seller") and 2704 Positive Associates, LP, ("Purchaser" or "Buyer").

WHEREAS, Purchaser and Seller did enter into the Agreement on or about September 11, 2017 for the purchase of the Quality Inn Deep Creek in McHenry, MD, to include all operating equipment, consumables, furniture, fixtures and equipment, and miscellaneous hotel supplies, all as more particularly set forth in the Agreement; and

WHEREAS, the parties wish to amend the Agreement but only as specifically set forth in this Amendment.

NOW THEREFORE, Seller and Purchaser in consideration of the promises and mutual covenants and agreement as set forth in the Agreement and this Amendment, the receipt and sufficiency of which is hereby acknowledged, each intending to be legally bound hereby do covenant and further agree as follows:

1. The recitals set forth above, to the extent not inconsistent with the following provisions, contained in the body of this Amendment are incorporated herein by reference thereto. Likewise the terms and provisions of the Agreement, to the extent not inconsistent with the following provisions are also incorporated herein by reference thereto as if fully set forth herein.

2. Article III Purchase Price is amended to reduce the Purchase Price to One Million Three Hundred Thousand (\$1,300,000) Dollars. The revision to the allocation found on Exhibit E is as follows:

Land	\$200,000.00
Building	\$650,000.00
FF&E	\$250,000.00
Land Improvements	<u>\$200,000.00</u>
Total	\$1,300,000.00

All parties must sign Tax Form 8594.

3. Article III is further amended to provide that the Deposit of \$25,000 shall not become firm and non-refundable until the Order of the Bankruptcy Court approving the sale as set forth in the Agreement, as amended, is issued. If Closing is not scheduled to occur 10 days or less from the distribution of the Bankruptcy Court approval or satisfaction of the other contingencies stated in Article II of the Agreement, Buyer shall promptly make the Further Deposit to the Title Company upon receipt of the Bankruptcy Court approval Order.

4. Article IV Inspection Period is amended to now provide that the Inspection Period commenced September 27, 2017 at which time certain, but not all, documents identified in the Agreement were provided by Seller to Purchaser. The Inspection Period will therefore conclude and end on October 27, 2017. Purchaser waives delay of the

commencement of the Inspection Period until all documents are final and furthermore waives Seller’s delivery of any further or additional documents required other than any notice or change in the use or condition of the Improvements and timely furnishing of all material information regarding the ongoing operations to include reservations. Such waiver does **not** include any waiver or change in Seller’s obligations with regard to the representations and warranties as contained in the Agreement and Seller’s obligations thereto. Furthermore, any materials or information required to be provided for Closing relating to tax contingency or otherwise are NOT waived and must be timely provided by Seller.

5. Seller represents and warrants that any and all contracts for goods and/or services with any third party vendor, other than the lease for the juice machine, will terminate on the Closing Date, unless otherwise specifically identified by Seller in writing.

6. Seller reaffirms its obligations set forth in Article XI to, among other things, continue to operate and maintain the Hotel substantially in accordance with its present standards and operations.

7. All other terms, conditions, obligations, contingencies as contained in the Agreement are hereby affirmed.

8. **COUNTERPARTS:** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all counterparts when signed and exchanged by both parties shall constitute one agreement. To facilitate execution of this Agreement, the parties may execute and exchange by telephone facsimile or by exchange electronically counterparts of the signature pages and such facsimile signatures shall be legally binding as if original signatures had been contained.

IN WITNESS WHEREOF, the parties hereto have executed or caused this Agreement to be executed, all as of the day and year first above written.

SELLER:
SWAGAT HOTELS, LLC
A Maryland Limited Liability Company

By: _____
Its: _____

PURCHASER:
2704 POSITIVE ASSOCIATES, LP,
A Pennsylvania limited partnership
By: Sai Blessing Hospitality, LLC its general partner

By: _____
Paritosh Mehta, Authorized Member