

5.4.16 Hotel Guests. A current list of all transient hotel guests occupying one or more hotel rooms at the Hotel together with a current description of all advance bookings of rooms, special events, banquet and similar functions and any ongoing promotions that will continue after Closing.

5.4.17 Property of Hotel Guests. An inventory prepared by representatives of Purchaser and Seller as of the Adjustment Point of all baggage parcels, laundry, valet packages and other property of guests checked or left in the care of the Hotel by guests then or formerly in the Hotel (excluding property in the safe deposit boxes), as well as all items in the Hotel lost and found. All baggage of Hotel guests which has been checked with or left in the care of Seller shall be inventoried, sealed and tagged jointly by Seller and Purchaser immediately after the Closing Date. Seller shall indemnify and hold Purchaser harmless for loss or damage related to such items prior to the Closing Date, and Purchaser shall indemnify and hold Seller harmless for loss or damage related to such items on and after the Closing Date.

5.4.18 A written receipt of payment of any commissions or other sums due the Seller's Broker referenced in Section 9.

5.4.19 The Estoppels (described in Section 12);

5.4.20 Notice to Vendors. Seller and Purchaser shall cooperate to notify, in writing, all vendors under the Contracts together with other vendors with whom Seller has agreements relating to the Property ("Vendors") of the change in ownership of the Property. If not previously delivered to Purchaser by Seller, Seller shall deliver to Purchaser, within one week from the Closing Date, the names and addresses of all Vendors.

5.4.21 Bookings. Prior to Closing, and upon request of Purchaser, Seller will obtain from Manager and deliver to Purchaser (i) all financial information related to the operations on the Property, including without limitation, all revenue and expense information and (ii) a complete list of all bookings related to the Property.

5.4.22 All keys to the Property.

5.4.23 All books and records, invoices, financial records, notices, correspondence and other such materials kept, prepared, or in the possession or control of Seller in its capacity as declarant under the Tower Declaration.

5.4.24 Insurance. Certificate of Insurance from the Owners of each of the Lots (as such term is defined in the Tower Declaration) not being conveyed by either this Agreement or the Other Purchase Agreement naming Purchaser as an Additional Named Insured thereunder and evidencing the coverage amounts required by the terms of the Tower Declaration.

5.4.25 Other Instruments. Such other instruments or documents as are necessary to effectuate the Closing in the reasonable judgment of the Seller and Purchaser.

5.5 Purchaser's Performance. At the Closing, Purchaser (i) will cause the balance of the Purchase Price to be paid to Seller; (ii) will execute and deliver the Assignment and Assumption of Assumed Contracts, the Assignment and Assumption of Rental Management Agreements, the Bill of Sale, the General Assignment, the Assignment and Assumption of Leases, if any, the Assignment and Assumption of Declarant's Rights and Obligations Under the NT/ST Declaration, the Assignment and Assumption of Declarant's Rights and Obligations Under the Tower Declaration, the Preliminary Closing Statement, and any other document necessary or desirable for the consummation of the transaction contemplated by this Agreement.

5.6 Evidence of Authority; Miscellaneous. Seller and Purchaser will deliver to the Title Company and each other such evidence or documents as may reasonably be required by the Title Company or either party hereto evidencing the power and authority of Seller and Purchaser and the due authority of, and execution and delivery by, any person or persons who are executing any of the documents required hereunder in connection with the sale of the Property. Seller and Purchaser will execute and deliver such other documents as are reasonably required to effect the intent of this Agreement. The exhibits to this Agreement shall be updated as necessary to be correct as of the Closing Date, for purposes of completion of the various items to be delivered hereunder.

5.7 Possession. Seller shall deliver possession of the Property to Purchaser at Closing free from all tenancies other than tenants pursuant to the Leases (unless such Leases are terminated pursuant to this Agreement) and transient Hotel guests.

5.8 Liquor Licenses. Purchaser acknowledges that Seller does not own the Liquor Licenses and that Seller does and will not have the right to manage the service of alcoholic beverages at the Property. After the Closing, Purchaser will notify or instruct the Hotel manager to notify the appropriate authorities of the change of ownership of the Property to the extent Manager is obligated to do so under applicable Legal Requirements.

6. Prorations of Taxes and Other Expenses.

6.1 Closing Statements.

No later than three (3) Business Days prior to Closing, Seller shall prepare and deliver to Purchaser for Purchaser's approval a preliminary closing statement (the "**Preliminary Closing Statement**"), which shall set forth Seller's best estimate of the amounts of the items to be adjusted and prorated under this Agreement. The Preliminary Closing Statement, once agreed upon, shall be executed by Seller and Purchaser at Closing.

By no later than ninety (90) days following the Closing Date, Purchaser shall deliver a final report (the "**Final Closing Statement**") to Seller setting forth its determination (and all documents supporting such determination, or necessary or helpful in connection with such determination) of all adjustments to the Preliminary Closing Statement which it believes are necessary to complete the prorations in accordance with this Agreement. Purchaser's failure to provide a Final Closing Statement within such ninety (90) day period shall constitute a waiver by Purchaser of any monies owed to it with respect to prorations. Within one hundred twenty (120) days after the Closing Date, Seller may deliver a Final Closing Statement, if Purchaser has not

timely done so, or may notify Purchaser in writing that it seeks an adjustment in such Final Closing Statement, which notice shall specify in reasonable detail, the items that it seeks to adjust and the reasons therefor. Purchaser and Seller shall cooperate in good faith to reconcile all items included on the Final Closing Statement, and once the Final Closing Statement is finally determined, Seller or Purchaser, as the case may be, shall pay the other sums necessary to account for the differences in the Preliminary Closing Statement and Final Closing Statement. Seller's failure to provide such notice to Purchaser within one hundred twenty (120) days after the Closing Date shall constitute Seller's acceptance of the Preliminary Closing Statement or Final Closing Statement delivered by Purchaser, as applicable.

The provisions of this Section 6 shall be Surviving Covenants.

6.2 Prorations. The items of revenue and expense set forth in this Section 6.2 shall be prorated between Seller and Purchaser (the "**Prorations**") as of 11:59 p.m. on the day preceding the Closing (the "**Adjustment Point**"), or such other time expressly provided in this Section 6.2, so that the Closing Date is a day of income and expense for Purchaser.

6.2.1 Real and Personal Property Taxes. All taxes on Real Property or Personal Property (which shall include all ad valorem taxes, special or general assessments and personal property taxes), shall be prorated as of the Adjustment Point between Seller and Purchaser. If the amount of any such taxes is not ascertainable on the Closing Date, the proration for such taxes shall be based on the most recent available tax bill; provided, however, that after the Closing, Seller and Purchaser shall reprorate the taxes and pay any deficiency in the original proration to the appropriate party promptly upon receipt of the actual bills for the relevant taxable period.

6.2.2 Other Taxes. The parties acknowledge that certain taxes and assessments accrue and are payable to the various local governments by any business entity operating a hotel and its related facilities. Included in those taxes and assessments may be business and occupation taxes, retail sales taxes, gross receipts taxes, liquor taxes, and other special lodging or hotel taxes and assessments. For purposes of this Agreement, all of such taxes and assessments (expressly excluding taxes and assessments covered in 6.2.1 or corporate franchise taxes, and federal, state and local income taxes) shall be allocated between Seller and Purchaser such that those attributable to the period prior to the Adjustment Point shall be allocable to Seller and those attributable to the period after the Adjustment Point shall be allocable to Purchaser (with the attribution of such taxes and assessments hereunder to be done in a manner consistent with the attribution under this Agreement of the applicable revenues on which such taxes and assessments may be based). Seller shall be solely responsible for payment of such taxes and assessments with respect to the period prior to the Adjustment Point, and Purchaser shall be solely responsible for payment of such taxes and assessments with respect to the period after the Adjustment Point; provided, that, the parties may make an estimate of the amount of Seller's share of such taxes and assessments accrued but not paid up to the Adjustment Point and credit the amount so estimated to Purchaser at Closing, and in such case, to the extent of such credit, Purchaser shall be responsible for the payment of such taxes and assessments when due after the Closing Date.

6.2.3 Management Agreement. All payments under the Hotel Agreements attributed to the period prior to Closing shall be the responsibility of Seller and if not terminated all payments attributed to any period after Closing shall be the responsibility of Purchaser.

6.2.4 Assumed Contracts. Any amounts prepaid, accrued or due and payable under the Assumed Contracts shall be prorated as of the Adjustment Point between Seller and Purchaser, with Seller being credited for amounts prepaid, and Purchaser being credited for amounts accrued and unpaid as of the Adjustment Point. Purchaser shall receive a credit for all deposits held by Seller under the Assumed Contracts (together with any interest thereon) which are not transferred to Purchaser, and Purchaser thereafter shall be obligated to refund or apply such deposits in accordance with the terms of such Assumed Contracts. Seller shall receive a credit for all deposits made by Seller under the Assumed Contracts (together with any interest thereon) which are transferred to Purchaser or remain on deposit for the benefit of Purchaser.

6.2.5 Licenses and Permits. All amounts prepaid, accrued or due and payable under any Licenses and Permits and transferred to Purchaser shall be the responsibility of Purchaser. Seller shall receive a credit for all deposits made by Seller under such Licenses and Permits (together with any interest thereon) which are transferred to Purchaser or which remain on deposit for the benefit of Purchaser.

6.2.6 Utilities. All utility services shall be prorated as of the Adjustment Point between Seller and Purchaser. The parties shall use commercially reasonable efforts to obtain readings for all utilities as of the Adjustment Point. If readings cannot be obtained as of the Closing Date, the cost of such utilities shall be prorated between Seller and Purchaser by estimating such cost on the basis of the most recent bill for such service; provided, however, that after the Closing, the parties shall re-prorate the amount for such utilities and pay any deficiency in the original proration to the appropriate party promptly upon receipt of the actual bill for the relevant billing period. Seller shall receive a credit for all deposits transferred to Purchaser or which remain on deposit for the benefit of Purchaser with respect to such utility contracts.

6.2.7 Security Deposits/Advance Rent. To the extent not terminated at or prior to Closing, Purchaser shall receive a credit against the Purchase Price at Closing for all security deposits, if any, outstanding under the Leases.

6.2.8 Bookings. Seller will transfer or credit to Purchaser the amount of (or assign to Purchaser any deposits held by Manager for) any prepaid expenses and refundable deposits as of the Adjustment Point in connection with any Occupancy Agreement or Guest Booking that relates to periods after the Adjustment Point. Any post-Closing prepayments made to Seller on confirmed reservations for dates after the Adjustment Point will be forwarded to Purchaser within fifteen (15) days after receipt.

6.2.9 Gift Certificates, etc. Purchaser shall receive a credit at closing equal to the amount of the outstanding gift certificates, coupons, or vouchers if any,

issued by Seller and relating to the Hotel. Seller shall produce an updated list of all such Gift Certificates, vouchers and coupons to Purchaser at least five (5) days prior to Closing.

6.2.10 Guest Revenues. Administrative Fee revenues from the Hotel guest rooms and revenue from facilities (other than revenues described in Subsection 6.2.11) occupied on the evening immediately preceding the Closing Date, including any sales taxes, room taxes and other taxes charged to guests in such rooms, all parking charges, sales from mini-bars, in-room food and beverage, telephone, facsimile and data communications, in-room movie, laundry, and other service charges allocable to such rooms with respect to the evening immediately preceding the Closing Date, shall be divided equally between Seller and Purchaser (where a complete meeting package ("CMP") guest is staying on a CMP rate, the food and beverage revenues shall be allocated based on whether the applicable meal or service occurred before or after the Adjustment Point); provided, however, that to the extent that Manager records in the ordinary course the times at which food and beverage sales, telephone, facsimile or data communication, in-room movie, laundry, and other services are ordered by guests, then the same shall be allocated between Seller and Purchaser based on when orders for the same were received, with orders originating prior to the Adjustment Point being allocable to Seller, and orders originating after the Adjustment Point being allocable to Purchaser. Seller shall receive a credit for the cost of all retail merchandise and items of food and beverage equal to Seller's cost therefor (which amount includes, but is not limited to, credit for Seller's funds, if any, escrowed by Manager for purchase of alcoholic beverages). All revenues from restaurants and other service operations conducted at the Property shall be allocated based on whether the same accrued before or after the Adjustment Period as described in the preceding sentence. In the event that an amount less than the total amount due from a guest is collected and such guest continued in occupancy after the Adjustment Period, such amount shall be applied first to any amount owing by such person to the Seller and thereafter to such person's amounts accruing to the Purchaser.

6.2.11 Property Revenues. (a) Revenues from conferences, receptions, meetings, and other functions occurring in any conference, banquet or meeting rooms in the Hotel, including usage charges and related taxes, food and beverage sales, valet parking charges, equipment rentals and telecommunications charges, shall be allocated between Seller and Purchaser, based on when the function therein commenced, with:

(i) one-day functions commencing prior to the Adjustment Point being allocable to Seller,

(ii) functions commencing after the Adjustment Point being allocable to Purchaser, and

(iii) multi-day functions commencing prior to the Adjustment Point being allocated between Seller and Purchaser on a day by day basis as if such functions were one-day functions pursuant to (i) and (ii) above or, to the extent any such revenue cannot be allocated on a per day basis, then according to when the event commences and is scheduled to end. For example, if such a function is scheduled to last ten days and the Adjustment Point occurs on the fifth (5th) day, Seller and Purchaser would divide such revenues equally.

(b) All other Revenue from the Property owing to the Hotel Lot (as such term is defined in the Tower Declaration), including, without limitation, all parking revenue, storage locker revenue and other such revenue of any nature shall be allocated as of the Closing Date between Seller and Purchaser as set forth in this Agreement.

6.2.12 Deliberately Deleted

6.2.13 Trade Payables. Except to the extent an adjustment or proration is made under another subsection of this Section 6.2, or to the extent prohibited by or inconsistent with the Bankruptcy Code or an order of the Bankruptcy Court, (i) Seller shall pay in full prior to the Closing all amounts payable to vendors or other suppliers of goods or services for the Hotel (the "Trade Payables") which are due and payable as of the Closing Date for which goods or services have been delivered to the Hotel prior to Closing, and (ii) Purchaser shall receive a credit for the amount of such Trade Payables which have accrued, but are not yet due and payable as of the Closing Date, and Purchaser shall pay all such Trade Payables accrued as of the Closing Date when such Trade Payables become due and payable unless otherwise permitted by the Bankruptcy Court Approval; provided, however, Seller and Purchaser shall reprorate the amount of credit for any Trade Payables and pay any deficiency in the original proration to the other party promptly upon receipt of the actual bill for such goods or services. Seller shall receive a credit for all advance payments or deposits made with respect to Hotel Inventory and Supplies ordered, but not delivered to the Hotel prior to the Closing Date, and Purchaser shall pay the amounts which become due and payable for such Hotel Inventory and Supplies, which were ordered prior to Closing and not delivered to the Hotel prior to the Closing Date. Seller shall receive a credit for all Hotel Inventory and Supplies at the Hotel as of the Adjustment Point.

6.2.14 Cash on Hand; Working Capital. Seller shall receive a credit for all cash on hand or on deposit in any house bank at the Hotel which shall remain on deposit for the benefit of Purchaser. Any working capital, reserve and similar accounts established by Seller for the benefit of Manager pursuant to the Management Agreement may be closed by Seller, and any sums contained in such accounts shall be retained by Seller.

6.2.15 Assessments and Reserves. To the extent there are any delinquent or unfunded assessment accounts, Purchaser shall assume responsibility for the collection of any and all delinquent assessments and or capital reserve accounts and acknowledges that Seller shall have no liability, responsibility or obligation monetarily or otherwise to fund or to pay or to reimburse Purchaser for any assessments or reserve accounts, if any, that are not fully funded prior to or at Closing. Seller at Closing shall assign to Purchaser and Purchaser shall accept an Assignment and Assumption of all of Seller's accounts receivable for delinquent assessments, unfunded amounts and or reserve accounts and Seller shall receive a credit for any advance payments of assessments or reserves held by Seller in commingled or other account under the Tower Declaration or the NT/ST Declarations. A list of all delinquent assessment amounts or unfunded amounts, including, without limitation, all amounts owed by either Seller, as Declarant under the Tower Declaration, or as the Owner of the other Lots under the Tower Declaration is set forth on Exhibit BB attached hereto.

6.2.16 Other Adjustments and Prorations. All other items of income and expense as are customarily adjusted or prorated upon the sale and purchase of a hotel property similar to the Property shall be adjusted and prorated between Seller and Purchaser accordingly. Nothing contained in this Section 6 shall prejudice the rights, if any, of Seller or Purchaser, as applicable, to recover any amount allocated to such party under this Section 6 from any third party.

7. Loss Due to Condemnation or Casualty.

7.1 Loss Due to Condemnation. In the event of any condemnation or eminent domain proceedings for any public or quasi-public purposes at any time prior to the Closing, resulting in a taking of any portion of the Property (prior to Closing thereon) which taking, in Purchaser's judgment, materially and adversely impacts the use and operation of the Property, Purchaser shall have the option to be exercised within ten (10) Business Days from Purchaser's receipt of notice of such proceedings (i) to cancel this Agreement whereupon the Deposit, together with all accrued interest, shall be immediately returned to the Purchaser and the parties shall thereupon be relieved of any and all further responsibility hereunder and neither party shall have any further obligation or liability to the other except as expressly provided herein otherwise; or (ii) to close the transactions contemplated by this Agreement, in which event the Purchase Price shall not be reduced, provided, however, that Seller shall assign any applicable condemnation or eminent domain award to Purchaser which Seller receives after the Closing Date. The terms and provisions of this Section shall survive the Closing.

7.2 Casualty Risk of Loss. In the event of damage or destruction prior to the Closing, in Purchaser's judgment, to any immaterial or insubstantial portion of the Property, the parties hereto shall consummate the sale of the Property pursuant to this Agreement, provided that Seller shall assign to Purchaser its right under any insurance policy covering such damage or destruction to the proceeds payable on account of such damage or destruction and the amount of any deductible under the insurance policy shall be credited against the Purchase Price at time of Closing. In the event of damage or destruction prior to the Closing to the Property or any portion thereof, greater than five percent (5%) of the Property, Purchaser shall have the option to be exercised within ten (10) Business Days from Purchaser's receipt of notice of such event (i) to cancel this Agreement whereupon the Deposit, together with all accrued interest, shall be immediately returned to the Purchaser and the parties shall thereupon be relieved of any and all further responsibility hereunder and neither party shall have any further obligation or liability to the other except as expressly provided herein otherwise; or (ii) to close the transactions contemplated by this Agreement, in which event the Purchase Price shall not be reduced, provided that Seller shall assign to Purchaser its right under any insurance policy covering such damage or destruction to the proceeds payable on account of such damage or destruction and the amount of any deductible under the insurance policy shall be credited against the Purchase Price at time of Closing. The terms and provisions of this Section 7 shall survive the Closing.

8. Seller's Covenants.

8.1 Safety Deposit Boxes. On the Closing Date, Seller shall deliver to Purchaser all keys to any safe deposit boxes at the Hotel, all receipts and agreements relating to such safe deposit boxes and a complete list of safe deposit boxes which are then being used, which

list shall contain the name and room number of each depositor. If any guest shall rent any safe deposit box after Seller shall have given to Purchaser such keys and list, Purchaser shall be solely responsible for all property deposited into such safe deposit box. On the day immediately prior to the Closing Date, Seller or Manager shall send a written notice to guests at the Hotel who then are utilizing safe deposit boxes, advising them of the pending sale of the Hotel to Purchaser and the procedures to be followed pursuant to this Section and requesting the removal and verification of the contents thereof on the day immediately preceding the Closing Date. All such removals and verifications shall be under the joint supervision of Purchaser and Seller, and the contents recorded. Any property in safe deposit boxes as of the Closing Date (whether or not so recorded) shall be the responsibility of Purchaser so long as the keys and list have been delivered to Purchaser in accordance with this Section. The obligations of Purchaser and Seller under this Section shall be a Surviving Covenant.

8.2 Manager's Cooperation. Between the Effective Date and the Closing Date, Seller shall cooperate, and shall use its reasonable efforts to cause Manager to cooperate, with Purchaser and Purchaser's employees, agents and representatives to ensure an orderly transition of the operation of Hotel, including but not limited to delivery of Books and Records at Closing.

8.3 Status of Property.

8.3.1 Operation. Between the Effective Date and Closing, Seller shall manage, operate, maintain and keep or cause the Manager to operate, maintain and keep the Property in a manner consistent with Seller's past practices with respect to the Property. Seller shall maintain or cause the Manager to maintain customary levels of Supplies between the Effective Date and the Closing Date.

8.3.2 Alterations. Between the Effective Date and Closing, no Alterations to the Property costing in excess of an aggregate amount of Twenty Five Thousand Dollars (\$25,000) will be made without the prior written consent of Purchaser in its sole discretion, except (i) Alterations performed in the ordinary course of business, (ii) for work necessary to prevent further injury or damage to persons or to property, (iii) for work required by Governmental Authority, and (iv) for other work specifically set forth in this Agreement. In no event may Seller perform any work except in compliance with all applicable laws and regulations.

8.3.3 Permits. Between the Effective Date and the Closing, Seller shall keep in full force and effect (or to renew, when necessary) all licenses and permits held by Seller or the Manager relating to the ownership or operation of the Property. Seller shall cooperate with Purchaser in the transfer of such licenses and permits to Purchaser at the Closing, to the extent Seller's licenses and permits are transferable. Seller shall have no obligation to apply for, procure, or pay any cost for new licenses or permits.

8.3.4 Guest Bookings. Between the Effective Date and the Closing, Seller shall or will cause Manager to accept and make Guest Bookings and reservations and other agreements for the use of rooms or other Hotel facilities or services in the ordinary course of business. Seller shall and will cause Manager to not intentionally

direct Guest Bookings away from the Hotel to hotels managed by Affiliates of Seller out of the ordinary course for the purpose of unfairly benefiting other hotels operated by the Manager.

8.4 No Alteration of Title. Except as otherwise provide in this Agreement, Seller shall not transfer or further alter or encumber in any way title to the Real Property as it exists as of the Effective Date without written notice to, and the prior written consent of, Purchaser. If Purchaser fails to object in writing to any such proposed instrument within three (3) Business Days after receipt of the aforementioned notice, Purchaser shall be deemed to have disapproved the proposed instrument. Purchaser's consent shall not be unreasonably withheld, conditioned or delayed with respect to any such instrument.

8.5 New Leases and Modifications to Leases. If Seller desires to (i) enter into any new Lease, (ii) cancel, modify, amend, extend or renew any existing Lease which Purchaser has elected to assume, (iii) consent to any assignment or sublease in connection with any Lease, (iv) waive any default under any Lease that will be binding on Purchaser after the Closing, or (v) accept any prepayment of rent thereunder (more than thirty (30) days in advance), Seller shall deliver to Purchaser written notice of its action, which notice shall contain information regarding the proposed action that is reasonably necessary to enable Purchaser to make informed decisions with respect to the advisability of the proposed action. Seller shall not be entitled to take such action without Purchaser's prior written consent, which consent shall be in Purchaser's sole discretion (and if no response by Purchaser is made within five (5) Business Days after Purchaser's receipt of such request and all documents related thereto, such consent shall be deemed to have been approved). If Purchaser disapproves the proposed action, Seller shall not execute such instrument unless such instrument will terminate at Closing without cost or expense to Purchaser. Notwithstanding any provision of this Agreement to the contrary, without any requirement for notice or consent from Purchaser, Seller (i) may, but shall not be obligated to, pursue any of its legal rights for contract enforcement (including, but not limited to, commencing an unlawful detainer action) against any tenant pursuant to a Lease, and (ii) may modify or amend any Lease so long as the terms and conditions of such modification or amendment are not binding on Purchaser on and after the Closing. Notwithstanding anything to the contrary herein contained, Purchaser acknowledges and agrees that pursuant to Section 5.4.8, the Spa Chakra Lease will be terminated and the Short Term Spa Lease will be entered into at or prior to Closing

8.6 Contracts. If Seller desires to (i) enter into any new contracts, (ii) cancel, modify, amend, extend or renew any of the existing Contracts which Purchaser has elected to assume, or (iii) waive any default under, accept any surrender of, any Contracts, Seller shall deliver to Purchaser written notice of such action, which notice shall contain information regarding the proposed action that is reasonably necessary to enable Purchaser to make informed decisions with respect to the advisability of the proposed action. Except for Contracts that can be terminated, without penalty, upon thirty (30) days (or less) written notice, Seller shall not be entitled to take such action without Purchaser's prior written consent, which consent shall be in Purchaser's sole discretion (and if no response by Purchaser is made within five (5) Business Days after Purchaser's receipt of such request and all documents related thereto, such consent shall be deemed to have been approved); upon delivery of such written consent, such Contract or modification thereof shall thereupon be included within the definition of "Contracts" set forth herein. Seller shall promptly make available to Purchaser true, correct and complete copies of any Contract, modification, or amendment that it enters into. Notwithstanding any provision of this Agreement to the contrary,

without any requirement for notice or consent from Purchaser, Seller (i) may, but shall not be obligated to, pursue any of its legal rights to enforce any Contract, and (ii) may modify or amend any Lease so long as the terms and conditions of such modification or amendment are not binding on Purchaser on and after the Closing.Personal Property. Seller shall not remove any of the Personal Property, from the Real Property nor use any of the Personal Property prior to the Closing Date except such use thereof as is normal and customary in the operation, management, use and maintenance of the Property. Seller covenants that items of Personal Property which consist of furniture and furnishings, artwork, inventory and supplies and maintenance items shall be maintained at Seller's customary level of quality and will be available and be conveyed by Seller to Purchaser at the Closing. No refurbishments to the Personal Property costing in excess of an aggregate amount of Twenty-Five Thousand Dollars (\$25,000) will be made without the prior written consent of Purchaser in its reasonable discretion, except (i) repairs or refurbishments performed in the ordinary course of business, (ii) for work required by Governmental Authority, or (iii) for work necessary to prevent further injury or damage to persons or to property.

8.8 Computer Software and Systems. Upon Purchaser's reasonable request, Seller shall in good faith, but without cost or obligation to itself, exercise reasonable efforts to assist and cooperate with Purchaser in Purchaser's efforts to obtain authorization or consent from third party lessors or licensors to the assignment or other transfer to Purchaser of such computer hardware, software or system(s) leases or licenses as are used in connection with the operation of the Property as of the Effective Date. Seller will not be required to pay any sums or otherwise incur any obligation in connection with any such requested assignment or transfer. Purchaser shall be solely responsible for any transfer, re-licensing or other fees of any nature payable in connection any such assignment or transfer except for fees of Seller or any Affiliate thereof. In the absence of an express consent to assignment by the third party lessors or licensors of any such lease or license, the Purchaser acknowledges that no such lease or license shall be transferred to Purchaser at Closing and/or the Seller may delete any and all software and other data from the storage drives of such computer hardware.

8.9 Insurance Policies. All existing insurance policies (or replacements thereof) affecting the Property or any portion thereof will be kept in full force and effect. The paid premiums for all insurance policies transferred to Purchaser shall be prorated as of the Adjustment Point.

9. Broker. Seller and Purchaser each represent to the other that other than Fernando Naranjo, a Florida licensed broker whose Tax ID# is 202273177, it has dealt with no agent or broker who in any way has participated as a procuring cause of the sale of the Property or any portion thereof. Each party agrees to defend, indemnify and hold harmless the other party for any and all judgments, costs of suit, Attorney Fees and other reasonable expenses which the other may incur by reason of any action or claim against such party or the Property by any broker, agent or finder with whom the indemnifying party has dealt arising out of this Agreement or any subsequent sale of the Property. Seller shall be responsible for payment of the real estate commission to Fernando Naranjo in the amount equal to two percent (2%) of the Purchase Price only upon the consummation of the Closing. The provisions of this Section 9 shall be Surviving Covenants.

10. Representations and Warranties.

10.1 Representations and Warranties of Seller. Seller makes the following representations and warranties with respect to the Property:

10.1.1 Seller (a) is a Delaware corporation duly organized (or formed), validly existing and in good standing under the laws of its state of organization and, as and to the extent required by laws for this transaction and as of the date of Closing, (b) is authorized to transact business in the State of Florida and subject to obtaining the Approvals described in Section 5.2.4, consummate the transaction and fulfill all of its obligations hereunder and under all documents contemplated hereunder to be executed by Seller, and (c) has all necessary power to execute and deliver this Agreement and subject to obtaining the Approvals described in Section 5.2.4, all documents contemplated hereunder to be executed by Seller, and to perform all of its obligations hereunder and thereunder; without limiting the generality of the foregoing, Seller has obtained all necessary internal approvals with respect to the transaction contemplated by this Agreement. Neither the execution and delivery of this Agreement and all documents contemplated hereunder to be executed by Seller, nor the performance of the obligations of Seller hereunder or thereunder will result in the violation of (i) to Seller's knowledge, any law or (ii) any provision of the organizational documents of Seller or (iii) will conflict with any order or decree of any court or Governmental Authority of any nature by which Seller is bound.

10.1.2 Subject to approval by the Official Creditor's Committee, the Lenders and receipt of Bankruptcy Court Approval, the execution and delivery of this Agreement and the consummation of the transaction contemplated hereby have been duly authorized by all necessary parties, and no other proceedings on the part of Seller are necessary in order to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by Seller and (assuming valid execution and delivery by the Purchaser) is a valid and binding obligation and agreement of Seller, enforceable against Seller in accordance with its terms.

10.1.3 With respect to the management of the Property as of the date of this Agreement, to the knowledge of Seller:

10.1.4 Pursuant to the terms of the Management Agreement, Seller and Manager have adopted the Operating Plan for the year 2009. Purchaser acknowledges and agrees that no representations are made regarding the Operating Plan and that actual results have and will differ from the contents of the Operating Plan. A copy of the Operating Plan, and all modifications thereto, is attached hereto as Exhibit T.

10.1.5 Seller is unaware of and has received no written notice from Manager that any uncured default exists on the part of Seller in performing any of its obligations under the Management Agreement. There are no uncured defaults on the part of Manager in performing any of its obligations under the Management Agreement.

10.1.6 Other than the Litigation and any Claims asserted in the chapter 11 case of the Seller, Seller has no knowledge of, nor has received, any written notice

of any claims, litigation, causes of action, suits or other proceedings (i) against Seller with respect to the For Sale Lots or any portion of the Property, or (ii) against Manager, except for (x) claims for death, personal injury, property damage or worker's compensation for which the insurance carrier has been notified on a timely basis and has accepted coverage and which are shown on **Exhibit P** annexed hereto, and (y) other claims, litigation or proceedings shown on **Exhibit Q** annexed hereto. Seller has no knowledge of any threatened claims, litigation, causes of action, suits or other proceedings against Seller or any portion of the Property nor has Seller received written notice of any threatened claims, litigation, causes of action, suits or other proceedings against Manager, except litigation of the nature described in clause (x) above. Purchaser acknowledges that Boran Craig Barker Engel (BCBE) has asserted a Claim in the chapter 11 case of Seller in the amount of \$13,894,239.00.

10.1.7 Seller is not a “foreign person” as defined in the Federal Foreign Investment in Real Property Tax Act of 1980 and the 1984 Tax Reform Act, as amended.

10.1.8 Neither Seller nor any holder of any direct or indirect equitable, legal or beneficial interest in Seller is the subject of any law blocking or prohibiting transactions with such person, including the USA Patriot Act.

10.1.9 With respect to the Leases:

10.1.9.1 Attached to this Agreement as composite **Exhibit R** is a true, accurate and complete copy of the Leases.

10.1.9.2 To Seller's knowledge, all of the leases reflected in **Exhibit R** are, as of the date of this Agreement, in good standing without default on the part of Seller, and shall remain without default on the part of Seller through the date of Closing; provided, however, if any of the leases are in default on the part of Seller prior to Closing, such defaults will be cured pursuant to subsection 2.2.

10.1.9.3 Seller has not received any prepaid rent under any of the Leases, except as reflected in **Exhibit R**.

10.1.9.4 A copy of the Liquor Licenses is attached hereto as **Exhibit AA**.

10.1.10 Except as expressly set forth in this Agreement, Seller makes no representations or warranties and Seller disclaims any liability as to the truth, accuracy, or completeness of any materials, data, or statements made by Seller's employees, directors, affiliates consultants, or any other information supplied to purchaser in connection with Purchaser's inspection of the Property. It is the parties' express understanding and agreement that such materials are provided only for Purchaser's convenience in making its own examination and determination as to whether it wishes to purchase the Property, and, in doing so, except as expressly set forth in this Agreement, Purchaser shall rely exclusively on its own independent investigation and evaluation of every aspect of the Property and not on any materials supplied or statements made by Seller or any of its employees, directors, affiliates or consultants. To Seller's Knowledge, the materials delivered or made available to Purchaser

are true and correct in all material respects. Except as expressly set forth in this Agreement, Purchaser disclaims any intent to rely on any such materials provided or statements made to it by Seller in connection with its inspections and agrees that it shall rely solely on its own independently developed or verified information. The provisions of this Section 10.1.10 shall survive termination of this Agreement or Closing.

10.1.11 There are 481 parking spaces within the parking facilities as provided by the Tower Declaration plus 89 spaces which the Residential Condominium has the right to use 230 have been assigned to others and 251 are owned or controlled by Seller and shall be assigned to Purchaser at Closing.

10.2 Representations and Warranties of Purchaser. Purchaser makes the following representations and warranties and agrees that Seller's obligations under this Agreement are conditioned upon the truth and accuracy of such representations and warranties in all material respects, both as of this date and as of the date of Closing:

10.2.1 Purchaser (a) is a Florida limited liability company duly organized (or formed), validly existing and in good standing under the laws of its state of organization and, as and to the extent required by laws for this transaction and as of the date of Closing, (b) is authorized to transact business in the State of Florida and consummate the transaction and fulfill all of its obligations hereunder and under all documents contemplated hereunder to be executed by Purchaser, and (c) has all necessary power to execute and deliver this Agreement and all documents contemplated hereunder to be executed by Purchaser, and to perform all of its obligations hereunder and thereunder; without limiting the generality of the foregoing, Purchaser has obtained all necessary internal approvals with respect to the transaction contemplated by this Agreement. Neither the execution and delivery of this Agreement and all documents contemplated hereunder to be executed by Purchaser, nor the performance of the obligations of Purchaser hereunder or thereunder will result in the violation of (i) to Purchaser's knowledge, any law or (ii) any provision of the organizational documents of Purchaser or (iii) will conflict with any order or decree of any court or Governmental Authority of any nature by which Purchaser is bound.

10.2.2 The execution and delivery of this Agreement and the consummation of the transaction contemplated hereby have been duly authorized by all necessary parties and no other proceedings on the part of Purchaser are necessary in order for Purchaser to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by Purchaser and (assuming valid execution and delivery by the Seller) is a legal, valid and binding obligation of Purchaser enforceable against it in accordance with its terms.

10.2.3 Neither Purchaser nor any holder of any direct or indirect equitable, legal or beneficial interest in Purchaser is the subject of any law blocking or prohibiting transactions with such person, including the USA Patriot Act.

10.2.4 Purchaser represents and warrants that it has the requisite experience, knowledge and wherewithal to perform its obligations under this Agreement and the instruments to be executed at Closing.

10.3 NO IMPLIED REPRESENTATIONS. PURCHASER ACKNOWLEDGES THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER SELLER NOR ANY AGENT OR REPRESENTATIVE OR PURPORTED AGENT OR REPRESENTATIVE OF SELLER HAS MADE, AND SELLER IS NOT LIABLE FOR OR BOUND IN ANY MANNER BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTEES, PROMISES, STATEMENTS, INDUCEMENTS, REPRESENTATIONS OR INFORMATION (INCLUDING ANY INFORMATION SET FORTH IN OFFERING MATERIALS HERETOFORE FURNISHED TO PURCHASER) PERTAINING TO THE PROPERTY OR ANY PART THEREOF, THE PHYSICAL CONDITION THEREOF, ENVIRONMENTAL MATTERS, INCOME, EXPENSES OR OPERATION THEREOF, THE USES WHICH CAN BE LAWFULLY MADE OF THE SAME UNDER APPLICABLE ZONING OR OTHER LAWS OR ANY OTHER MATTER OR THING WITH RESPECT THERETO, INCLUDING, WITHOUT LIMITATION, ANY EXISTING OR PROSPECTIVE LEASES OR OTHER AGREEMENTS. WITHOUT LIMITING THE FOREGOING, PURCHASER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND IN THE DOCUMENTS AND INSTRUMENTS DELIVERED BY SELLER AT THE CLOSING, SELLER IS NOT LIABLE FOR OR BOUND BY (AND PURCHASER HAS NOT RELIED UPON) ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS, OFFERING MATERIALS OR ANY OTHER INFORMATION RESPECTING THE PROPERTY FURNISHED BY SELLER OR ANY BROKER, EMPLOYEE, AGENT, CONSULTANT OR OTHER PERSON REPRESENTING OR PURPORTEDLY REPRESENTING SELLER. NOTHING CONTAINED IN THIS SECTION 10.3 SHALL BE DEEMED TO IMPAIR, LIMIT OR OTHERWISE AFFECT PURCHASER'S RIGHTS UNDER THIS AGREEMENT IN RESPECT OF THE REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER SET FORTH IN SECTION 10.1 OF THIS AGREEMENT AND THE OTHER PROVISIONS HEREOF BINDING UPON SELLER.

10.4 "AS-IS" PURCHASE. PURCHASER REPRESENTS THAT IT HAS INSPECTED OR WILL INSPECT THE PROPERTY, THE PHYSICAL AND ENVIRONMENTAL CONDITION AND THE USES THEREOF AND THE FIXTURES, EQUIPMENT AND PERSONAL PROPERTY INCLUDED IN THIS SALE TO ITS SATISFACTION, THAT IT HAS INVESTIGATED, ANALYZED AND APPRAISED OR WILL INDEPENDENTLY INVESTIGATE, ANALYZE AND APPRAISE THE OPERATION, VALUE AND PROFITABILITY OF THE PROPERTY AND THE HOTEL AS A BUSINESS CONCERN, THE CREDITWORTHINESS OF TENANTS AND THE PRESENCE OF HAZARDOUS MATERIALS, IF ANY, IN OR ON THE PROPERTY, THAT IT HAS RECEIVED COPIES OF AND/OR HAS REVIEWED OR WILL REVIEW THE OTHER AGREEMENTS AND ALL OTHER DOCUMENTS REFERRED TO HEREIN, THAT IT IS ACQUAINTED OR WILL ACQUAINT ITSELF WITH RESPECT TO ALL OF THE FOREGOING AND THAT PURCHASER IS A SOPHISTICATED PURCHASER, OPERATOR AND DEVELOPER OF REAL PROPERTY AND WILL, IN PURCHASING THE PROPERTY, RELY UPON ITS OWN INVESTIGATIONS, ANALYSES, STUDIES AND APPRAISALS AND NOT UPON ANY INFORMATION PROVIDED TO PURCHASER BY OR ON BEHALF OF SELLER WITH RESPECT THERETO (EXCEPT IN EACH CASE TO THE EXTENT COVERED BY ANY WARRANTIES OR REPRESENTATIONS OF SELLER SET FORTH IN THIS AGREEMENT OR IN ANY OTHER DOCUMENT OR INSTRUMENT DELIVERED BY SELLER IN CONNECTION WITH THE CLOSING). PURCHASER AGREES TO ACCEPT THE

PROPERTY "AS IS," "WITH ALL FAULTS" AND IN ITS CONDITION AS AT THE EFFECTIVE DATE, INCLUDING REASONABLE WEAR AND TEAR AND DAMAGE BY FIRE OR OTHER CASUALTY (SUBJECT TO THE PROVISIONS OF SECTION 7) BETWEEN THE EFFECTIVE DATE AND THE CLOSING DATE EXCEPTED.

10.5 No Independent Investigation. All representations and warranties made herein by Seller which are based on Seller's knowledge or receipt of written notice by Seller are made, and are hereby acknowledged by the Purchaser to be made, without independent investigation regarding the facts contained therein.

10.6 Seller's Warranties Deemed Modified. To the extent that Purchaser is deemed to know prior to the Closing that any of Seller's Warranties are inaccurate, untrue or incorrect in any way, such Seller's Warranties shall be deemed modified to reflect Purchaser's deemed knowledge.

10.7 Survival of Seller's Warranties, etc.

10.7.1 All of Seller's representations and warranties made in, or pursuant to, this Agreement shall terminate at the Closing and shall not survive the Closing.

10.7.2 If prior to the Closing, Purchaser obtains actual knowledge that any of Seller's warranties are untrue, inaccurate or incorrect in any adverse and material respect, Purchaser shall give Seller written notice thereof within five (5) Business Days of obtaining such knowledge (but, in any event, prior to the Closing). Seller shall have the right, but not the obligation, to cure such misrepresentation or breach and shall be entitled to a reasonable adjournment of the Closing (not to exceed thirty (30) days) for the purpose of such cure. If Seller is unable to so cure any misrepresentation or breach, then Purchaser, as its sole remedy (except as hereinafter provided to the contrary) for any and all such materially untrue, inaccurate or incorrect material representations or warranties, shall elect either (a) to waive such misrepresentations or breaches of representations and warranties and consummate the Closing without any reduction of or credit against the Purchase Price, or (b) to terminate this Agreement by written notice given to Seller on the Closing Date, in which event this Agreement shall be terminated and the Deposit, shall be returned to Purchaser. Notwithstanding anything to the contrary set forth in this Section 10 or elsewhere in this Agreement, if prior to the Closing Purchaser has or obtains knowledge that any of Seller's warranties or representations set forth in this Section 10 is untrue in any respect, and Purchaser nevertheless proceeds with the Closing, then the breach by Seller of the warranties, representations or certifications as to which Purchaser shall have such knowledge shall automatically be deemed waived by Purchaser and Seller shall not have any liability to Purchaser or its successors or assigns in respect thereof.

10.8 Surviving Covenants. The provisions of this Section 10 shall be Surviving Covenants.

11. Purchaser's Indemnification. Subject to the releases and waivers of subrogation contained in or required by this Agreement, Purchaser hereby indemnifies Seller (and its Affiliates) for, and agrees to defend and hold Seller (and its Affiliates) harmless from and against, all Losses asserted

against, imposed upon or incurred by Seller (or any Affiliate thereof) solely by reason of or arising out of claims of third parties (i.e., parties other than Seller and its Affiliates) solely made or solely arising after the Closing Date that are made by such third party relating to (i) the ownership, management, leasing, operation, construction, maintenance and/or repair of the Property and/or (ii) the operation of alcoholic beverage service at the Property, in each case from and after the Closing Date, including, without limitation, any claims solely arising on or after the Closing Date made by any person or entity for personal injury, death or property damage relating to the Property. Purchaser further agrees to defend, indemnify and hold Seller, its employees, agents, and contractors harmless from and against any and all loss, damage, claim, demand, liability, or expense (including reasonable attorneys' fees) solely resulting from claims or causes of action by any individual or entity now or hereafter asserted against Seller based solely on any actual or alleged acts or omissions (specifically including negligence) of Purchaser, its engineers, surveyors, consultants, employees, agents, and contractors solely in connection with Purchaser's use of the Property, including, without limitation, claims relating to nonpayment for services rendered to Purchaser, for construction or mechanics' liens, and for damages to persons or property. The provisions of this Section shall survive termination of this Agreement or Closing.

11.1 Surviving Covenants. The provisions of this Section 11 shall be Surviving Covenants.

11.2 No Limitations. Except as specifically limited herein, nothing contained in this Section 11 is in any way intended to limit the rights of Seller or Purchaser to pursue any remedies as may exist at law or in equity against any third parties unrelated to Seller or Purchaser or any of their respective Affiliates, constituent owners or beneficial owners with respect to any matters covered by this Section 11.

12. Estoppel Information. Estoppel Certificates. Prior to the Closing Date, Seller shall, at Seller's expense, use its commercially reasonable best efforts to obtain estoppel certificates (each a "**Title Estoppel**") from the counterparties to the Tower Declaration, the NT/ST Declaration, the Development Agreement and the Plaza Easement (as the latter two terms are defined in Section 20.1.7 of this Agreement) confirming that (i) the Agreement is in full force and effect; (ii) that there are no defaults existing under the Agreement and if there is a default existing under the Agreement the nature of the default; and (iii) all amounts due and owing under the Agreement have been paid or if not paid the amount that has not been paid. Seller shall deliver each such Title Estoppel at least five (5) days prior to the Closing Date. If Seller is unable to obtain and deliver one or more of either the Title Estoppels on or before the date that is five (5) days prior to the Closing Date, Seller shall deliver to Purchaser one or more Seller's certificates in lieu thereof confirming that to the knowledge of Seller, the information that would have been provided in the Estoppel.

13. Title Matters.

13.1 Title Review and Cure.

13.1.1 Title Commitment. Within fifteen (15) Business Days after the date of this Agreement, Seller shall provide a current title insurance commitment (the "**Title Commitment**") from First American Title Insurance Company (by WCI Title, as

agent) (the "**Title Company**"), together with a legible copy of each instrument shown as an exception or pertaining to a requirement in Schedule B of the commitment,. Within five (5) days thereafter Purchaser shall provide Seller written notice of any matters, other than the Permitted Exceptions, shown in the Title Commitment which Purchaser finds objectionable (collectively, "**Purchaser's Title Objections**"). Notwithstanding the foregoing sentence to the contrary, each of the title exceptions listed on Exhibit S to this Agreement are accepted by Purchaser and are deemed to be "**Permitted Exceptions**." Additionally, all matters shown in the Title Commitment as to which Purchaser fails to give notice to Seller within five (5) days of delivery of the Title Commitment shall also be considered to be Permitted Exceptions and Purchaser shall have no subsequent right to object to any of those matters. Notwithstanding the foregoing provisions, Seller shall terminate, bond-off, satisfy, cure, release or transfer free and clear pursuant to the Sale Order (as the case may be) all of the following defects ("**Mandatory Cure Defects**"), if any: (1) mortgages, or (2) liens. As to any defects properly objected to by Purchaser pursuant to this Agreement, other than Mandatory Cure Defects, Seller shall have thirty (30) Business Days from receipt of Purchaser's notice in which to elect either (a) to cure Purchaser's Title Objections, in which event Seller may also elect to extend the Closing Date for such time as may be necessary to cure the defects not to exceed sixty (60) days (the "**Title Cure Period**"), and the Closing Date shall be extended accordingly; or (b) to advise Purchaser that it will not cure all or some of such defects and to permit Purchaser to terminate this Agreement. If Seller fails to timely respond to notice Purchaser's Title Objections, Seller shall be deemed to have elected not to cure Purchaser's Title Objections, in which case Purchaser may elect, prior to the Closing, to either (i) to terminate this Agreement and receive a full refund of its Deposit, together with all interest earned thereon, or (ii) to close, with Seller to deliver title in its then existing condition (with no reduction in or offset against the Purchase Price), subject to Seller's obligation to cure Mandatory Cure Defects, and to proceed to Closing notwithstanding the objections to title raised by Purchaser. In such event Purchaser's Title Objections shall become part of the Permitted Exceptions. Purchaser shall be deemed to have elected to close if Purchaser fails to provide written notice of its election to terminate this Agreement within the five (5) Business Days of the earlier of: (i) the expiration of the Title Cure Period; or (b) Seller providing notice to Purchaser that it will or will not cure all or some of Purchaser's Title Objections.

13.1.2 Update of Title Commitment.

13.1.2.1 No later than five (5) days prior to the Closing Date, Purchaser will cause the Title Company to update the effective date of the Title Commitment to the current date then available for the local land records (the "**Updated Commitment**").

13.1.2.2 If the Updated Commitment shows no additional exceptions to title or other change in the condition of title that Purchaser finds objectionable (except those caused or created at the direction of Purchaser), other than Permitted Exceptions, then the parties shall proceed to Closing as scheduled, subject, however, to all other conditions precedent to Closing set forth in this Agreement.

13.1.2.3 If the Updated Commitment reveals any additional exception to title (other than the Permitted Exceptions) (except for matters which do not render title unmarketable or that are caused by or created at the direction of Purchaser), then,

such additional title exceptions shall be dealt with in the same fashion as provided for title defects in Section 13.1.1.

13.1.2.4 Any new matters on the Updated Commitment not timely objected to by Purchaser or any new matters on the Updated Commitment which Purchaser elects to accept as provided in this section, or both, shall be deemed waived by Purchaser and shall become part of the Permitted Exceptions.

14. Assignment. Upon written notice to Seller received no later than ten (10) Business Days prior to the Closing Date, and subject to approval by the Bankruptcy Court, Purchaser shall be entitled to assign this Agreement and its rights hereunder in whole (but not in part) to any one Affiliate of Purchaser provided such Affiliate can make the representations and warranties set forth in Section 10.2 and otherwise fully complies with the terms and conditions of this Agreement. Except as provided in the preceding sentence, Purchaser must obtain the written consent of Seller prior to any assignment of this Agreement, which consent may be granted or withheld in the sole and absolute discretion of Seller. In the event of any permitted assignment by Purchaser, any assignee shall assume any and all obligations and liabilities of Purchaser under this Agreement but, notwithstanding such assumption, the liability of Purchaser shall not terminate under this Agreement.

15. Notice. All notices hereunder or required by law shall be (i) sent via United States Mail, postage prepaid, certified mail, return receipt requested, (ii) via any nationally recognized commercial overnight carrier with provisions for receipt or via personal delivery, (iii) personally delivered via courier or (iv) sent by via facsimile machine which automatically generates a transmission report that states the date and time of the transmission, the length of the document transmitted and the telephone number of the recipient's facsimile machine. In addition, notices to Seller, Seller's counsel and Purchaser's counsel may be sent by electronic mail (*.pdf or similar file types). All notices shall be addressed to the parties hereto at their respective addresses set forth below or as they have theretofore specified by written notice delivered in accordance herewith:

Purchaser: Elevation Communities, LLC
7301 SW Court, Suite 15
Miami, Florida 33143
Attn: Jorge Arevalo
Managing Member
Telephone: (305) 984-1022
Facsimile: (305) 357-9050

with a copy to:

Holland & Knight LLP
701 Brickell Avenue, Suite 3000
Miami, Florida 33131
Attention: Mark I. Aronson, Esq.
Telephone: (305) 789-7657
Facsimile: (305) 789-7799

Seller: WCI Communities, Inc
24301 Walden Center Drive
Bonita Springs, Florida 34134
Attn: Jonathan Pertchik, Chief Restructuring Officer/~~Chief Restructuring Officer~~
Telephone: (239) 390-3729
Facsimile: (239) 949-0233

with a copy to:

Kenneth Y. Gordon, Esq.
24301 Walden Center Drive
Bonita Springs, Florida 34134
Telephone: (239) 498-8680
Facsimile: (239) 498-8595

Delivery will be deemed complete upon (i) delivery or attempted delivery of U.S. Mail with respect to mailed notices or nationally recognized commercial overnight carrier with respect to notices transmitted in that manner, (ii) the date of delivery when delivered personally via courier or (iii) the date of transmission with respect to facsimile or electronic mail delivery, if so transmitted before 5:00 p.m. (local time of the recipient) on a Business Day, or on the next Business Day, if so transmitted on or after 5:00 p.m. (local time of the recipient) on a Business Day or if transmitted on a day other than a Business Day. In all events, notice shall be deemed complete upon actual receipt or refusal to accept delivery. Signatures to this Agreement transmitted by facsimile or via electronic mail (*.pdf or similar file types) shall be valid and effective to bind the party so signing. Each party agrees to promptly deliver an execution original to this Agreement, any amendment thereto, or any notice sent via facsimile or via electronic mail with its actual signature to the other party, but a failure to do so shall not affect the enforceability of this Agreement, amendment, or notice, it being expressly agreed that each party to this Agreement shall be bound by its own telecopied or electronically mailed signature in all instances and shall accept the telecopied or electronically mailed signature of the other party to this Agreement.

16. Expenses.

16.1 Seller's Expenses. Seller shall pay (i) the fees and expenses of its attorney, (ii) one-half (1/2) of the Florida documentary stamp taxes and surtax, if any, payable on the Special Warranty Deed, (iii) one half (1/2) of the recording costs for the Special Warranty Deed, (iv) one half (1/2) of the escrow fees, (v) one half (1/2) of any search and exam fees associated with the policy, (vi) one half (1/2) of the premium for the Title Policy to be obtained by Purchaser and (vii) cost of recording Seller's partial release of mortgage.

16.2 Purchaser's Expenses. Purchaser shall pay (i) its due diligence expenses, including, but not limited to, the cost of any environmental or engineering studies obtained by Purchaser, (ii) the fees and expenses of its attorney, (iii) one half (1/2) of the premium for the Title Policy to be obtained by Purchaser, provided that any premiums associated with any endorsements required by Purchaser will be paid solely by Purchaser, (iv) one half (1/2) of any search and exam fees associated with the policy, (v) one half (1/2) of the escrow fees, (vi) all costs of any financing arranged by Purchaser; (vii) one-half (1/2) the Florida documentary stamp taxes and surtax, if any,

payable on the Special Warranty Deed, (viii) one half (1/2) of any conveyance tax on the Special Warranty Deed, and (ix) one half (1/2) of the recording costs for the Special Warranty Deed.

17. Property Data. Seller agrees to grant access to Purchaser during business hours at Seller's offices located at the Real Property to review all documents and records in Seller's possession or control, if any, as they relate to, title, the physical condition and the operation of the Property, including without limitation, title reports, copies of existing owner's title insurance policy, surveys, permits and approvals from the applicable governmental agencies, all Contracts, plans and specifications pertaining to the Improvements, 2009 Operating Plan, budgets of the associations, violations of permits and records pertaining to such permits, if any, (collectively, "**Property Data**"). Seller hereby represents and warrants that, to Seller's Knowledge, the Property Data is true and correct in all material respects and that there is no information other than the Property Data applicable to the Property. Upon any termination of this Agreement, Purchaser shall return the Property Data to Seller and, without any cost or fee incurred by Seller, shall deliver to Seller copies of all third party created and non-proprietary due diligence materials obtained by Purchaser relating to the Property including without limitation surveys, title commitments, environmental reports and appraisals.

18. Underground Stormwater Drainage Wells #1 and #3. The Department of Environmental Protection on November 15, 2004 issued permit #0255318-0010UA to Seller to properly plug and abandon Wells #'s 1&3 (the "**Wells**"). The Wells are located beneath the Building. The Department of Environmental Protection ("**DEP**") did not have the opportunity prior to the construction of the Building to inspect the Wells to determine if the Wells were properly capped and abandoned. On or about September 2008 Seller received a notice of violation from the DEP (the "**NOV**") [DEP OCG File No. 08-2824]. The DEP and Seller have resolved the NOV and settled the matter as evidenced by the settlement letter from the Florida Department of Protection, a copy of which is attached hereto as Exhibit W (the "**DEP Settlement**").

19. Utility Easement and Bill of Sale. Although the twelve inch (12") water main and twelve inch (12") force sewer main improvements located between the entry ramp and loading dock on the north west side of the Building were installed in accordance with plans approved and permits issued by the Village of Bal Harbour (the "**Water Line**"), the Village of Bal Harbour Fire Department subsequent to the completion of the Water Line installation required Seller to construct a stairwell (the "**Stairwell**") over and upon the portion of the Property where a section of the Water Line was installed. The location of the Stairwell constructed over a portion of the Water Line is shown on Exhibit X attached hereto. The Village of Bal Harbour requires a utility easement to allow for ingress, egress, and access to, upon, over and under the land upon which the Stairwell is constructed to allow for the maintenance, repair, replacement, and installation of the utility pipes, lines and facilities together with a hold harmless provision with respect to any damage which may occur during or arising out of the removal of the stairwell or any portion thereof that is required to access the Water Line (the "**Utility Easement**"). The proposed Utility Easement to be granted to the Village of Bal Harbour and Bill of Sale for the Water Line improvements in the form attached hereto as Exhibit X is to be recorded in the public records of Miami-Dade County upon acceptance by the Village of Bal Harbour. Purchaser agrees that the Utility Easement shall constitute and be deemed a Permitted Exception.

20. Miscellaneous.

20.1 Successors and Assigns. All the terms and conditions of this Agreement are hereby made binding upon the executors, heirs, administrators, successors and permitted assigns of both parties hereto.

20.2 Gender. Words of any gender used in this Agreement shall be held and construed to include, any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

20.3 Captions. The captions in this Agreement are inserted only for the purpose of convenient reference and in no way define, limit or prescribe the scope or intent of this Agreement or any part hereof.

20.4 Construction. This Agreement is the result of negotiations between the parties who are experienced in sophisticated and complex matters similar to the transaction contemplated by this Agreement and is entered into by both parties in reliance upon the economic and legal bargains contained herein and shall be interpreted and construed in a fair and impartial manner without regard to such factors as the party which prepared the Agreement, the relative bargaining powers of the parties or the domicile of any party. Seller and Purchaser are each represented by legal counsel competent of advising them of their obligations and liabilities hereunder.

20.5 Entire Agreement. This Agreement, including all the exhibits hereto which are hereby incorporated by reference, constitutes the entire contract between the parties hereto and supersedes and replaces all written and oral agreements previously made or existing between the parties, including, without limitation, all correspondence and letters of intent related to the Property, and there are no other oral or written promises, conditions, representations, understandings or terms of any kind as conditions or inducements to the execution hereof and none have been relied upon by either party. This Agreement may be amended or supplemented only by an instrument in writing executed by Seller and Purchaser, and Escrow Agent only in the event Escrow Agent is a party against whom enforcement is sought.

20.6 Original Document. This Agreement, any amendments hereto, and any other documents to be executed by Seller, Purchaser, and/or Escrow Agent, may be executed by both parties in counterparts in which event each shall be deemed an original, and all of which shall constitute one Agreement, amendment, or other closing document.

20.7 Governing Law. This Agreement shall be construed, and the rights and obligations of Seller and Purchaser hereunder, shall be determined in accordance with the laws of the State of Florida, without application of conflict of laws principles. Venue for any proceeding shall be in the Bankruptcy Court.

20.8 No Third Party Beneficiary. The parties hereto do not intend to confer any benefit hereunder on any person, firm, corporation or other entity other than the parties hereto and their permitted assigns.

20.9 No Recording; Confidentiality; Press Release. The parties agree that neither this Agreement nor any memorandum or notice hereof shall be recorded or filed in any public records.

20.10 Waiver of Trial by Jury. To the fullest extent permitted under Applicable Laws, Seller and Purchaser waive any right to trial by jury of any claim arising under or with respect to this Agreement, the Property, or the relationship of Seller and Purchaser herein, whether now existing or hereafter arising. Seller and Purchaser hereby agree that any such claim shall be decided by a court trial without a jury and that any party hereto may file an original counterpart or a copy of this Section with any court as written evidence of the consent of the other party hereto to waiver of its right to trial by jury. This Section 20.10 shall be a Surviving Covenant.

20.11 Legal Relationships. This Agreement shall not create any partnership, joint venture, or other joint undertaking between Seller and Purchaser, and neither party shall be liable for the debts or have the authority to make any representations on behalf of the other.

20.12 Further Assurances. Each party agrees to execute, acknowledge and deliver such further instruments and documents, and do all such other acts and things as may be required by law, or as may be required to carry out the purposes and intent of this Agreement. The provisions of this Section 19.13 constitute a Surviving Covenant.

20.13 Time of the Essence. Time is of the essence with respect to each term and condition of this Agreement. If the time for performance of any of the terms, conditions and provisions hereof shall fall on a day that is not a Business Day, then the time of such performance shall be extended to the next Business Day thereafter. The last day of any time period herein shall be deemed to end at 5:00 p.m. Miami, Florida time.

20.14 Fees and Expenses. Notwithstanding any provisions in this Agreement to the contrary, in the event that Seller should retain counsel and/or institute any suit against Purchaser for violation of or to enforce any of the covenants or conditions of this Agreement, or should Purchaser institute any action against Seller for violation of any covenants or conditions of this Agreement, or should either party institute a suit against the other for a declaration of rights hereunder, or should either party intervene in any suit in which the other is a party, to enforce or protect its interests or rights hereunder, the prevailing party in any such suit shall be entitled to all its costs, expenses and Attorney Fees in connection therewith. **All references in this Agreement to "Attorney Fees" is deemed to mean reasonable attorneys' fees and paralegals' fees, costs and expenses at all levels of proceedings (trial, appellate or otherwise) actually incurred on an hourly basis and not as a percentage of any debt or amount in controversy, and shall be irrespective of any court schedule of reasonable attorneys' fees.** The provisions of this Section constitute a Surviving Covenant.

20.15 Invalidity and Waiver. If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Agreement shall be deemed valid and operative, and, to the greatest extent legally possible, effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall not be deemed to be a waiver of such party's right to enforce against the other party the same or any other such term or provision in the future. Excuse or waiver of the performance by the other party of any obligation under this Agreement shall only be effective if evidenced by a written statement signed by the party so excusing or waiving. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by Seller or Purchaser of the breach of any covenant of this Agreement shall be

construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

20.16 Radon Gas Notice. Pursuant to Florida Statutes Section 404.056(8), Seller hereby makes, and Purchaser hereby acknowledges, the following notification:

RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

20.17 Receipt of Condominium Documents and Other Instruments Purchaser hereby acknowledges receipt of the Tower Declaration, Condominium Declaration, NT/ST Declaration and summary of easements granted in the NT/ST Declaration, the Development Agreement And Declaration of Restrictive Covenants recorded in Miami-Dade County Official Records Book 21375, Pages 0212-227 (the "Development Agreement"), the Plaza Easement Agreement recorded in Miami-Dade County Official Records Book 21982, Pages 4725-4290 (the "Plaza Easement"); the Rental Management Agreements and any amendments thereto, the 2008 financial statements, the 2009 Budgets for the Hotel Condominium and the Shared Facilities, the Residential Association Management Agreement for the hotel condominium units, the Other Agreements identified on Exhibit "F", the list of Personal Property identified on Exhibit "G".

20.18 Parking Easement. Purchaser hereby acknowledges that the NT/ST Declaration provides for, among other agreements and easements, a parking easement for the benefit of and as an appurtenance to the ST Site and a perpetual and exclusive easement for parking and other uses over and across the portion of the NT Site which includes eighty-nine (89) parking spaces located on three (3) levels of the Parking Facility as defined in the NT/ST Declaration and ramps and driveways.

20.19 Work. Seller has provided Purchaser with a copy of a certain letter from Seamans, Evans dated March 23, 2008. Seller has informed Purchaser that Seller is currently undertaking the completion of the following items (i) through (v) hereof (the "Work"): (i) Installation of condominium back-of-house carpeting and base; (ii) install curbing which is intended to mitigate offsite drainage that corrects flooding at the loading dock, however, Seller makes no representation that such work will completely prevent water from intruding into the loading dock; (iii) Install duct work and exhaust fan at the pool bar grill; (iv) Pre-function door reset and hurricane shutters; and (v) Inspection by Florida Fish and Wildlife of Turtle lighting. Seller anticipates the Work will be completed prior to Closing, however, notwithstanding anything to the contrary, Seller and Purchaser both agree that the completion of the Work is not a condition to Closing and that if the Work or any portion thereof is not complete prior to Closing it shall be Seller's obligation to complete the Work, at Seller's sole cost and expense, after Closing and Purchaser grants Seller and its contractors access to the Property for the purpose of completing the Work. In connection with the Work, Seller represents covenants, warrants and agrees that:

20.19.1 Seller has, as of the date of this Agreement, commenced the Work and will undertake and diligently complete all of the Work.

20.19.2 Seller shall pay for and obtain or cause to be paid for and obtained all permits, licenses and approvals required by all applicable laws with regard to the Work, whether necessary for commencement, completion, use or otherwise.

20.19.3 Seller shall perform or cause to be performed all Work in a good and workmanlike manner, in compliance with all applicable laws, ordinances, rules and regulations (including, without limitation, any and all environmental laws and laws for the handicapped and/or disabled) .

20.19.4 Seller shall provide or cause to be provided workers' compensation and public liability insurance and in commercially reasonable amounts or as otherwise required under applicable laws in connection with any of the Work All such policies shall be in form and amount to reasonably satisfactory to Purchaser . All such policies shall name Purchaser as an additional insured and loss payee.

20.19.5 Seller covenants and agrees that the Work shall be constructed, installed or completed, as applicable, free and clear of any and all liens (including mechanic's, materialman's or other liens), claims and encumbrances whatsoever .

20.19.6 Upon completion of the Work, Seller shall assign, or cause to assign, all warranties and guaranties relating to the Work to Purchaser.

20.19.7 The provisions of this Section 20.19 shall survive the Closing.

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

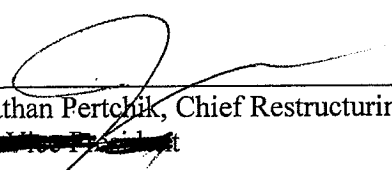
SELLER:

PURCHASER:


WCI COMMUNITIES, INC.

ELEVATION COMMUNITIES, LLC

By:


Jonathan Pertchik, Chief Restructuring Officer

By:


Jorge Arevalo
Managing Member

Date signed by Seller:

May 12, 2009

Date signed by Purchaser:

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20.19.7 The provisions of this Section 20.19 shall survive the Closing.

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

SELLER:

PURCHASER:

WCI COMMUNITIES, INC.

ELEVATION COMMUNITIES, LLC

By: _____
Jonathan Pertchik, Chief Restructuring Officer
and Vice President

By:  _____
Jorge Arevalo
Managing Member

Date signed by Seller: _____

Date signed by Purchaser: May 12/09

JOINDER OF ESCROW AGENT

Receipt of original copies of this Agreement executed by Seller and Purchaser is acknowledged. Escrow Agent has agreed to act as escrow agent for the convenience of the parties without fee or compensation for its services. Escrow Agent shall hold the Deposit and to deliver same to the parties herein in accordance with the provisions of this Agreement.

First American Title Insurance Company

By: _____
Name: _____
Title: _____

Dated: _____

Escrow Agent hereby acknowledges the receipt of the Deposit in the amount of
\$1,200,000.00

First American Title Insurance Company

By: _____
Name: _____
Title: _____

Dated: _____

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