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UNITED STATES BANKRUPTCY COURT

DISTRICT OF HAWAII

In re

M WAIKIKI LLC,

Debtor and Debtor-in
Possession.

CASE NO. 11-02371

(Chapter 11)

INTERIM DIP ORDER

**(A) AUTHORIZING DEBTOR TO
OBTAIN POST-PETITION**

FINANCING WITH THE

DAVIDSON FAMILY TRUST;

**(B) GRANTING SUPERPRIORITY
EXPENSE CLAIMS AND**

SECURITY INTERESTS;

(C) GRANTING REPLACEMENT

**LIENS TO PRE-PETITION
SECURED LENDERS;
(D) AUTHORIZING DEBTOR TO
USE CASH COLLATERAL;
(E) PROVIDING ADEQUATE
PROTECTION; AND
(F) GRANTING OTHER RELIEF
UNDER 11 U.S.C. §§ 105, 361, 362,
363 AND 364, F.R.B.P. 2002 AND
4001; AND LBRS 2002-1 AND 4001-
2; EXHIBITS A and B**

Interim Hearing:

Date: September 13, 2011

Time: 1:30 p.m.

Judge: Hon. Robert J. Faris

Related Docket No.: 76

**INTERIM DIP ORDER(A) AUTHORIZING DEBTOR TO OBTAIN POST-
PETITION FINANCING WITH THE DAVIDSON FAMILY TRUST;
(B) GRANTING SUPERPRIORITY EXPENSE CLAIMS AND SECURITY
INTERESTS; (C) GRANTING REPLACEMENT LIENS TO PRE-
PETITION SECURED LENDERS; (D) AUTHORIZING DEBTOR TO USE
CASH COLLATERAL; (E) PROVIDING ADEQUATE PROTECTION;
AND (F) GRANTING OTHER RELIEF UNDER 11 U.S.C. §§ 105, 361, 362,
363 AND 364, F.R.B.P. 2002 AND 4001; AND LBRS 2002-1 AND 4001**

This matter came before this Court for an interim hearing on September 13, 2011 (the “**Interim Hearing**”), and this Court having determined to enter this interim order (the “**Interim DIP Order**”) upon the Motion (the “**Motion**”) filed on September 9, 2011 by the above-captioned Debtor, pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e) and 507(b) of title 11

of the United States Code, 11 U.S.C. §§ 101, et seq. (as amended, the “**Bankruptcy Code**”), and Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Local Rules for the Bankruptcy Court for the District of Hawaii (the “**Local Bankruptcy Rules**”), seeking, among other things:

1. authorization for Debtor to enter into and to be bound by, and the approval of (A) the provisions of that certain fully executed Loan Term Sheet for \$2,500,000 DIP Credit Facility, dated as of September 5, 2011, attached hereto as Exhibit A, (B) that certain Secured Super-Priority Debtor-In-Possession Loan and Security Agreement, ~~dated as of September [TBD], 2011~~ (the “**Credit Agreement**”), by and among Debtor, as borrower, Robert M. Davidson and/or Janice G. Davidson as trustees for The Davidson Family Trust dated December 22, 1999, as amended (the “**Trust**” or the “**DIP Lender**”), and The Davidson Group, as agent for the DIP Lender (the “**Administrative Agent**”), in substantially the form annexed as Exhibit B,¹ and (C) the provisions of the other documents, agreements and instruments reasonably necessary to document the financing and transactions contemplated herein, including without limitation deposit account control agreements, mortgages and any other documents granting a lien upon, or

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Credit Agreement.

control (for Uniform Commercial Code purposes) of the Collateral (as defined below) as security for payment of the credit facility evidenced by the Credit Agreement (the Credit Agreement and all such other documents, agreements and instruments, including, without limitation, the “Financing Documents,” as defined in the Credit Agreement, collectively, the “**Financing Documents**”), and that the Financing Documents are entered into in connection with post-petition financing consisting of a superpriority and priming lien-secured credit facility (collectively, the “**DIP Credit Facility**”) pursuant to which Debtor may (a) borrow through the Administrative Agent from the DIP Lender a term loan up to an aggregate principal amount not to exceed \$2,500,000 (with the total amount to be determined prior to the final hearing on the Motion) under the terms and conditions of the Financing Documents and this Interim DIP Order to provide working capital loans (each a “**DIP Loan**”) for Debtor until the Termination Date (as defined below) in an amount sufficient to fund Debtor’s ordinary operating expenses, professional fees, and other expenses of the administration of this Chapter 11 case (the “**Case**”) in accordance with the terms of the Financing Documents and this Interim DIP Order and such final DIP order as shall be entered after the final hearing on the Motion (the “**Final DIP Order**”), and to prevent immediate and irreparable harm to the estate and (b) pay fees to the Administrative Agent as provided under

Section 2.2 of the Credit Agreement and other fees due under the other Financing Documents;

2. authorization for Debtor to execute and enter into the Financing Documents and to perform such other and further acts as may be required in connection with the Financing Documents as may be reasonably necessary or desirable in order to give effect to the provisions of the DIP Credit Facility;

3. authorization pursuant to sections 364(c)(1) and 507(b) of the Bankruptcy Code, that all obligations owing to the DIP Lender under the DIP Credit Facility shall be accorded second priority status in the Case, and shall, subject only to the Carve-Out (as defined below), other administrative expenses, and the Senior Liens (as defined below) of the Indenture Trustee (as defined below), have priority over any and all other expenses arising in these cases;

4. authorization to grant the Administrative Agent and the DIP Lender the DIP Liens (as defined below) on all Property (as defined herein) and Collateral (as defined herein) of Debtor and Debtor's estate within the meaning of section 541 of the Bankruptcy Code (but specifically excluding avoidance actions arising under chapter 5 of the Bankruptcy Code and applicable state law), and with the exception of certain assets as expressly provided in the Credit Agreement and this Interim DIP Order as follows (as detailed more fully herein):

- (A) pursuant to section 364(c)(2) of the Bankruptcy Code, valid, perfected security interests in and liens on the Collateral that are not subject to non-avoidable, valid and perfected liens in existence as of the Petition Date (as defined herein), or to non-avoidable valid liens in existence as of the Petition Date that are subsequently perfected as permitted by section 546(b) of the Bankruptcy Code, subject only to the Carve-Out, the validly perfected, prepetition senior security interests and liens (the “**Senior Liens**”) of Wells Fargo Bank, National Association, as Trustee for Nomura CRE CDO Grantor Trust, Series 2007-2 (the “**Indenture Trustee**”), and Permitted Liens (as defined in the Credit Agreement) (the exclusion for Permitted Liens, however, does not include any Primed Liens or Offsets as defined in the Credit Agreement);
- (B) pursuant to section 364(c)(3) of the Bankruptcy Code, valid, perfected, junior perfected security interests in and liens on all leased or purchase money-financed equipment of Debtor which was on the Petition Date subject to valid and perfected security interests; and

- (C) pursuant to section 364(d)(1) of the Bankruptcy Code, valid, perfected priming priority security interests in and liens on all Collateral (including with respect to any Collateral subject to the Primed Liens and Offsets), with such DIP Liens being senior in priority in all respects to the Primed Liens, Offsets and Recoupment Rights (for the avoidance of doubt, the DIP Liens are senior in priority to any liens in favor of the Subordinated Loan, as defined below), and subject only to the Carve-Out, the Senior Liens of the Indenture Trustee, and Permitted Liens not constituting Primed Liens and Offsets;
- (D) such liens on Post-petition Accounts or other Post-petition account receivables of Debtor or other assets of Debtor shall be senior in priority to any and all rights, if any, held by any other person or entity of offset, setoff or recoupment on Post-petition Accounts or other Post-petition account receivables of Debtor or other Collateral, except that they shall be junior in priority to the Senior Liens of the Indenture Trustee, and except as otherwise set forth in Paragraph 26(b) hereof;

5. authorization for Debtor, pursuant to section 363 of the Bankruptcy Code, to utilize cash collateral of the Indenture Trustee and Trust and granting replacement liens pursuant to section 364(c) of the Bankruptcy Code;

6. authorization and order limiting Debtor's right to surcharge any Collateral (as defined below) under sections 506(c) and 552(b) of the Bankruptcy Code;

7. authorization and direction for Debtor to pay, upon entry of the Final DIP Order, the principal, interest, fees, expenses and other amounts payable to the Administrative Agent and the DIP Lender under the DIP Credit Facility, as the same become due including all reasonable expenses incurred in the course of the Case by the DIP Lender, all as and to the extent provided in the DIP Credit Facility and the Credit Agreement; and

8. authorization and direction to vacate and modify the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Credit Facility and this Interim DIP Order.

This Court having considered the Motion and the DIP Credit Facility, the papers in support thereof and the papers in response thereto; and due and proper notice of the Motion having been provided in accordance with sections 102(1), 361, 362, 363 and 364 of the Bankruptcy Code and Bankruptcy Rules 2002,

4001(b) and (c) and 6004 and Local Bankruptcy Rules 4001-2 and 9013-1 as reflected in the Certificate of Service filed with the Court on September 12, 2011 to consider the interim relief requested in the Motion; and all objections, if any, to the interim relief requested in the Motion having been withdrawn, reserved, resolved or overruled on the merits by this Court; and it appearing that granting the interim relief requested in the Motion is appropriate, fair and reasonable and in the best interests of Debtor, its estate, creditors and other parties in interest, and is essential for Debtor's continued operations; and upon consideration of the evidence ~~presented, proffered or adduced at the hearing and~~ in the Declaration of Damien McKinney that was filed on September 14, 2011, and any other evidence presented ^{prior to} ~~at~~ the hearing; and upon the arguments of counsel; and after due deliberation and consideration and good and sufficient cause appearing therefor:

(KF)

BASED UPON THE RECORD ESTABLISHED AT THE HEARING, THIS COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A. Debtor having filed this Chapter 11 Case on August 31, 2011 (the **"Petition Date"**);

B. An interim hearing on the Motion (the **"Interim Hearing"**) having been conducted on September 7, 2011;

C. An Official Committee of Creditors Holding Unsecured Claims having been appointed;

D. The Court having heard and considered Debtor's Motion with regard to the use of cash collateral claimed by the Indenture Trustee and the Subordinated Lender (as defined below);

E. Upon the record made by Debtor at the Interim Hearing, the Declaration of Damien McKinney dated September 14, 2011, and having considered the Responses and Oppositions filed by the Official Committee of Unsecured Creditors (the "Committee") and Marriott International, Inc. ("Marriott") (collectively, the "Objections"), and the issues raised in the Response of the Committee having been resolved, and all other objections having been resolved for purposes of this interim order or overruled, and it appearing that the Indenture Trustee consents to the use of its cash collateral on the terms set forth herein and does not object to the approval of this Interim DIP Order, and that interests of all other holders of liens on the Collateral (as defined below) are also adequately protected, and after due deliberation and consideration and sufficient cause appearing therefor:

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:

1. *Disposition.* The Motion is granted on an interim basis on the terms set forth in this Interim DIP Order. Any objections to the relief sought in the Motion or this Interim DIP Order that have not been previously resolved or

withdrawn are overruled on the merits. This Interim DIP Order shall be valid, binding and enforceable on all parties in interest and fully effective immediately upon entry, provided however, that notwithstanding anything to the contrary herein, any findings or conclusions made herein ~~are subject to restatement and review upon further hearing and any further objections by interested parties, and the rights, claims, and defenses of all parties are preserved for such purpose,~~ *shall not be binding for purposes of a final order and shall not alter the burden of proof for purposes of such order,* and this Interim DIP Order is expressly subject to a final order. (R)F

2. **Jurisdiction and Venue.** This Court has jurisdiction over the Case and the Motion as a core proceeding and over the parties and property affected hereby under 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409. No request has been made for the appointment of a trustee or examiner.

3. **Notice.** Under the circumstances, the notice given by Debtor of the Motion, the relief requested therein, and the Interim Hearing pursuant to Bankruptcy Rules 2002, 4001(b) and (c) and Local Bankruptcy Rules 4001-2 and 9013-1 constitutes appropriate, due and sufficient notice thereof and complies with Bankruptcy Rules 2002, 4001(b) and (c) and Local Bankruptcy Rules 4001-2 and 9013-1.

4. **Interim Findings Regarding the DIP Loans:**

a. The Credit Agreement and the other Financing Documents, having been negotiated in good faith and at arm's length between all parties

thereto, all of which were or have been represented by experienced counsel, are fair and reasonable under the circumstances, are for reasonably equivalent value and fair consideration, are enforceable in accordance with their terms, and have been and shall be deemed to have been entered into and extended in good faith, as that term is used in Section 364(e) of the Bankruptcy Code.

b. Debtor does not have available sources of working capital and financing to carry on the operation of its business without obtaining the DIP Loans.

c. Debtor needs funding of the DIP Loans as authorized herein (i) to finance, among other things, the orderly continuation of the operation of its business; (ii) to maintain business relationships with vendors, suppliers and customers; (iii) to finance payroll; (iv) to make capital expenditures to the extent set forth in the DIP Budget (as defined below); (v) to satisfy other working capital and operational needs; (vi) to pay the fees and costs of the Administrative Agent and the DIP Lender in connection with the DIP Loan, including, but not limited to, the reasonable fees and disbursements of counsel, financial advisors and other consultants for the Administrative Agent and the DIP Lender with respect to the negotiation, documentation, administration, and enforcement of the Credit Agreement or the Interim DIP Order (collectively, the “**DIP Fees**”); (vii) to the extent and in the amounts reflected in the DIP Budget, to provide for payment of the professional fees and expenses of Debtor and the Committee (“**Professional**

Fees”) pursuant to the Orders of this Court, including the fees and expenses of counsel, accountants, and financial advisors; and, if necessary, for funding of the Carve Out (as defined below); (viii) to pay such items as are set forth by line item in the DIP Budget; (ix) to pay the reasonable professional fees and expenses of the Indenture Trustee; and (x) for other lawful purposes in the ordinary course of Debtor’s business not prohibited by the Credit Agreement or this Interim DIP Order (“Permissible Uses”).

d. The access of Debtor to sufficient working capital and liquidity through borrowings under the DIP Credit Facility is vital to the preservation and maintenance of the going concern values of Debtor and to a successful reorganization of Debtor. Debtor is unable ^(at this time) to obtain financing on more favorable terms from sources other than the Administrative Agent and the DIP Lender under ^(at this time) the Credit Agreement and the Financing Documents and is unable to obtain adequate unsecured credit allowable under sections 364(c)(1) or 503(b)(1) of the Bankruptcy Code as an administrative expense. Debtor is also unable ^(at this time) to obtain secured credit from sources other than the DIP Lender that would be allowable under sections 364(c)(2), 364(c)(3) and 364(d)(1) of the Bankruptcy Code for the purposes set forth in the Credit Agreement and Superpriority Claims as defined and set forth herein. The terms of the Credit Agreement are fair and commercially reasonable and in the best interests of creditors.

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e. Debtor has determined that it requires up to \$1,000,000 to be available for the interim period (“**Interim Period Availability**”), inclusive of the \$250,000 Initial Advance (as defined below), pending the final hearing on the Motion, but it has not yet ascertained the maximum amount of its working capital needs beyond the interim period, and will have to prepare budgets and analyses during the interim period to finalize the amount of the DIP Loan to be approved at the Final Hearing.

f. Due to the emergency filing of the Case and the urgent need to provide funding for the purchase of critical supplies for the operations of the Modern Honolulu over the Labor Day holiday weekend, at Debtor’s request, the DIP Lender advanced \$250,000 to the Debtor by wire transfer on September 1, 2011, intended as an initial installment of the DIP Loan (the “**Initial Advance**”). The priority and treatment of the Initial Advance shall be reserved for the final hearing.

g. The terms of the Credit Agreement, the other Financing Documents and this Interim DIP Order are fair and commercially reasonable, reflect Debtor’s prudent exercise of business judgment consistent with its fiduciary duties and constitute reasonably equivalent value and fair consideration.

h. The DIP Lender is an investor in and lender to the Debtor. The DIP Lender indirectly holds a majority of the Class A membership interests in

Debtor that it acquired for an investment of \$28,000,000. The remaining indirect Class A interests are held by approximately 75 investors, for a total investment of approximately \$23,000,000. The DIP Lender is also the sole holder of Class C direct membership interests, having provided \$80,000,000 in capital contributions for the renovation of the Hotel, carrying costs (taxes, financing, insurance), and operating shortfalls. In addition, the DIP Lender is also a lender (in that capacity, the “**Subordinated Lender**”) to Debtor pursuant to a Promissory Note dated November 16, 2010 in the initial principal amount of \$15 million, secured by a Mortgage, Assignment of leases and Rents, Security Agreement, Financing Statement and Fixture Filing of the same date, among other collateral and related documentation (the “**Subordinated Loan**”). The Subordinated Loan ^(is allegedly secured by) holds liens _{mk} on substantially all of Debtor’s assets (the “**Subordinated Liens**”) that are junior in priority to Senior Liens of the Indenture Trustee. Although interest was supposed to have been paid on a current basis on the Subordinated Loan, no interest has in fact been paid, so with accrued interest, the outstanding balance on the Subordinated Loan is currently \$18,200,000. The DIP Lender is not willing to make further equity contributions under the circumstances.

i. The Credit Agreement, the Financing Documents and the terms of the DIP Credit Facility have been negotiated in good faith and at arm’s length among Debtor and the Administrative Agent, and all of Debtor’s obligations and

indebtedness arising under, in respect of or in connection with the DIP Credit Facility, the Credit Agreement and the Financing Documents, including without limitation, any and all amounts due, whether now existing or hereafter arising, under the Credit Agreement or any Financing Document, including any and all DIP Loans (whether extended under this Interim DIP Order or the Final ~~Interim~~ ¹⁰⁷ DIP Order), interest, DIP Fees, penalties, charges, premiums, indemnities and costs owed or owing to the Administrative Agent or any of the DIP Lender by Debtor, in each instance, whether absolute or contingent, direct or indirect, secured or unsecured, due or not due, primary or secondary, joint or several, arising by operation of law or otherwise, and all interest and other charges thereon, including post-petition interest (collectively, the “**DIP Obligations**”), shall be deemed to have been extended by the Administrative Agent and the DIP Lender and their affiliates in good faith, as that term is used in section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and the DIP Obligations, the DIP Liens (as defined below) and the Superpriority Claims (as defined below) shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim DIP Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise, or modification of the terms of the financing authorized by this Interim DIP Order.

j. Debtor has requested immediate entry of this Interim DIP Order under Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and Local Rule 4001-2 and waiver of any applicable stay under Bankruptcy Rule 6004(h). Absent granting the relief sought by this Interim DIP Order, Debtor's estate will be immediately and irreparably harmed. Consummation of the financing under this Interim DIP Order and the Credit Agreement is therefore in the best interest of Debtor's estate consistent with its fiduciary duties.

5. ***Authorization of the DIP Loans Under the Credit Agreement.***

a. ***DIP Loans.*** Subject to the satisfaction of the conditions precedent set forth in the Credit Agreement and this Interim DIP Order, pursuant to and upon entry of this Interim DIP Order, Debtor ~~(s authority)~~ to enter into the DIP Loans and be bound by the provisions of the Credit Agreement as provided by this Interim DIP Order is hereby authorized. Debtor is hereby, based on entry of this Interim DIP Order, authorized to (i) pay interest, fees and expenses related to DIP Loans and Obligations incurred under the Credit Agreement to the extent necessary as a source of working capital, including, but not limited to, prompt payment of DIP Fees accrued as of the Interim Order Date, payment of other DIP Fees as they come due, and payment of accrued interest at the Termination Date; and (ii) do all other things and execute and deliver all other documents, instruments and

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agreements contemplated by the Credit Agreement, the Financing Documents, and this Interim DIP Order.

b. Debtor is obligated to repay the DIP Obligations under the Credit Agreement in accordance with the terms of this Interim DIP Order and the Credit Agreement. The proceeds of the DIP Loans shall be used for the purposes, and subject to the terms and conditions, set forth herein and in the Credit Agreement.

~~e. Until Full Payment (as defined in the Credit Agreement), without the prior written consent Administrative Agent, neither Debtor nor any successor trustee or creditor (other than Administrative Agent) in the Case or any subsequent proceeding under the Bankruptcy Code, shall be permitted to sell, pledge, hypothecate or otherwise transfer any of its interests in the Property (as such terms are defined herein) (or improvements, fixtures or other assets used to operate the Property), except as otherwise expressly permitted by the Credit Agreement or this Interim DIP Order, and any such sale, pledge, hypothecation or other transfer in violation of this provision shall be void *ab initio*.~~

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6. **Termination Date.** Subject to compliance with the terms and conditions of the Credit Agreement and this Interim DIP Order, Debtor is authorized to borrow the DIP Loans, during the period from the date of entry of this Interim DIP Order through and including the final hearing on the DIP Credit

Facility Termination Date (as defined in the Credit Agreement to mean the earliest to occur of (a) the appointment of a Chapter 11 Trustee ; (b) replacement of the Modern Hotel Management, LLC (“**Manager**”) as the management company for the Property without the consent of the DIP Lender; (c) the dismissal of the Chapter 11 Case; (d) the occurrence of an event of default under the DIP Loan Documentation, (e) the indefeasible payment in full of the indebtedness and obligations under the DIP Credit Facility, (f) a sale of all or substantially all, or the sale of any material portion of, the assets of Borrower, (g) the conversion of the Chapter 11 Case to a case under Chapter 7, (h) the effective date of a plan confirmed by a final order in the Chapter 11 Case, and (i) the failure of the Court to enter the Final DIP Order in a form acceptable to DIP Lender in its sole discretion.

7. ***Requests for DIP Loans.*** Subject to the limitations of this Interim DIP Order and the Credit Agreement, including the limitation to Permissible Uses and the DIP Financial Covenants (as defined below), so long as the Termination Date has not occurred and no Event of Default has occurred and is continuing, Debtor may request DIP Loans by delivering to the Administrative Agent, a Draw Request (as defined in the Credit Agreement) and signed by an authorized signer on behalf of Debtor. Draw Requests will be deemed to be Debtor’s representation and warranty that (i) the DIP Loans requested are necessary to fund Debtor’s

operating expenses after utilization and application of all other available cash of Debtor, (ii) the intended uses thereof are Permissible Uses and are consistent with the terms of this Interim DIP Order and the Credit Agreement and are necessary in order for Debtor to satisfy its obligations in the ordinary course of business or as otherwise permitted under this Interim DIP Order and the Credit Agreement, (iii) Debtor has observed and performed in all material respects all applicable obligations and requirements contained in this Interim DIP Order and the Credit Agreement, and satisfied each condition to the requests for DIP Loans contained in this Interim DIP Order and the Credit Agreement to be observed, performed or satisfied by it, and (iv) no Event of Default under this Interim DIP Order or the Credit Agreement, and no event or condition that with notice or the lapse of time, or both, would constitute an Event of Default, has occurred and is continuing under this Interim DIP Order or the Credit Agreement.

8. ***DIP Budget.*** Debtor will only use the proceeds of DIP Loans for Permissible Uses, including, subject to the Variance (as defined below), the costs and expenses associated with the operation of Debtor's business and the conduct of the Case, in the amounts and categories of Debtor's budget delivered to and agreed by the Administrative Agent prior to entry of the Interim DIP Order (the "**Interim DIP Budget**"), which shall set forth by line item (i) net cash flow (including cash receipts and cash disbursements), and (ii) expenditures detail, including projected

administrative claims, projected by Debtor on a weekly basis for a rolling time period from the week immediately following the then current week, to the week which is 13 weeks following the then current week, in form and substance acceptable to, and approved in writing by, Administrative Agent (each, a “**13 Week Forecast**”). Each successive 13 Week Forecast shall, when so accepted by the Administrative Agent in its sole and absolute discretion, replace the Interim DIP Budget or, as the case may be, the prior 13 Week Forecast, and thereafter shall constitute the budget governing the Financing Documents until replaced, upon its acceptance by the Administrative Agent, by the successive week’s 13 Week Forecast (each, when so accepted by the Administrative Agent, the “**DIP Budget**”).

9. **Reporting Requirements.** Debtor will provide the Administrative Agent with any written financial information or reporting on the same terms as provided in the Credit Agreement and this Interim DIP Order. In addition, from and after entry of this Interim DIP Order, Debtor shall deliver to the Administrative Agent, the Indenture Trustee, and the Committee (if any) the following:

- a. On each Wednesday Debtor shall deliver its 13 Week Forecast.
- b. On each Wednesday Debtor shall deliver a report, for the week ending on the preceding Wednesday, of actual net cash flow (including cash

receipts and cash disbursements) and expenditures (payments on accounts payable) in each case comparing Debtor's actual performance to the DIP Budget, in a form reasonably satisfactory to the Administrative Agent and Indenture Trustee a certification from a Responsible Officer (as defined in the Credit Agreement) certifying that the reports fairly present the financial condition and results of operations of Debtor for such period (each an "**Actual Cash Flows Report**").

c. On each Friday, after delivery of the Actual Cash Flows Report, Debtor shall deliver to the Administrative Agent and Indenture Trustee a reasonably detailed explanation for any Variance (as defined below) in the Actual Cash Flows Report from the DIP Budget and stating Debtor's compliance with, or identifying any areas of Debtor's non-compliance with the Financial Covenants of this Interim DIP Order or the Credit Agreement, in a form reasonably satisfactory to the Administrative Agent (each, a "**Variance and Compliance Report**").

d. On each Business Day Debtor shall deliver to the Administrative Agent and Indenture Trustee a report, as of the close of the immediately preceding Business Day, stating Debtor's actual cash balances, in form and in detail reasonably satisfactory to the Administrative Agent.

e. Within ten (10) days after the last day of each month, Debtor shall deliver to Administrative Agent and Indenture Trustee aged listings of accounts receivable and accounts payable (by invoice date).

f. As and when reported to the United States Trustee, all reports and operating statements which are not filed electronically and are provided to the United States Trustee, shall be delivered to the Administrative Agent and Indenture Trustee.

g. As and when reported to the Indenture Trustee, any reports given or required to be given to the Indenture Trustee under this Order, which are not otherwise required to be provided to the Administrative Agent.

h. All reports given or required to be given under any order or agreement between Debtor and the Committee shall be provided to the Administrative Agent and Indenture Trustee. All reports given or required to be given to the Administrative Agent and Indenture Trustee shall also be provided to the Committee.

i. The Administrative Agent and the Indenture Trustee, through each of their respective employees, expert consultants, counsel, and financial advisors, shall have access to Debtor's Chief Financial Officer (the "CFO"), the responsible managers at Modern Hotel Management Services, LLC (the "Manager"), Debtor's employees, Debtor's premises, and non-attorney-client privileged business records at reasonable times and to a reasonable extent. Debtor will cooperate, consult with and provide the Administrative Agent's and the Indenture Trustee's employees, counsel, consultants and advisors all non-attorney-

client privileged information and reports as provided in the Credit Agreement or as otherwise reasonably requested by Administrative Agent. (Items (a) through (i), individually and collectively, the “Reporting Requirements”).

10. *DIP Financial Covenants.*

a. *Cash Flow Tests.* ~~For each rolling eight week period, Debtor shall not permit (a) its Gross Cash Receipts (as defined in the Credit Agreement) less its total disbursements for such period to be less than \$ [TBD] or (b) its Gross Cash Receipts less its Total Operating Disbursements (as defined in the Credit Agreement) to be less than \$ [TBD] for such period.~~

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RESERVED FOR FINAL HEARING

b. *Budget Variance Test.* For any weekly period, if (a) the “Cumulative Net Cash Flow” in the DIP Budget is a negative number, the actual Cumulative Net Cash Flow as reported in the reports for such period must not be less than ¹⁰20% per line item, 10% overall of such negative number, or (b) the Cumulative Net Cash Flow in the DIP Budget is a positive number, the actual Cumulative Net Cash Flow as reported in the reports for such period must not be less than ¹⁰20% per line item, 10% overall of such positive number, *provided* however, if the Variance (as defined below) is less than \$ ^{25,000,00}[TBD] it will not be considered a Default under this Covenant. The “Variance” is the absolute value difference between the DIP Budget Cumulative Net Cash Flow and the (Actual) Cumulative Net Cash Flow reported in the reports for any weekly period.

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c. The Cash Flow Tests and the Budget Variance Test shall be referred to as the “**DIP Financial Covenants.**”

11. *DIP Loan Covenants.* Debtor shall observe all covenants in the Credit Agreement, the Financing Documents and in this Interim DIP Order at all times prior to the Termination Date and the indefeasible payment in full of all outstanding DIP Loans and DIP Obligations. In addition, without the prior written consent Administrative Agent (which consent shall not be unreasonably withheld), Debtor will not assume, reject, terminate or stipulate to relief from automatic stay with respect to its contract with Manager, or otherwise retain or employ a substitute management company to operate the Property.

12. *Implementation, Supplementation and Modification of Credit Agreement.* In furtherance of this Interim DIP Order and without further approval of this Court:

a. Debtor is authorized and directed to perform all acts, to make, execute and deliver all instruments and documents (including, without limitation, the execution or recordation of security agreements, pledge agreements, fixture filings, mortgages, hypothecs, deeds of trust, control agreements and financing statements), and to pay all fees that may be reasonably required or necessary for Debtor’s performance of its DIP Obligations and this Interim DIP Order, provided,

however, that the DIP Fees shall not be payable until the earlier of the entry of the Final DIP Order or the Termination of the Credit Facility;

b. The Administrative Agent and Debtor may agree in writing executed by both of them, which shall be delivered to Committee counsel to (i) the execution, delivery and performance of one or more waivers, consents or forbearances under the Credit Agreement (it being understood that no further approval of the Court shall be required for ^{non-material} waivers, consents or forbearances under the Credit Agreement, or any ^{non-material} amendment, waiver, consent or forbearance fees paid in connection therewith); (ii) to make any non-material amendments or modifications to the Credit Agreement, including any amendment or modification to correct a typographical or scrivener's error or otherwise to conform to the provisions of this Interim DIP Order (each a "**Non-Material Modification**"); and (iii) to make any Material Modification or Amendment (as defined below) to the Credit Agreement; *provided* that notice of any Material Modification or Amendment to the Credit Agreement shall be filed with the Bankruptcy Court and served by Debtor on the Indenture Trustee, the Committee, and their respective counsel, and the United States Trustee, whom shall each have five (5) business days from the date of such filing within which to object in writing to such proposed Material Modification or Amendment; *provided further* that if the Indenture Trustee, the Committee (or any of the twenty largest unsecured creditors, if no

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Committee has been appointed), or the United States Trustee timely objects to any such Material Modification or Amendment to the Credit Agreement, then such Material Modification or Amendment shall only be permitted pursuant to an order of this Court after notice and a hearing. For purposes of this paragraph, a **“Material Modification or Amendment of the Credit Agreement”** shall mean any modification or amendment that operates to (1) shorten the maturity of the extensions of credit under the Credit Agreement, (2) increase the aggregate amount of any of the DIP Loan Commitment, (3) increase the rate of interest or any other ~~existing~~ fees or charges payable thereunder (other than to the extent contemplated in the Credit Agreement as in effect on the date hereof or this Interim DIP Order including clause (i) of this Section 12(b)), (4) expand the scope of the DIP Liens, or (5) otherwise modify the Credit Agreement in a manner materially less favorable to Debtor and its estate, but Material Modification or Amendment of the Credit Agreement shall exclude any forbearance or waiver which may occur after a notice of an Event of Default. Debtor shall send notice to the Indenture Trustee, any Committee (or the twenty largest unsecured creditors, if no Committee has been appointed), and the United States Trustee of any Non-Material Modification but Non-Material Modifications need not be filed with the Court and shall take effect immediately and shall remain effective unless determined, on motion of a party, to constitute a Material Modification or Amendment of the Credit

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Agreement, in which event such modification shall be governed by this subparagraph; and

c. Debtor is authorized and directed to perform all other acts required under or in connection with the Credit Agreement.

13. ***Interest, Fees and Expenses.*** Debtor shall pay all interest, DIP Fees and expenses when due to the Administrative Agent, the DIP Lender and the Indemnitees in accordance with the terms of the Credit Agreement and/or the other Financing Documents, including, without limitation, the following:

a. ***Interest.*** Debtor shall pay all interest when due in accordance with Section 2.02 of the Credit Agreement.

b. ***Fees Payable to Administrative Agent.*** Debtor shall pay all DIP Fees and expenses pursuant to Sections 2.02 and 2.05 of the Credit Agreement and pursuant to the procedure set forth in subparagraph (c) below.

c. ***Objections.*** All DIP Fees within ten (10) calendar days after receipt by Debtor, the Indenture Trustee, and the Committee of invoices from the Administrative Agent or DIP Lender's professionals (which may be redacted to remove any attorney-client privileged communications). Unless Debtor, the Indenture Trustee, or the Committee (if any, or the twenty largest unsecured creditors if no Committee has been appointed) notifies the Administrative Agent that it objects to any portion of the Administrative Agent's fees within such

ten (10) calendar days (“**DIP Fees Objection**”), Administrative Agent may pay DIP Fees by making any DIP Loans and the amount thereof shall be added to the DIP Loans. Any DIP Fees Objection shall state with particularity the particular time or expense entries to the objection is made and the reasons therefor, or the Administrative Agent may disregard such objection. The Court’s decision regarding a DIP Fees Objection shall be determined under the reasonableness standards applicable to a secured creditor’s fees, costs and charges pursuant to Bankruptcy Code Section 506(b). If Debtor, the Indenture Trustee, or the Committee (if any), or any other interested party asserts a DIP Fees Objection, the Administrative Agent shall exclude from the DIP Loans the portion of DIP Fees that are specified in the DIP Fees Objection until it has been resolved by agreement between Debtor, the Indenture Trustee, or the Committee, as applicable, and the Administrative Agent, Court Order, or otherwise, but it may make any DIP Loans for any DIP Fees (or the portion thereof) that are not specifically objected to in a DIP Fees Objection.

14. **Indemnification.** Debtor shall indemnify the Administrative Agent and DIP Lender (and their directors, direct and indirect members, officers, employees, agents, attorneys, affiliates and advisors, collectively, the “**Indemnitees**”) on the terms provided in Section 2.05 of the Credit Agreement, and will reimburse, indemnify, pay and hold Indemnitees harmless from and

against DIP Fees, *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such indemnified liabilities are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee.

15. *Effectiveness of Credit Agreement.* From and after entry of this Interim DIP Order (the “**Effective Date**”), the Credit Agreement constituted and constitutes a valid and binding obligation of Debtor, enforceable against Debtor in accordance with the terms of this Interim DIP Order for all purposes during the Case, any subsequently converted case of Debtor under Chapter 7 of the Bankruptcy Code or after the dismissal of the Case. No obligation, payment, transfer or grant of security under the Credit Agreement or this Interim DIP Order shall be stayed, restrained, voidable, avoidable or recoverable under the Bankruptcy Code or under any applicable law (including without limitation, under sections 502(d), 548 or 549 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law), or subject to any defense, reduction, setoff, recoupment or counterclaim.

16. *Conditions Precedent to the DIP Credit Facility.* Conditions precedents to the Administrative Agent’s and the DIP Lender’s obligations to fund DIP Loans under the DIP Credit Facility shall include but are not limited to:

a. Debtor shall be in compliance with all applicable laws and regulations, and shall have obtained all licenses, consents and approvals necessary to operate its business and shall have obtained all material and appropriate approvals pertaining to all applicable governmental, ERISA, retiree health benefits, workers' compensation and other requirements, regulations and laws including Environmental Laws (as defined in the Credit Agreement).

b. The Administrative Agent shall have received and been satisfied with all applicable orders entered by the Bankruptcy Court in the event special authority is needed.

c. No unwaived Event of Default has occurred under the Credit Agreement, and no event or condition that with notice or the lapse of time, or both, would constitute an Event of Default, has occurred and is continuing under the Credit Agreement.

d. The Administrative Agent shall have received such additional documents, information and materials as the Administrative Agent may reasonably request.

e. Satisfactory legal due diligence review.

17. ***DIP Liens.*** As security for the DIP Obligations, effective and perfected upon the date of entry of this Interim DIP Order, and without the necessity of the execution or recordation of filings by Debtor, of security

agreements, pledge agreements, fixture filings, mortgages, ^{action} hypothecs, deeds of trust, control agreements, financing statements or other similar documents, or the possession or control by the Administrative Agent (for the benefit of DIP Lender), security interests in and liens are hereby granted to the Administrative Agent for its own benefit and for the benefit of DIP Lender on and over all property and other assets of Debtor and its estate of every kind or type whatsoever, tangible, intangible, real, personal or mixed, whether now owned or hereafter acquired or arising, and whether or not encumbered prior to the Petition Date, wherever located; all property of Debtor's estate within the meaning of section 541 of the Bankruptcy Code; and all proceeds, rents and products of the foregoing (collectively, all of the foregoing property and assets of Debtor and/or its estate, "**Property**"), which property includes but is not limited to: all other real and personal property of the Borrower including, without limitation, all of Borrower's right, title and interest, whether now existing or hereafter acquired, in all accounts, inventory, goods, equipment, general intangibles, instruments, contracts, licenses, insurance policies, investment property, deposit and investment accounts, commercial tort claims, supporting obligations, letter of credit rights, intellectual property, real property, cash, leasehold estates, and all proceeds and products of any of the foregoing (such security interests, liens and pledges collectively referred to herein as the "**DIP Liens**"; and such assets and products and proceeds

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collectively referred to herein as the “**Collateral**”), provided, however, the Collateral shall not include avoidance actions as defined in Chapter 5 of the Bankruptcy Code, and further provided that such security interests and DIP Liens shall have the following priorities and shall be subject, in the Case, to the Carve Out:

a. ***Second Priority Lien on Substantially All Assets.*** Pursuant to section 364(c) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected, second priority security interest junior only to the Senior Liens of the Indenture Trustee, in and lien upon all Collateral, except leased or purchase money-financed equipment of Debtor which was on the Petition Date herein subject to valid and perfected pre-petition security interests, as to which the Administrative Agent shall have a lien junior to that of the Indenture Trustee;

b. ***Priming Lien.*** Administrative Agent for the benefit of DIP Lender is granted a valid, binding, continuing, enforceable, fully-perfected, security interest lien pursuant to Section 11 U.S.C. § 364(d) upon all Collateral that is senior to and shall prime the security interests and lien granted to the Subordinated Lender. The Subordinated Lender has consented to such priming;

c. ***Seniority over Setoff and Recoupment Rights.*** For avoidance of doubt, the DIP Liens granted to the Administrative Agent for the benefit of the DIP Lender on the Collateral shall be senior in priority to any and all rights, if any,

of any other person or entity of offset, setoff or recoupment on Post-petition Accounts or other Post-petition account receivables of Debtor or other Property and/or Collateral, provided, however, that the DIP Liens shall be junior to the Senior Liens of the Indenture Trustee;

d. For avoidance of doubt, the Administrative Agent consents to a junior and fully subordinate lien on all Collateral to be granted in favor of the Subordinated Lien.

18. *Superpriority Claims.* Subject to the Carve Out, pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed senior administrative expense claims against Debtor with priority over any and all unpaid administrative expenses, diminution claims and all other claims against Debtor, now existing or hereafter arising, of any kind whatsoever (the “**Superpriority Claims**”), including, without limitation, all other unpaid administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546, 726, 1113 or 1114 of the Bankruptcy Code, and shall at all times be senior to the rights of Debtor, any successor trustee or any creditor, in the Case or any subsequent proceedings under the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-

consensual lien, levy or attachment, which allowed claims shall be payable from and have recourse to all pre- and post-petition property of Debtor and all proceeds thereof. Notwithstanding anything to the contrary herein, the Superpriority Claims granted hereunder shall not extend to any and all proceeds or property (net of the costs of the recovery or disposition of such property) in respect of (i) any and all proceeds of Avoidance Actions (the “**Avoidance Action Proceeds**”), whether or not such proceeds or property is recovered from a judgment, settlement or otherwise, and (ii) Debtor’s interests, rights, choices in action, or claims of any kind whatsoever, choate or inchoate, present or residual, which for any reason cannot be made subject to the DIP Lien including, but not limited to, the Excluded Assets (the “**Unencumbered Assets**”). With respect to the Avoidance Action Proceeds, the DIP Obligations shall have ordinary administrative priority status of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code. Prior to payment in full of the DIP Loans and all DIP Obligations (or the express written consent of the Administrative Agent), Debtor shall not sell, pledge, hypothecate or otherwise encumber any Avoidance Action Proceeds, Unencumbered Assets or the Facility Lease (and any such sale, pledge, hypothecation or other transfer shall be void *ab initio*).

19. ***Authorization and Adequate Protection for Use of Cash Collateral.***

The Debtor is authorized to use cash proceeds which constitute cash collateral

pursuant to the Senior Liens of the Indenture Trustee in accord with the budget (“**Budget**”) submitted into evidence at the Interim Hearing through October 1, 2011, the last day covered by the Budget. The ~~Interim~~^{Indenture} Trustee is granted a replacement lien, to the extent (i) its cash collateral was actually used by the Debtor and (ii) to the extent such cash constitutes the Indenture Trustee’s collateral, and (iii) to the extent the Indenture Trustee’s collateral actually diminishes in value during the period covered by the Budget and during any subsequent periods covered by any other orders of this Court approving use of cash collateral.

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20. **Replacement Liens.** On account of the Subordinated Lender’s consent to the priming of the Subordinated Loan, and on account of the Indenture Trustee’s consent to the use of cash collateral, and on account of each of the Subordinated Lender^(s) and the Indenture Trustee^(s) consent to the security interests to the DIP Agent for the benefit of the DIP Lender, the use of cash collateral and for any diminution in the value of the prepetition lenders’ prepetition collateral (the “**Prepetition Collateral**”) from and after the Petition Date resulting from the sale, lease or use by the Debtor (or other decline in value, whether due to priming, depreciation, decline in market price or otherwise) of the Prepetition Collateral (including the cash collateral), from and after the Debtor’s Petition Date, the prepetition lenders, shall be granted: (a) with respect to the Indenture Trustee, (i) a

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valid, binding, continuing, enforceable, and fully-perfected first priority replacement lien on and senior security interest under section 364(c)(2) of the Bankruptcy Code upon all of the Prepetition Collateral (including, but not limited to, (v) all receivables, all revenues, rent equivalents, and collections arising from the rent, lease, or use of guest rooms, restaurants, bars, office space, meeting rooms, banquet rooms, recreational facilities, parking facilities, health club facilities, and vending machines at the Hotel Facility, (w) all receivables, all revenues, rent equivalents, and collections relating to service charges, customer obligations, the wholesale or retail of food and beverage, and installment payment obligations at the Hotel Facility, (x) other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of the Hotel Facility, including and improvements thereto, (y) the proceeds from any applicable insurance policies relating to business interruption or other loss of income, and (z) any and all other proceeds from the use of the Prepetition Collateral, unencumbered collateral (including, but not limited to, the Unencumbered Assets except for avoidance actions and proceeds thereof, and any unencumbered postpetition revenue), subject only to the Carve-Out, and (ii) a valid, binding, continuing, enforceable, and fully-perfected first priority continuing lien on and senior security interest under section 364(c)(2) of the Bankruptcy Code upon all of the Prepetition Collateral (including

but not limited to those items listed in subparagraph (a)(i) of this paragraph), and unencumbered collateral (including the Unencumbered Assets except for avoidance actions and proceeds thereof), subject only to the Carve-Out; and (b) with respect to the Trust, as the Subordinated Lender, a valid, binding, continuing, enforceable fully perfected junior security interest and lien, under section 364(c) (3) of the Bankruptcy Code, upon all property of the estate that is subject to a lien subject only to the Carve-Out, the Senior Liens, and the DIP Liens. The replacement and continuing liens of the Indenture Trustee shall have the same validity, extent and priority as the Senior Liens, and shall be senior in priority to the DIP Liens. The Subordinated Lender Replacement Liens shall have the same validity, extent and priority as the liens that the Subordinated Lender possessed on the Petition Date, except that the Subordinated Lender Replacement Liens shall be junior to DIP Liens.

21. ***Adequate Protection.*** In addition to the valid, binding, continuing, enforceable, and fully-perfected first priority replacement and continuing liens on and senior security interest upon all of the Prepetition Collateral and the Debtor's unencumbered collateral, as such liens are more fully described in paragraph 20 above, (i) the Debtor shall be required to pay the Indenture Trustee's reasonable fees and costs, including its professionals' fees, relating to this Case, and (ii)

interest shall accrue at the default rate on (x) the Debtor's matured, prepetition secured loan giving rise to the Senior Liens, and (y) the Subordinated Loan.

22. **Carve Out.** For purposes hereof, Carve Out shall mean the sum of Court and UST Fees, Potential Chapter 7 Trustee Fees and Post Default Professional Fees as defined and limited in subparagraphs (a) through (d) below:

a. All fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in subparagraph (c) below) ("**Court and UST Fees**");

b. Fees and expenses up to \$15,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in subparagraph (c) below) (the "**Potential Chapter 7 Trustee Fees**");

c. To the extent allowed by the Court, all professional fees and expenses (regardless of when incurred, such professional fees and expenses, the "**Post Default Professional Fees**") which had not for any reason been paid to or held by Professional Persons (as defined below) prior to the first business day following the earlier of the delivery by the Administrative Agent of a notice of an Event of Default which specifies a Termination Date under this Interim DIP Order or the Credit Agreement, whether such Post Default Professional Fees are allowed by the Bankruptcy Court prior to or after delivery of such notice of an Event of

Default or the occurrence of a “Termination Event” (as defined in the Credit Agreement), and incurred by (i) persons or firms retained by Debtor pursuant to section 327, 328 or 363 of the Bankruptcy Code, or (ii) the Committee appointed in the Case (collectively, the “**Professional Persons**”).

d. Notwithstanding anything to the contrary set forth in this Interim DIP Order, the Credit Agreement or otherwise, the carve out to provide for the potential liabilities for Court and UST Fees, Potential Chapter 7 Trustee Fees and Post Default Professional Fees shall be in an aggregate amount of not more than \$500,000 (the “**Carve Out**”) and, for the avoidance of doubt, shall not be affected or enlarged by the Variances or amounts included in any DIP Budget but not paid. The Administrative Agent may in its sole and absolute discretion establish collateral reserves or availability blocks from the Borrowing Base for the Carve Out.

e. For the purpose of clarity, the Carve Out shall not be reduced by (i) amounts paid to Professional Persons or on account of Court and UST Fees by Debtor prior to the delivery by the Administrative Agent of the notices described in subsection (c) of this paragraph or (ii) retainers received by Professional Persons prior to the filing of the Case.

23. *Limitation on Charging Expenses Against Collateral.* RESERVED

24. *Perfection of DIP Liens.*

a. The Administrative Agent is hereby authorized, but not required, to file or record any one or more financing statements, trademark filings, copyright filings, patent assignments, real estate mortgages, hypothecs, ^(atom) fixture filings, deeds of trust, notices of lien or similar instruments (collectively, “**Notice Filings**”) in any jurisdiction, or take possession of or control over, or take any other action in order to validate and perfect the liens and security interests granted to the Administrative Agent hereunder. The DIP Liens granted under this Interim DIP Order shall constitute valid and duly perfected security interests and liens, and the Administrative Agent is hereby not required to file or record any Notice Filings which otherwise may be required under federal or state law in any jurisdiction, or take any action, including taking possession, to validate and perfect such security interests and liens, and such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge dispute or subordination, as of the Effective Date. The failure of Debtor to execute any documentation relating to the enforceability, priority or perfection of the DIP Liens shall in no way affect the validity, perfection or priority of the DIP Liens.

b. If the Administrative Agent, in its sole discretion, elects to file any Notice Filings or otherwise to confirm perfection of such DIP Liens, Debtor shall cooperate with and assist in such process, the stay imposed under section 362 of the Bankruptcy Code is hereby lifted to permit the filing and recording of a

certified copy of the Interim DIP Order, this Interim DIP Order or any such Notice Filings, and all such documents shall be deemed to have been filed and recorded at the time of and on the Effective Date. Any error, omission or other defect in any such filing shall not affect the validity, enforceability, priority or perfection of any DIP Liens granted under the Interim DIP Order, this Interim DIP Order or rights under the Credit Agreement.

c. A certified copy of this Interim DIP Order or the Interim DIP Order may, in the discretion of the Administrative Agent, be filed with or recorded in filing or recording offices in addition to or in lieu of such Notice Filings, and all filing offices are hereby authorized and directed to accept such certified copy of this Interim DIP Order or the Final DIP Order for filing and recording. The DIP Liens may be perfected against the Land by recordation of the Interim DIP Order and/or this Interim DIP Order or Abstract thereof in the appropriate state or county filing office.

25. *Events of Default.* In addition to the Events of Default under the Credit Agreement, which are incorporated herein and constitute events of default hereunder, the following shall constitute events of default (each, an “**Event of Default**”) under this Interim DIP Order:

a. The Case is dismissed or converted to a Chapter 7 case; or if a Chapter 11 trustee, a responsible officer, or an examiner with enlarged powers

relating to the operation of the business of Debtor (powers beyond those established in section 1106(a)(3) and (4) of the Bankruptcy Code) is appointed in the Case and the order appointing such trustee, responsible officer or examiner shall not have been reversed or vacated within three (3) days of entry thereof.

b. Manager is removed as manager of the Hotel Facility without the written consent of Administrative Agent, which consent shall not be unreasonably withheld.

c. The Bankruptcy Court enters an order granting relief from the automatic stay to the holder or holders of a security interest to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any assets of Debtor which have an aggregate value in excess of \$50,000.

d. An order is entered reversing, amending, supplementing, suspending or staying this Interim DIP Order.

e. If Debtor creates, incurs or causes to exist any post-petition liens or security interests other than those granted pursuant to the Interim DIP Order, to which the Administrative Agent has not consented in writing which exceeds \$50,000 at any one time, provided, however, that Administrative Agent and the DIP Lender shall be deemed to have consented to (i) liens senior to the DIP Liens in favor of the Indenture Trustee, and (ii) liens junior to the DIP Liens in favor of the Subordinated Lien Agent.

f. If Debtor (1) suffers any judgment on a post-petition obligation or (2) the Court allows an administrative claim which (A) is not contemplated by the DIP Budget (within permitted Variance parameters), (B) not covered by insurance, and (C) the enforcement of the judgment or payment of the administrative claim has not been stayed or agreed by the claimant to be deferred, or (3) if Debtor compromises an account receivable, which, in each case, will reasonably foreseeably have an adverse impact on Debtor's cash flow or Borrowing Base in the DIP Budget in excess of \$50,000 (the occurrences described in subclauses (1), (2) and (3) hereof, each an "**Adverse Budget Impact**"), unless the Adverse Budget Impact has been (a) identified as a line item by amount and creditor or account debtor, as the case may be, on a rolling 13 Week Forecast, and (b) such rolling 13 Week Forecast has been approved by the Administrative Agent and has become the DIP Budget, it being understood that the filing of a motion to approve the incurrence of an Adverse Budget Impact shall not constitute an Event of Default provided that the conditions of subclauses (a) and (b) hereof are met prior to Court's Order approving the motion. For avoidance of doubt, (i) allowance and payment of administrative claims which are Permissible Uses included in the DIP Budget and paid in the ordinary course of Debtor's business shall not constitute an Event of Default, (ii) the allowance of administrative claims by stipulation or order providing for payment on or after the effective date of a

plan of reorganization that provides for full payment of the DIP Loans shall not constitute an Event of Default, (iii) allowance of Professional Fees pursuant to Orders of the Court (each, a “**Professional Fee Allowance**”) in excess of the amounts theretofore allocated in the DIP Budget shall not constitute an Event of Default, provided that Debtor may pay, within permitted Variance parameters, Professional Fee Allowances only in amounts not greater than the amounts provided for in the DIP Budget, cumulative of all periods through the month in which the Professional Fee Allowance is ordered by the Court. For the purpose of clarity, Professional Fee Allowances may be paid by Debtor from the relevant line item of the DIP Budget for a Professional from periods of the DIP Budget occurring either before or after the month in which the Court ordered the Professional Fee Allowance.

g. The Bankruptcy Court shall have entered an order approving payment of any prepetition Claim (other than by application of a prepetition deposit), such as a critical vendor claim, unless the claim has been (i) identified as a line item by amount and creditor on a rolling 13 Week Forecast, (ii) such rolling 13 Week Forecast has been approved by the Administrative Agent and has become the DIP Budget, it being understood that the filing of a motion to approve such a payment shall not constitute an Event of Default provided that the conditions of subclauses (i) and (ii) hereof are met prior to Court’s Order approving the motion.

h. Debtor (or any of its successors or assigns) files a motion or application or adversary proceeding challenging the validity, enforceability, perfection or priority of any claim or lien securing or pertaining to the DIP Obligations.

i. The Court allows the setoff of a prepetition deposit from one of Debtor's account debtors which, after giving effect to the setoff, causes Debtor to breach a Financial Covenant of the Interim DIP Order or the Credit Agreement.

j. Debtor files or seeks confirmation of any chapter 11 plan (and related disclosure statement) which does not provide for both (a) the irrevocable payment in full of the DIP Loans and all DIP Obligations on the effective date of such plan and (b) a release of the Administrative Agent and the DIP Lender to the fullest extent permitted at law.

k. A plan is confirmed in the Case that does not provide for termination of the DIP Obligations and payment in full in cash of outstanding obligations pursuant to the Credit Agreement and Financing Documents (on the effective date of a plan of reorganization or liquidation), or any order is entered that dismisses the Case and which order does not provide for such termination and payment, or Debtor seeks support for or fails to contest the filing or confirmation of a plan or the entry of an order that does not provide for payment in full of the DIP Loans and all DIP Obligations on the effective date of such plan.

l. The filing of a motion, pleading, or proceeding by Debtor, or any of its affiliates, that could reasonably be expected to result in any impairment of the rights or interests of the DIP Lender and Administrative Agent or a determination by a court with respect to a motion, pleading or proceeding brought by another party that results in any impairment of the rights, claims and liens relating to the DIP Loans and any DIP Obligations.

m. Any other superpriority administrative expense claim or lien (other than the Carve Out) which is *pari passu* with or senior to the Superpriority Claims or DIP Liens of the Administrative Agent for the benefit of DIP Lender is granted in the Case, provided, however, for avoidance of doubt, payment of operating expenses in the ordinary course of business pursuant to the DIP Budget is permitted.

n. Any failure of Debtor's actual performance to meet the requirement of the DIP Budget within permitted Variance parameters.

o. Failure of Debtor to satisfy in a timely fashion any of the Reporting Requirements of the Final DIP Order, this Interim DIP Order, Financing Documents and the Credit Agreement.

p. Debtor default in the due and punctual payment of any payment, fee or expense owing to a DIP Lender and/or Administrative Agent pursuant to any of the Financing Documents, when and as the same shall become

due and payable, whether pursuant to this Interim DIP Order, Sections 2.02 and 2.05 of the Credit Agreement or other provision of the Financing Documents, at maturity, by acceleration or otherwise.

q. Any material provision of Credit Agreement or any other Financing Document shall at any time fail for any reason to be in full force and effect, or the Credit Agreement or any other Financing Document shall terminate, be terminated or become void or unenforceable by the Administrative Agent for the benefit of the DIP Lender for any reason whatsoever without the prior written consent of the Administrative Agent.

r. The Credit Agreement and the other Financing Documents and the Interim DIP Order and/or Final DIP Order shall, for any reason, cease to create a valid lien on any of the Collateral purported to be covered thereby or such lien shall cease to be a perfected lien having the priority provided herein pursuant to Section 364 of the Bankruptcy Code against Debtor, or Debtor shall so allege in any pleading filed in any court.

s. Debtor shall default in the performance or observance of any covenant, agreement or provision contained in the Credit Agreement or any other Financing Document or in any other instrument or document evidencing or creating any obligation, guaranty or lien in favor of the Administrative Agent or the DIP Lender in connection with or pursuant to the Credit Agreement.

t. A “Revocation Order” (as defined in the depositary agreement) shall have been sent or any change or replacement shall have been made in the standing revocable instructions (as described in each of the depositary agreement(s)) or any bank at which any deposit account or blocked account is maintained shall fail to comply with any of the terms of any deposit account, blocked account, or similar agreement (including any depositary agreement) to which such bank is a party.

u. Any representation or warranty made or deemed made by Debtor under or in connection with this Interim DIP Order, the Credit Agreement or any other Financing Document or any information or report delivered by Debtor pursuant to this Interim DIP Order, Credit Agreement or any other Financing Document shall prove to have been incorrect or untrue in any material respect when made or deemed made or delivered.

v. There shall have occurred any event, or any condition shall exist, other than the filing of the Case, that has had or resulted in, or could reasonably be expected to have or result in, a Material Adverse Effect (as defined in the Credit Agreement) since the Petition Date.

w. Debtor enters into any transaction or agreement that could reasonably be expected to result in a Change in Control (as defined in the Credit Agreement) that is to become effective prior to payment in full of the DIP Loans

and all DIP Obligations; or a Change in Control shall have occurred prior to payment in full of the DIP Loans and all DIP Obligations.

x. Debtor is enjoined, restrained or in any way prevented by the order of any court or any Governmental Authority from conducting all or any material part of its business for more than five (5) days.

y. Debtor (or any of its successors or assigns) or any other Person files a motion, adversary proceeding or takes any other action to (i) sell or otherwise transfer any of Debtor's (or any of its successors' or assigns') interest in the Hotel Facility (or improvements, fixtures or other assets used to operate the Hotel Facility), except as expressly provided in the Credit Agreement, (ii) amend in any manner adverse to Administrative Agent or the DIP Lender, or terminate access of Administrative Agent and the DIP Lender to the Hotel Facility or (iii) cease operating the Hotel Facility in the ordinary course of business.

26. *Protection of the Administrative Agent's and DIP Lender's Rights.*

a. ***Remedies on Termination Date.*** Subject to the following provisions of this paragraph and the Court's determination of the outcome on a Relief From Default Motion (as defined below), on and after the Termination Date, the Administrative Agent for the benefit of the DIP Lender (subject to the terms of an intercreditor agreement with the Indenture Trustee, if any), shall have the right to exercise all rights and remedies under the Financing Documents as provided

below, including in respect of exercising all rights and remedies to dispose of the Collateral, in such commercially reasonable manner as the Administrative Agent may determine to effect the repayment of the DIP Credit Facility with the proceeds of such dispositions. After the occurrence and during the continuance of an Event of Default that has not either (i) been waived by the Administrative Agent or (ii) solely with regard to the remedies set forth in subparagraph c. below, unless temporarily stayed by the filing of a Relief From Default Motion or by the Court's issuance of a Relief From Default Order (as defined below), the Administrative Agent for the benefit of the DIP Lender may undertake the following remedies, for which the automatic stay of section 362(a) of the Bankruptcy Code is hereby lifted:

b. ***Remedies Available Without Notice Or Further Court Approval.*** On the Termination Date, without further Order of the Court, the automatic stay having been hereby lifted ^(only) for such purposes, and without regard to any temporary stay arising from the filing of a Relief From Default Motion, (i) Debtor's right, if any, to obtain DIP Loans on the terms and conditions set forth in the Credit Agreement and in this Interim DIP Order shall terminate automatically, and (ii) the unpaid balance of the DIP Obligations (and any unpaid and accrued interest) shall automatically be accelerated and become immediately due and payable, and (iii) Debtor shall immediately cease to have the right, through

Manager or otherwise, to access or use any cash or Proceeds in its Deposit Accounts.

c. *Remedies Available Upon Seven Business Days' Notice.*

Subject only to the Court's issuance of a Relief From Default Order [and the terms of an intercreditor agreement with the Indenture Trustee, if any], except for the actions authorized to be taken by the Administrative Agent for the benefit of the DIP Lender without notice or further Court order under the prior subparagraph, upon providing seven (7) business days' notice of an Event of Default under this Interim DIP Order or under the Credit Agreement to Debtor, the United States Trustee, the Indenture Trustee, any Committee (or the twenty largest unsecured creditors, if no Committee has been appointed), and any other official, statutory committee hereinafter appointed herein Administrative Agent shall be entitled to exercise all of its rights and remedies against the Collateral by foreclosure, collection, suit, receivership or otherwise pursuant to the Credit Agreement, any other Financing Document and applicable law. Following notice of an Event of Default, Debtor, the Indenture Trustee or the Committee (if any) may contest whether an Event of Default has occurred and is material by filing a motion (the "**Relief From Default Motion**") with the Court within seven (7) business days of the notice of an Event of Default. The timely filing and service of a Relief From Default Motion will temporarily stay the Administrative Agent from taking actions

against the Collateral (except for actions by the Administrative Agent pursuant to the prior subparagraph, which will not be so stayed) but until the Court enters its order granting or denying the Relief From Default Motion (the “**Relief From Default Order**”). Subject to the convenience of the Court’s calendar, the hearing on a Relief From Default Motion shall be within five (5) business days of Debtor’s filing of the Relief From Default Motion. If a Relief From Default Motion is not timely filed and served and the hearing is not timely sought, or if the Relief From Default Motion is denied, the Administrative Agent will have relief from the automatic stay for all purposes and Debtor shall have no further remedy or recourse with regard to the Collateral. On a Relief From Default Motion, or any other hearing regarding any exercise of rights or remedies after an Event of Default has occurred, the only issue that may be raised by Debtor or the Committee, ~~and the only issue for the Court to determine~~, is whether an Event of Default under the Interim DIP Order or the Credit Agreement has, in fact, occurred, is material and is continuing. Debtor and the Committee shall not have the right to seek relief, including, without limitation, under section 105 of the Bankruptcy Code, to the extent such relief would in any way impair or restrict the rights and remedies of the Administrative Agent set forth in this Interim DIP Order, the Credit Agreement or any other Financing Document. The delay or failure of the Administrative Agent to seek relief or otherwise exercise or enforce its rights and remedies under this

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Interim DIP Order, the Credit Agreement or any other Financing Document shall not constitute a waiver of the Administrative Agent's or the DIP Lender's rights or remedies.

d. ***Limitations On Marshaling.*** The Administrative Agent or the DIP Lender shall not be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the Collateral.

27. ***Preservation of Rights Granted Under the Interim DIP Order and this Interim DIP Order.***

a. Other than the Permitted Liens, including the Senior Lien of the Indenture Trustee, no claim or lien having a priority superior to or *pari passu* with those granted by this Interim DIP Order to the Administrative Agent for the benefit of the DIP Lender in respect to the Collateral shall be granted or allowed while any portion of the DIP Obligations remains outstanding. Subsequent to the Petition Date, Debtor shall not grant to any party or suffer any liens senior to or *pari passu* with the DIP Liens, except with the Administrative Agent's prior written consent. The DIP Liens shall not be subject or subordinate to or *pari passu* with (i) ~~any lien or security interest that is avoided and preserved for the benefit of Debtor and its estate under section 551 of the Bankruptcy Code,~~ (ii) any liens arising after the Petition Date including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit, commission,

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board or court for any tax liability of Debtor, whether secured or unsecured, including property taxes for which liability is *in rem*, *in personam*, or both, except a tax of a kind specified in section 507(a)(8) of the Bankruptcy Code, or ^{1/}~~(iii)~~ any intercompany or affiliate liens of Debtor. The DIP Liens shall not be subordinated to or made *pari passu* with any other lien or security interest under sections 363 or 364 of the Bankruptcy Code or otherwise.

~~b. Any holder of a claim for offset, setoff or recoupment on Post-petition Accounts or other Post-petition account receivables of Debtor or other assets of Debtor shall be stayed and prohibited from asserting such right of setoff, offset or recoupment in any manner.~~

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c. Unless all DIP Obligations shall have been indefeasibly paid in full and all DIP Obligations terminated, Debtor shall not seek (i) any order modifying or extending this Interim DIP Order without the prior written consent of the Administrative Agent, and no such consent shall be implied by any other action, inaction or acquiescence of the Administrative Agent, (ii) any order modifying or extending this Interim DIP Order or adversely affecting the rights, priorities and liens provided herein without the prior written consent of the Administrative Agent or (iii) an order converting or dismissing the Case. If an order dismissing the Case under section 1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall provide (in accordance with sections 105

and 349 of the Bankruptcy Code) that (x) the DIP Liens and the Superpriority Claims in favor of the Administrative Agent for the benefit of the DIP Lender pursuant to this Interim DIP Order shall continue in full force and effect and shall maintain their priorities as provided by this Interim DIP Order, until all DIP Obligations shall have been indefeasibly paid in cash and satisfied in full and the DIP Obligations shall have been terminated and that such Superpriority Claims and the DIP Liens remain binding on all parties in interest, and (y) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the Superpriority Claims and the DIP Liens to the fullest extent authorized by statute and applicable law.

d. If any or all of the provisions of this Interim DIP Order are hereafter reversed, modified, vacated or stayed, such reversal, modification, vacatur or stay shall not affect (i) the validity, priority or enforceability of any DIP Obligations incurred prior to the actual receipt of written notice by the Administrative Agent, as applicable, of the effective date of such reversal, modification, vacatur or stay or (ii) the validity or enforceability of the DIP Liens and the Superpriority Claims authorized or created hereby with respect to any DIP Obligations. Notwithstanding any such reversal, modification, vacatur or stay, any DIP Obligations incurred by Debtor to the DIP Lender prior to the actual receipt of written notice by the Administrative Agent of the effective date of such reversal,

modification, vacatur or stay shall be governed in all respects by the original provisions of this Interim DIP Order, as applicable, and the Administrative Agent and the DIP Lender shall be entitled to all the rights, remedies, privileges and benefits granted in sections 363(m) and 364(e) of the Bankruptcy Code and this Interim DIP Order and all Financing Documents with respect to all DIP Obligations.

e. Except as expressly provided in this Interim DIP Order, the Credit Agreement or any other Financing Document, the DIP Liens, the Superpriority Claims, and the DIP Obligations, and all other rights and remedies of the Administrative Agent for the benefit of the DIP Lender granted by the provisions of this Interim DIP Order and all the Financing Documents shall survive, and shall not be modified, impaired or discharged by (i) the entry of an order converting the Case to a case under chapter 7, dismissing the Case, or (ii) the entry of an order confirming a plan of reorganization in the Case and, pursuant to section 1141(d)(4) of the Bankruptcy Code, Debtor having hereby waived any discharge of any remaining DIP Obligations. The terms and provisions of this Interim DIP Order shall continue in the Case, or in any superseding chapter 7 Case under the Bankruptcy Code, and the DIP Liens, the Superpriority Claims, the DIP Obligations, and all other rights and remedies of the Administrative Agent for the benefit of the DIP Lender granted by the provisions of this Interim DIP Order shall

continue in full force and effect until the DIP Obligations are indefeasibly paid in full.

28. *Limitation on Use of the DIP Loans.* By the Interim DIP Order Debtor waived, and Debtor hereby waives any and all claims and causes of action against the Administrative Agent and the DIP Lender and their respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys or advisors, directly related to the Credit Agreement, any Financing Document and this Interim DIP Order or the negotiation of the terms thereof. Notwithstanding anything herein or in any other order by this Court to the contrary, no borrowings under the Credit Agreement, any Financing Document, proceeds of the Collateral or the Carve Out may be used for any of the following without the prior written consent of each affected party: (a) to object, contest or raise any defense to, the validity, perfection, priority, extent or enforceability of any amount due under the this Interim DIP Order, the Credit Agreement, any Financing Document, or the DIP Liens or Superpriority Claims granted under the Interim DIP Order, the Credit Agreement or any Financing Document, (b) ~~to assert any claims or defenses or causes of action against the Administrative Agent, the DIP Lender or their respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys or advisors,~~ ^(b) to prevent, hinder or otherwise delay the Administrative Agent's assertion, enforcement or realization on the Collateral in accordance with

the Credit Agreement, any Financing Document or this Interim DIP Order, ¹⁵(d) to seek or to modify any of the rights granted to the Administrative Agent for the benefit of the DIP Lender hereunder, under this Interim DIP Order or under the Credit Agreement or the Financing Documents, or ¹⁶(e) to pay any amount on account of any claims arising before the Petition Date unless such payments are approved by an order of this Court and consented to by the Administrative Agent, provided, however, that no more than \$10,000 in the aggregate of the proceeds of the DIP Facility and the Carve-Out may be used by the Committee to investigate (but not prosecute or challenge) the validity, perfection, priority, extent or enforceability of any amount due to the DIP Lender in its capacity as Subordinated Lender.

29. *Interim DIP Order Governs* ^{Subject to paragraph 1 ("Disposition"),} To the fullest extent permissible under the Bankruptcy Code and existing law, the provisions of this Interim DIP Order, including all findings, are binding on all parties in interest in the Case, including the Administrative Agent, the DIP Lender, the Indenture Trustee, the Committee (if any), and Debtor and their respective successors and assigns (including any Chapter 7 or Chapter 11 trustee subsequently appointed or elected for the bankruptcy estate of any of Debtor) and inures to the benefit of the Administrative Agent for the benefit of the DIP Lender and its respective successors and assigns; provided that the Administrative Agent and the DIP Lender have no obligation to

extend any financing to any Chapter 7 trustee or similar responsible person appointed for the bankruptcy estate of Debtor. To the extent that there is a conflict among the Motion, the Credit Agreement, the Financing Documents, and this Interim DIP Order, this Interim DIP Order will govern and control.

30. **Headings.** Sections headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Interim DIP Order.

31. **Waiver of any Applicable Stay.** Any applicable stay (including, without limitation, under Bankruptcy Rule 6004(h)) is hereby waived and shall not apply to this Interim DIP Order.



SEP 15 2011

United States Bankruptcy Judge

In Re: M Waikiki LLC, Debtor; Case No. 11-02371, United States Bankruptcy Court, District Of Hawaii; INTERIM DIP ORDER (A) AUTHORIZING DEBTOR TO OBTAIN POST-PETITION FINANCING WITH THE DAVIDSON FAMILY TRUST; (B) GRANTING SUPERPRIORITY EXPENSE CLAIMS AND SECURITY INTERESTS; AND (C) GRANTING OTHER RELIEF UNDER 11 U.S.C. §§ 105, 361, 362, 363 AND 364, F.R.B.P. 2002 AND 4001; AND LBRS 2002-1 AND 4001-2

EXHIBIT "A"

LOAN TERM SHEET
[\$2,500,000] DIP CREDIT FACILITY

We are pleased to advise you that Robert M. Davidson and/or Janice G. Davidson as Trustees of The Davidson Family Trust dated December 22, 1999, as amended ("Trust") will consider establishing a secured debtor-in-possession credit facility ("DIP Credit Facility") under the terms and conditions set forth below with M Waikiki LLC as debtor-in-possession under Chapter 11 of the United States Bankruptcy Code ("Borrower") to provide for Borrower's ongoing working capital requirements and operations. Please note that any funding under this proposal is subject to due diligence, legal documentation and final approval of the Trust and the Court (as defined below).

Borrower: M Waikiki LLC as debtor and debtor in possession under Case No.11-02511 in the United States Bankruptcy Court for the District of Hawaii ("Court"), In re M Waikiki LLC ("Chapter 11 Case").

Administrative Agent: The Davidson Group, a Nevada corporation.

DIP Lender: The Trust.

DIP Credit Facility: Secured debtor-in-possession term credit facility to provide for the Borrower's ongoing operations pending a plan of reorganization.

The Property: The hotel and related facilities owned by Borrower that are currently known as the Modern Honolulu in Honolulu, Hawaii.

Maximum Loan Amount: The Maximum Loan Amount under the DIP Credit Facility shall be [Two Million Five Hundred Thousand Dollars (\$2,500,000)]. The amount available to Borrower under the DIP Credit Facility at any one time shall be limited by the provisions governing Availability (described below).

Availability . The DIP Credit Facility will be available in two or more draws, subject to the conditions contained herein and in the DIP Loan Documentation (as defined below). Up to [\$1,000,000] (the "**Interim DIP Availability**") shall be immediately available under the DIP Credit Facility upon entry of an interim order by the bankruptcy court approving the DIP Credit Facility ("**Interim DIP Order**," and the date of entry thereof, the "**Interim DIP Order Date**") and the final execution and delivery of the DIP Loan Documentation (it being understood that the \$250,000 emergency advance made by DIP Lender to Borrower on

EXHIBIT "A"

September 1, 2011 shall be treated as an advance pursuant to the foregoing and shall reduce the Interim DIP Availability by such amount). Upon entry of a final DIP Order on notice as required by Bankruptcy Rule 4001(c)(2) (the “**Final DIP Order**,” and collectively with the Interim DIP Order, the “**DIP Orders**”), up to an additional [\$1,500,000] shall be available as of the day after the entry of the Final DIP Order (the “**Final DIP Order Date**”). Each draw shall be in an amount not less than \$50,000 and no amount of the DIP Credit Facility may be reborrowed once repaid.

Term:

All principal and interest (and to the extent not earlier paid pursuant to the terms of the DIP Loan Documentation, fees and expenses) shall be paid in full in cash on the earlier of (a) [six] months from the Interim DIP Order Date and (b) the occurrence of a DIP Credit Facility Termination Event (as defined below). “**DIP Credit Facility Termination Event**” means the termination of the DIP Credit Facility by the Administrative Agent, in its sole discretion, based upon any one of the following events: (i) the appointment of a Chapter 11 Trustee or other replacement of Modern Management Services, LLC as the management company for the Property without the consent of the Administrative Agent, not to be unreasonably withheld; (ii) the dismissal of the Chapter 11 Case; (iii) the occurrence of an event of default under the DIP Loan Documentation, (iv) the indefeasible payment in full of the indebtedness and obligations under the DIP Credit Facility, (v) a sale of all or substantially all, or the sale of any material portion of, the assets of Borrower, (vi) the conversion of the Chapter 11 Case to a case under Chapter 7, (vii) the effective date of a plan confirmed by a final order in the Chapter 11 Case, (viii) the failure of the Court to enter the Final DIP Order in a form acceptable to Administrative Agent in its sole discretion, and (ix) such other events as may be designated by the Administrative Agent.

Use of Proceeds

The proceeds of the DIP Credit Facility will be used (i) to pay in full all of the DIP Credit Facility Costs (as defined below), and (ii) to fund the working capital needs of the Borrower (including, without limitation, the costs and expenses of administrating the Chapter 11 Case provided no Event of Default then exists or would result therefrom) in accordance with a budget to be prepared by the Borrower and its financial advisors or other accounting professionals in form and substance acceptable to the Administrative Agent in its sole discretion (“**DIP Budget**”). The DIP Budget shall set forth the expenditures, revenues, receipts and disbursements of the Borrower on a weekly basis during the Chapter 11 Case. Borrower shall submit any request to draw

upon the DIP Credit Facility on at least two business days' notice.

Interest and Fees:

(a) Interest on the outstanding balance of the DIP Credit Facility shall accrue monthly at an annual rate of 15% per annum. Interest shall be calculated on the basis of the actual number of days elapsed in a 360 day year. Upon any default under the DIP Credit Facility, the outstanding balance of such DIP Credit Facility shall bear interest at the default rate of 20% per annum, until such default shall have been cured in full.

(b) Administrative Agent and DIP Lender agree to waive any origination fee, Administrative Agent fees, any unused line fee, or exit fee -- fees that are usual and customary for DIP Loans.

(c) Borrower shall pay the DIP Credit Facility Costs.

Security:

The DIP Credit Facility will be secured by valid court-authorized second priority perfected priming security interests and liens in and pledges of all property of the Borrower, junior in priority only to the security interests and liens of Wells Fargo Bank, National Association, as Trustee for Nomura CRE CDO Grantor Trust, Series 2007-2, and the Carve-Out (as defined below), including the Property and all other real and personal property of the Borrower including, without limitation, all of Borrower's right, title and interest, whether now existing or hereafter acquired, in all accounts, inventory, goods, equipment, general intangibles, instruments, contracts, licenses, insurance policies, investment property, deposit and investment accounts, commercial tort claims, supporting obligations, letter of credit rights, intellectual property, real property, cash, leasehold estates, and all proceeds and products of any of the foregoing (such security interests, liens and pledges collectively referred to herein as the "DIP Liens"; and such assets and products and proceeds collectively referred to herein as the "Collateral"). Notwithstanding the foregoing, the Collateral shall not include avoidance actions as defined in the Bankruptcy Code. The DIP Liens shall also be accorded super-priority administrative claim status under Section 364(c)(1) of the Bankruptcy Code subject only to a carve-out not to exceed \$500,000 in the aggregate for (a) the Borrower's professional fees and expenses incurred in the Chapter 11 Case and (b) the payment of fees pursuant to 28 U.S.C. § 1930 (collectively, the "Carve-Out") (in each case, other than any fees or expenses incurred by any party in connection with the investigation (including discovery proceedings), initiation or prosecution of any claims, causes of action, adversary proceedings, contested matters or other litigation against the Administrative Agent or the DIP Lender, including without limitation challenging the amount, validity, perfection, priority or enforceability of or asserting any

defense, counterclaim or offset to, any obligations owed to or claimed by the Administrative Agent or the DIP Lender or the liens and security interests granted to secure such obligations.

Financial Covenants:

Financial covenants shall include, without limitation, (1) minimum weekly revenue, (2) minimum weekly cash receipts, and (3) maximum weekly expenses (subject to an expense reduction program acceptable to Administrative Agent), each of which shall be negotiated and determined prior to the entry of the Final DIP Order. In addition, Borrower shall deliver to the Administrative Agent at least once each week, a 13-week DIP Budget setting forth on a weekly basis cash revenue, receipts, expenses, disbursements, variances to the prior budget and other information.

Cash Management:

(a) Borrower shall implement cash management procedures reasonably satisfactory to the Administrative Agent.

(b) The Administrative Agent shall have the right to perform, at Borrower's expense, field audits on Borrower's books and records and collateral-related information.

Loan Documents:

Borrower shall execute and deliver, and cause to be executed and delivered, to Administrative Agent such loan and security agreements, instruments, documents, certificates, and assurances as are reasonable and customary for similar loans, and as Administrative Agent may reasonably require in connection with the closing of the DIP Credit Facility.

[Administrative Agent shall receive an opinion from Borrower's counsel satisfactory to Administrative Agent.]

Conditions
Precedent:

Customary conditions for financings of this type, including but not limited to:

- Satisfactory review by the Administrative Agent of due diligence items, including but not limited to: (1) receipt of and satisfaction with financial information regarding operations of the Property since its opening in September 2010; (2) legal diligence and (3) monthly financial projections for the next 6 months (balance sheet, income statements, cash flow statements, and availability statement). The findings related to these due diligence items could change the terms and conditions of this Term Sheet.
- Execution of all necessary credit documentation, including a credit agreement incorporating the terms and conditions set forth in this Term Sheet, together with customary closing documentation,

including opinions of counsel, corporate resolutions, certificates and other items reasonably requested by the Administrative Agent, in each case in form and substance satisfactory to the Administrative Agent (collectively, the “DIP Loan Documentation”).

- Perfection on a second priority basis of all security interests and liens in the Collateral, subject to the Carve-Out.
- Prior to the Final DIP Order Date, title insurance in form and content acceptable to the Administrative Agent for all real property liens.
- Payment of all outstanding DIP Credit Facility Costs (as defined below) of the Administrative Agent.
- Receipt of all documentation and other information required by any applicable regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including without limitation the PATRIOT Act and OFAC.
- All of the orders entered in the Chapter 11 Case since the commencement of the Chapter 11 Case shall be in form and substance reasonably satisfactory to the Administrative Agent and its counsel.
- The Bankruptcy Court shall have entered an Interim DIP Order and a Final DIP Order authorizing the secured financing under the DIP Credit Facility on the terms and conditions contemplated by this Term Sheet and the DIP Loan Documentation, granting to the Administrative Agent the security interests and liens and super-priority administrative expense claim status described above, granting the use of cash collateral, accelerating all obligations owing to the DIP Lender under the DIP Loan Documentation if the Final DIP Order satisfactory to Administrative Agent is not granted on or before November 15, 2011, and modifying the automatic stay and other provisions required by Administrative Agent and its counsel. Subject to the Carve-Out, the DIP Orders shall limit the debtor’s right to surcharge any of the Collateral.
- The Administrative Agent shall have received the DIP Budget (as defined below) and the DIP Budget shall have been satisfactory to the Administrative Agent in its sole discretion.
- Neither Marriott International, Inc. nor any of its affiliates shall have any role in the management or control of the Borrower or

the Property.

- Consent to the DIP Loan Documentation by the Trust, as lender under that certain \$15,000,000 Promissory Note date November 16, 2010 given by Borrower.

Additional
Conditions
Precedent for Each
Borrowing:

Each borrowing, including, without limitation, the initial extension of credit, under the DIP Credit Facility will be subject to satisfaction of the following conditions precedent:

(i) All of the representations and warranties in the DIP Loan Documentation shall be true and correct in all material respects.

(ii) No Default or Event of Default shall have occurred and be continuing or would occur as a result of such borrowing.

(iii) All Loan proceeds shall be used only for expenses set forth in the DIP Budget approved by Administrative Agent in its sole discretion, to the extent other funds available to the Borrower are not sufficient to pay such expenses, provided that certain emergency expenses outside of an agreed to variance from the DIP Budget may be funded with loan proceeds with the prior consent of the Administrative Agent.

Representations and
Warranties:

Customary for a facility of this type, including, without limitation, those mentioned specifically in this Term Sheet and the following:

(i) organization, qualification and due authorization of the Borrower; (ii) no breach of charter, by-laws, law, regulation, judgments, or other post-petition agreements, as applicable; (iii) enforceability of DIP Loan Documentation; (iv) no litigation or contingent obligations, except as disclosed; (v) compliance with all applicable law; (vi) licenses, title to property, and related matters; (vii) outstanding debt; (viii) filing and payments of all taxes, except where contested in good faith by appropriate proceedings; and (ix) all necessary third party consents have been obtained.

Affirmative and
Negative Covenants

Customary for a facility of this type, including, without limitation, the following items (subject to baskets, exceptions and materiality qualifiers to be agreed upon) and the covenants contained elsewhere in this Term Sheet:

(i) preservation of existence; (ii) compliance with and

maintenance of all material licenses and material agreements; (iii) compliance with all applicable laws, including, without limitation, PATRIOT Act, ERISA, environmental and tax; (iv) maintenance of insurance; (v) delivery of financial statements, projections, and cash flow statements, including, without limitation, the weekly DIP Budget; (vi) payment of all taxes and other post-petition obligations as and when due except where contested in good faith and by appropriate proceedings; (vii) at the Borrower's expense, monitoring of collateral; (viii) access to and maintenance of records and books of account and visitation rights; (ix) maintenance of properties; (x) conducting transactions with affiliates on terms equivalent to those obtainable on an arm's-length basis; (xi) further assurances as to perfection and priority of security interests; (xii) maintenance of a cash management system acceptable to the Administrative Agent; (xiii) maintenance of perfected lien on all collateral; (xiv) engagement of an accountant or financial advisor acceptable to Administrative Agent in its reasonable discretion; (xv) limitations on: (A) additional debt, guaranties and other contingent liabilities; (B) liens; (C) investments; (D) disposition of assets; (E) dividends, distributions redemptions and repurchases; (F) mergers, consolidations and acquisitions; (G) changes in fiscal year or accounting method, (H) amendments of constituent documents or material agreements; and (I) changes in conduct of business or capital structure.

Events of Default

Customary for a facility of this type, including, without limitation: (i) failure to pay principal, interest, fees, expenses when due; (ii) inaccuracy of representations or warranties; (iii) violation of covenants; (iv) change of control; (v) customary ERISA defaults; (vi) Borrower's allegation in any pleading or other writing, or the finding or conclusion by the Bankruptcy Court, that any loan or security document or any Bankruptcy Court order pertaining to the DIP Credit Facility is not valid, binding or enforceable, or any other event occurs or circumstance exists which causes such loan or security document to be impaired or to not be valid, binding and enforceable; (vii) dismissal of chapter 11 cases or conversion to chapter 7 cases; (viii) appointment of a chapter 11 trustee or an examiner with enlarged powers relating to the operation of the business of Borrower; (ix) granting of relief from automatic stay to permit foreclosure on or exercise of any other remedies with respect to any Collateral; (x) entry of any order, without the Administrative Agent's prior consent, reversing, amending, supplementing, staying or vacating any DIP Order or any other order with respect

to the DIP Credit Facility; (xi) unstayed post-petition monetary judgment defaults in an amount to be agreed and material post-petition non-monetary judgment defaults; (xii) the occurrence of any event or circumstance that would constitute a material adverse change in the business, condition (financial or otherwise), operations, performance, properties or prospects of the Borrower since the Interim DIP Order Date; (xiii) any material default under any cash collateral order that has not been cured within the time for doing so; (xiv) the entry of an order in the Chapter 11 Case adverse to the Administrative Agent or the DIP Lender and their respective rights and remedies under the DIP Credit Facility; and (xv) Modern Management Services, LLC ceases to be the manager of the Property without the appointment of a successor satisfactory to the Administrative Agent.

DIP Credit Facility
Costs:

All reasonable costs of the Administrative Agent and the DIP Lender associated with the DIP Credit Facility, including, but not limited to the Administrative Agent's and DIP Lender's out-of-pocket expenses associated with the transaction, professional fees, recording fees, search fees, and filing fees will be paid by Borrower.

Broker:

Borrower represents and warrants unto Administrative Agent and DIP Lender that Borrower has not and will not incur any brokerage, finders or other similar obligations in respect of the DIP Credit Facility.

Indemnity:

The Borrower shall indemnify and hold harmless the Administrative Agent and DIP Lender and each of their affiliates and each of the respective officers, directors, employees, agents, advisors, trustees, trustors, beneficiaries, attorneys and representatives (each an "**Indemnified Party**") from and against (and will reimburse each Indemnified Party as the same are incurred for) any and all claims, damages, losses, liabilities and expenses (including, without limitation, reasonable fees and disbursements of counsel), joint or several, that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or relating to any investigation, litigation or proceeding or the preparation of any defense with respect thereto, arising out of or in connection with or relating to this Term Sheet, the DIP Credit Facility, the DIP Loan Documentation, all advances made or other actions taken or not taken by Administrative Agent and/or DIP Lender pursuant to or in anticipation of entering into the DIP Loan Documentation, or the transactions contemplated thereby, or any actual or

proposed use to be made with the proceeds of the DIP Credit Facility, whether or not such investigation, litigation or proceeding is brought by Borrower, any direct or indirect members or creditors of Borrower, an Indemnified Party or any other person, or an Indemnified Party is otherwise a party thereto and whether or not the transactions contemplated hereby are consummated, except to the extent such claim, damage, loss, liability or expense is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted solely from such Indemnified Party's gross negligence or willful misconduct. The Borrower further agrees that no Indemnified Party shall have any liability (whether in contract, tort or otherwise) to Borrower or any of its respective direct or indirect members or creditors for, or in connection with, the transactions contemplated hereby, except for direct damages (as opposed to special, indirect, consequential or punitive damages (including, without limitation, any loss of profits, business or anticipated savings)) determined in a final non-appealable judgment by a court of competent jurisdiction to have resulted solely from such Indemnified Party's gross negligence or willful misconduct.

Governing Law:

New York.

The terms of the DIP Credit Facility as set forth herein are for discussion purposes only and this term sheet does not imply in any way a commitment by the Administrative Agent or the DIP Lender to enter into the DIP Credit Facility. This term sheet is neither an offer, which by an "acceptance" can become a contract, nor a contract. Rather, this term sheet is intended merely as the basis for further negotiations and the preparation of loan documents. The Administrative Agent may terminate its review of the DIP Credit Facility at any time in its sole discretion. The Administrative Agent will make the loans summarized above only upon further due diligence and underwriting of the transaction, the Administrative Agent's continuing satisfaction with (i) the financial and business conditions of the Borrower; (ii) the management of the Property by Modern Management Services, LLC; and (c) receipt of documentation and assurances satisfactory to the Administrative Agent and its legal counsel. This term sheet will terminate automatically (other than the terms hereof that survive such termination pursuant to the terms hereof) if the Marriott International, Inc. or any of its affiliates resumes the management of the Property. This term sheet does not purport to specify all of the terms, conditions, representations and warranties, covenants and other provisions that will be contained in the final Financing Documents for the DIP Credit Facility, if approved by the Administrative Agent. The DIP Credit Facility shall be subject to such other terms, covenants and conditions as the Administrative Agent deems appropriate in its sole discretion. Prior to the execution and delivery of definitive loan documents for the DIP Credit Facility by all parties thereto, any party who changes its position in connection with or in reliance on this term sheet, does so at its own risk and shall not hold any party hereto responsible for such change in position.

THE BORROWER, THE ADMINISTRATIVE AGENT AND THE DIP LENDER ACKNOWLEDGE AND AGREE THAT NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE "DIP CREDIT FACILITY COSTS," "INDEMNITY" AND "GOVERNING LAW" SECTIONS HEREIN SHALL BE LEGALLY BINDING ON THE PARTIES ON AND AFTER THE DATE HEREOF AND APPROVAL OF THE COURT AND SHALL SURVIVE TERMINATION OF THIS TERM SHEET.

This term sheet is being delivered in reliance that all information provided to the Administrative Agent is and will be accurate and complete.

This term sheet supersedes all previous discussions, communications and proposals relating in any way to the DIP Credit Facility and shall expire if not executed by Borrower and returned to Administrative Agent by 5:00pm PDT on September 6, 2011.


Administrative Agent and the DIP Lender hereby notifies Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56, signed into law October 26, 2001) (the "Act"), Administrative Agent and/or the DIP Lender may be required to obtain, verify and record certain information and documentation that identifies each Borrower, which information includes the name and address of each Borrower and such other information that will allow Administrative Agent and/or the DIP Lender to identify each Borrower in accordance with the Act.

[Remainder of page intentionally left blank]

If you would like the Administrative Agent to continue reviewing your loan request, please evidence your agreement with the forgoing by accepting this proposal on the space set forth below, and returning it to the Administrative Agent, Attn: Mark R. Herron. Upon receipt, we will immediately begin due diligence and legal documentation. We appreciate the opportunity to furnish this proposal to you. If you have any questions, please do not hesitate to call.

Very truly yours,

The Davidson Group

By: 
Name: Mark R. Herron
Title: President and Chief Executive Officer

Agreed and accepted this ___ day of September, 2011.

M Waikiki LLC
Debtor in Possession

By: _____

Name: _____

Title: _____

If you would like the Administrative Agent to continue reviewing your loan request, please evidence your agreement with the forgoing by accepting this proposal on the space set forth below, and returning it to the Administrative Agent, Attn: Mark R. Herron. Upon receipt, we will immediately begin due diligence and legal documentation. We appreciate the opportunity to furnish this proposal to you. If you have any questions, please do not hesitate to call.

Very truly yours,

The Davidson Group

By: _____
Name: Mark R. Herron
Title: President and Chief Executive Officer

Agreed and accepted this 5 day of September, 2011.

M Waikiki LLC
Debtor in Possession

By: eRealty Fund, LLC
Its: Manager

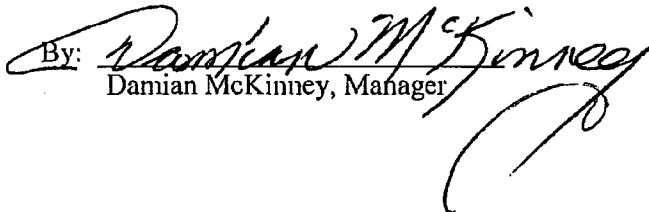
By: 
Damian McKinney, Manager

EXHIBIT "B"

LOAN AND SECURITY AGREEMENT

Dated as of September __, 2011

among

M WAIKIKI LLC,

as Debtor and Debtor in Possession

as the "Borrower"

and

ROBERT M. DAVIDSON AND/OR JANICE G. DAVIDSON

AS TRUSTEES OF THE

THE DAVIDSON FAMILY TRUST

DATED DECEMBER 22, 1999, AS AMENDED

as the "DIP Lender"

and

THE DAVIDSON GROUP

as the "Administrative Agent"

EXHIBIT "B"

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LOAN AND SECURITY AGREEMENT, dated as of September __, 2011, among M WAIKIKI LLC, a limited liability company organized under the laws of the State of Hawaii and a debtor and debtor in possession under Chapter 11 of the Bankruptcy Code, as borrower (the “**Borrower**”), Robert M. Davidson and/or Janice G. Davidson as Trustees of THE DAVIDSON FAMILY TRUST, dated December 22, 1999, as amended, as lender (the “**DIP Lender**”), and THE DAVIDSON GROUP, a Nevada corporation, in its capacity as the administrative agent (the “**Administrative Agent**”) for the DIP Lender.

RECITALS

WHEREAS, on August 31, 2011 (the “**Petition Date**”), Borrower filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code (as defined below) with the Bankruptcy Court (as defined below);

WHEREAS, Borrower is continuing to operate its businesses and manage its properties as debtor in possession under Sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS, Borrower has requested that the DIP Lender provide a loan of up to [\$2,500,000] in order to fund the continued operation of Borrower’s business as debtor and debtor in possession under the Bankruptcy Code, to be advanced in accordance with the terms hereof;

WHEREAS, the DIP Lender is willing to make available to Borrower such loans upon the terms and subject to the conditions set forth herein; and

WHEREAS, Borrower has agreed to secure its obligations to DIP Lender hereunder with, *inter alia*, security interests in, and liens on, substantially all of its real and personal property and assets, all as more fully provided herein.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the covenants and agreements contained herein, the parties hereto hereby agree as follows:

ARTICLE I. DEFINITIONS

Section 1.01 Definitions. As used in this Agreement (including the Exhibits and Schedules attached hereto), the terms “**Account**,” “**Chattel Paper**,” “**Deposit Account**,” “**Documents**,” “**General Intangibles**,” “**Software**,” “**Goods**,” “**Inventory**,” “**Equipment**,” “**Instruments**,” “**Investment Property**,” “**Commercial Tort Claims**,” “**Supporting Obligations**,” “**Letter of Credit Rights**” and “**Proceeds**” shall have the meanings ascribed thereto in Article 9 of the UCC, and the following terms shall have following meanings:

“**Administrative Agent**” has the meaning set forth in the preamble hereto.

“**Advance**” has the meaning set forth in Section 2.01(a).

“**Affiliate**” means, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by or is under common control with such Person or is a director or officer of such Person. For the purposes of this definition, “control”, when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise. For avoidance of doubt, “Affiliate” does not include the Administrative Agent or the DIP Lender for purposes of this Agreement.

“**Agreement**” means this Loan and Security Agreement, as amended, restated, modified, or supplemented from time to time in accordance with the terms hereof.

“**Authorized Officer**” means an officer of Borrower or Manager designated from time to time by Borrower in a written notice to the Administrative Agent, which designation shall continue in force and effect until terminated in a written notice to the Administrative Agent from Borrower.

“**Avoidance Action**” means claims and causes of action under Sections 502(d), 544, 545, 547, 548, 549, 550 and 553 of the Bankruptcy Code and any other avoidance actions under Chapter 5 of the Bankruptcy Code and applicable state law.

“**Bankruptcy Case**” means the bankruptcy case commenced on the Petition Date, designated Case No. 11-02371, *In re M Waikiki LLC*, by the filing of a voluntary petition under the Bankruptcy Code with the Bankruptcy Court.

“**Bankruptcy Code**” means Title 11 of the United States Code, 11 U.S.C. 101 *et seq*, as the same may be amended, modified or supplemented from time to time, and any successor statute thereto.

“**Bankruptcy Court**” means the United States Bankruptcy Court for the District of Hawaii (together with the United States District Court for the District of Hawaii, where applicable).

“**Borrower**” has the meaning set forth in the preamble hereto.

“**Business Day**” means any day that is not a Saturday, a Sunday or a day on which banks are required or permitted to be closed in the State of New York.

“**Capital Lease**” means, as applied to any Person, any lease of any Property (whether real, personal or mixed) by that Person as lessee, the obligations of which are required, in accordance with GAAP, to be capitalized on the balance sheet of that Person.

“**Carve-Out**” means an amount, that shall not be subject to Liens, rights or claims of the Administrative Agent or the DIP Lender in an amount not to exceed \$500,000 which funds shall be used to satisfy (i) any unpaid fees of the U.S. Trustee or the Clerk of the Bankruptcy Court pursuant to 28 U.S.C. § 1930(a), (ii) any fees and expenses incurred by any trustee under section 726(b) of the Bankruptcy Code, and (iii) the aggregate allowed unpaid fees and expenses payable under sections 330 and 331 of the Bankruptcy Code to professional persons retained pursuant to an order of the Bankruptcy Court by Borrower.

“**Collateral**” has the meaning set forth in Section 4.01 hereof.

“**Debt**” of any Person means (without duplication): (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, notes, debentures, or other similar instruments or upon which interest payments are customarily made, (c) all obligations of such Person to pay the deferred purchase price of Property or services (other than trade payables or other accounts payable incurred in the ordinary course of such Person’s business and not outstanding for more than 90 days after the date such payable was created), (d) all Debt of others directly or indirectly guaranteed (which term shall not include endorsements in the ordinary course of business) by such Person, (e) all obligations created under Capital Leases of such Person, and (f) all obligations secured by a Lien on any Property owned by such Person, whether or not the obligations secured thereby have been assumed by such Person or are non-recourse to the credit of such Person (but only to the extent of the value of such Property).

“**Default**” means an event, act or condition that with the giving of notice or the lapse of time, or both, would, unless cured or waived, become an Event of Default.

“**DIP Budget**” has the meaning set forth in the DIP Orders.

“**DIP Credit Facility Termination Event**” means the termination of this Agreement, the other Loan Documents and the Total Commitment by the Administrative Agent, in its sole discretion, based upon any one of the following events: (i) the appointment of a Bankruptcy Case Trustee; (ii) replacement of Manager as the management company for the Hotel without the prior consent of the Administrative Agent, which consent shall not be unreasonably withheld; (iii) the dismissal of the Bankruptcy Case; (iv) the occurrence of an Event of Default; (v) Full Payment; (vi) a sale of all or substantially all, or the sale of any material portion of, the Property of Borrower; (vii) the conversion of the Bankruptcy Case to a case under Chapter 7 of the Bankruptcy Code; (viii) the effective date of a plan confirmed by a final order in the Bankruptcy Case; and (ix) the failure of the Bankruptcy Court to enter the Final DIP Order in a form acceptable to Administrative Agent in its sole discretion by November 15, 2011.

“**DIP Fees**” means the fees and costs of the Administrative Agent and the DIP Lender in connection with the DIP Loan, including, but not limited to, the reasonable fees and disbursements of counsel, financial advisors and other consultants for the Administrative Agent and the DIP Lender with respect to the negotiation, documentation, administration, and enforcement of the Credit Agreement or the DIP Orders, subject only to the notice and objection procedures set forth in the DIP Orders.

“**DIP Lender**” has the meaning set forth in the preamble hereto.

“**DIP Lender Debt**” means and includes any and all amounts owed, whether now existing or hereafter arising, under this Agreement or any other Loan Document, including any and all principal, interest, penalties, fees, charges, premiums, indemnities and costs owed or owing to the Administrative Agent or DIP Lender by Borrower, in each instance, whether absolute or contingent, direct or indirect, secured or unsecured, due or not due, primary or

secondary, joint or several, arising by operation of law or otherwise, and all interest and other charges thereon.

“**DIP Loan**” has the meaning set forth in Section 2.01(a).

“**DIP Motion**” means a motion to be heard on shortened notice to approve the DIP Loan on an interim basis, pending a fully noticed final hearing on the DIP Loan.

“**DIP Orders**” means either or both of the Interim DIP Order and the Final DIP Order.

“**Effective Date**” means the date on which the Interim DIP Order approving the DIP Loan is entered by the Bankruptcy Court.

“**Environmental Laws**” means any and all applicable federal, state and local laws, statutes, ordinances, rules, regulations, permits, licenses, approvals, interpretations and DIP Orders of courts or any Governmental Entity, relating to the protection of human health from exposure to hazardous materials or the environment, including the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 et seq.), the Hazardous Material Transportation Act (49 U.S.C. § 331 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Safe Drinking Water Act (42 U.S.C. § 300, et seq.), the Environmental Protection Agency’s regulations relating to underground storage tanks (40 C.F.R. Parts 280 and 281), and the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.), and the rules and regulations thereunder, each as amended or supplemented from time to time. Environmental Laws include but are not limited to requirements pertaining to the manufacture, processing, distribution, use, treatment, storage, disposal, transportation, handling, reporting, licensing, permitting, investigation or remediation of hazardous materials.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder as from time to time in effect.

“**ERISA Affiliate**” means any trade or business (whether or not incorporated) that, together with Borrower, is treated as a single employer under Section 414(b), (c), (m) or (o) of the Code or Section 4001 of ERISA.

“**Event of Default**” has the meaning set forth in Section 10.01.

“**Excluded Claim**” has the meaning set forth in Section 2.05(b).

“**Excluded Collateral**” means, collectively, (i) Equipment to the extent the granting of a security interest in such Equipment would constitute a breach or violation of a valid and effective restriction in favor of a third party (but not including any restriction in the Senior Loan prohibiting other liens) or give rise to any indemnification obligations or any right to terminate or commence the exercise of remedies under such restrictions, in each case, to the extent not subject to the automatic stay; provided, that such excluded Equipment shall not include Proceeds, substitutions or replacements of such Equipment (unless such Proceeds,

substitutions or replacements would constitute excluded Equipment), but only to the extent, and for so long as, such restriction is not terminated or rendered unenforceable or otherwise deemed ineffective by the UCC or any other applicable law; (ii) any property to the extent that the granting of such a security interest would constitute a breach or violation of a valid and effective restriction in place as of the date hereof (including under the Bankruptcy Code) in favor of a third party (including, without limitation, mandatory consent rights; and the parties agree that the Administrative Agent shall not require any action to be taken with respect to such consent rights), that would result in the termination of Borrower's interest in such property or give rise to any indemnification obligations or any right to terminate or commence the exercise of remedies under such restrictions, and (iii) Avoidance Actions.

"Final DIP Order" means entry of a final DIP order with respect to the DIP Loan by the Bankruptcy Court on notice as required by Bankruptcy Rule 4001(c)(2).

"First Stage DIP Commitment" means an amount not to exceed \$1,000,000.00 in the aggregate, including the \$250,000.00 advanced on August 30, 2011.

"Full Payment" means, with respect to DIP Lender Debt, (a) the full and indefeasible cash payment thereof, including any principal, interest, fees and other charges accruing, and (b) a release of any Indemnified Claims of Borrower against each Indemnified Party arising on or before the payment date.

"Funding Date" means any Business Day on which an Advance is made at the request of Borrower in accordance with provisions of Section 2.01 of this Agreement.

"GAAP" means generally accepted accounting principles in the United States of America.

"Governmental Entity" means the United States of America, any state thereof, any political subdivision of a state thereof and any agency or instrumentality of the United States of America or any state or political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"Hazardous Material" means any substance, material or waste that is regulated by, or forms the basis of liability now or hereafter under, any Environmental Laws, including any material or substance that is (a) defined as a "solid waste," "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "pollutant," "contaminant," "hazardous constituent," "special waste," "toxic substance" or other similar term or phrase under any Environmental Laws, or (b) petroleum or any fraction or by-product thereof, asbestos, polychlorinated biphenyls (PCB's), or any radioactive substance.

"Hotel" means the hotel and related facilities owned by Borrower that are currently known as the Modern Honolulu in Honolulu, Hawaii.

"Hotel Management Agreement" has the meaning set forth in Section 7.01(1).

"Indemnified Claims" has the meaning set forth in Section 2.05(b).

“Indemnified Party” has the meaning set forth in Section 2.05(b).

“Initial Final DIP Order Advance” means the first Advance made under this Agreement after the Final DIP Order is entered by the Bankruptcy Court.

“Initial Interim DIP Order Advance” means the first Advance made under this Agreement after the Interim DIP Order is entered by the Bankruptcy Court.

“Interim DIP Order” means an order of the Bankruptcy Court approving the DIP Motion for an initial period pending a final hearing on the DIP Motion.

“IRS Code” means the Internal Revenue Code of 1986, as amended, replaced or supplemented from time to time.

“Lien” means any lien, charge, deed of trust, mortgage, security interest, tax lien, pledge, hypothecation, assignment, preference, priority, other charge or encumbrance, or any other type of preferential arrangement of any kind or nature whatsoever by or with any Person (including any conditional sale or title retention agreement), whether arising by contract, operation of law, or otherwise.

“Loan Documents” means this Agreement, the Note and each other document or instrument now or hereafter executed and/or delivered to the Administrative Agent or DIP Lender pursuant to or in connection herewith or therewith (including each other agreement now existing or hereafter created providing collateral security for the payment or performance of DIP Lender Debt).

“Manager” means Modern Management Services, LLC, a Hawaii limited liability company, solely in its role as manager of the Hotel.

“Material Adverse Effect” means (a) a material adverse effect on the business, Properties, assets, liabilities, operations, prospects or condition (financial or other) of Borrower, (b) the material impairment of the ability of Borrower to perform its obligations under this Agreement or any of the other Loan Documents, (c) the material impairment of the validity or enforceability of, or the rights, remedies or benefits available to the Administrative Agent or DIP Lender under, this Agreement or any other Loan Document, or (d) the material impairment of the validity, perfection or priority of any Lien granted in favor of Administrative Agent, for the benefit of itself and the DIP Lender, pursuant to this Agreement or any other Loan Document.

“Maturity Date” means the earlier of (i) the date which is six (6) months from the date that the Interim DIP Order is entered and (ii) the occurrence of a DIP Credit Facility Termination Event.

“Maximum Permissible Rate” has the meaning set forth in Section 2.06.

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA to which any Borrower or any ERISA Affiliate has any obligation or liability, contingent or otherwise.

“**Note**” shall mean that certain Promissory Note of even date herewith by Borrower, as maker, in favor of DIP Lender, as payee, in the original principal amount of \$2,500,000.00, to be advanced pursuant to the terms of this Agreement.

“**Other Taxes**” has the meaning set forth in Section 2.04(b).

“**Patriot Act**” has the meaning set forth in Section 12.15.

“**Permissible Uses**” means such uses of the proceeds of the DIP Loan as are permitted under the terms of the Interim DIP Order or the Final DIP Order, or any amendment thereto with the consent of the DIP Lender.

“**Permitted Debt**” means (i) Debt secured by purchase money security interests and Capital Leases to the extent such Debt finances the acquisition of equipment and real estate, in each case, consistent in all material respects with the DIP Budget; provided, that the amount of such Debt does not exceed 100% of the purchase price or construction cost (including any capitalized interest and issuance fees) of the subject asset; (ii) the DIP Lender Debt; (iii) Debt existing as of the Closing Date described in Schedule 1.01; (iv) Debt in respect of any overdrafts and related liabilities arising from treasury, depository and cash management services or in connection with any automated clearing house transfers of funds; (v) Debt to credit card processors in connection with credit card processing services incurred in the ordinary course of business and consistent with past practices; (vi) the Senior Debt; (vii) Debt owing to the Subordinated Lender pursuant to the loan documents governing such Debt as in existence on the date hereof; and [(viii) other unsecured Debt incurred subsequent to the date hereof in an aggregate amount not to exceed \$[_____] outstanding at any time].

“**Permitted Liens**” means the following encumbrances: (a) Liens for taxes or assessments or other governmental charges not yet due and payable or which are being contested in good faith by appropriate proceedings and for which adequate reserves are maintained on the books of Borrower; (b) pledges or deposits of money securing statutory obligations under workmen’s compensation, unemployment insurance, social security or public liability laws or similar legislation (excluding Liens under ERISA); (c) pledges or deposits of money securing bids, tenders, contracts (other than contracts for the payment of money) or leases to which Borrower is a party as lessee made in the ordinary course of business; (d) workers’, mechanics’ or similar liens arising in the ordinary course of business, so long as such Liens are inchoate and unperfected and attach only to tooling, fixtures and/or real estate or being contested in good faith by appropriate proceedings and for which adequate reserves are maintained on the books of such Borrower; (e) carriers’, warehousemen’s, suppliers’ or other similar possessory liens arising in the ordinary course of business so long as such Liens are inchoate and unperfected and attach only to Inventory or being contested in good faith by appropriate proceedings and for which adequate reserves are maintained on the books of such Borrower; (f) deposits securing, or in lieu of, surety, appeal or customs bonds in proceedings to which Borrower is a party; (g) any attachment or judgment lien not constituting an Event of Default; (h) zoning restrictions, easements, licenses, or other restrictions on the use of any real estate or interests of Borrower in real estate or other minor irregularities in title (including leasehold title) thereto, so long as the same do not materially impair the use or the value of any parcel of owned real estate; (i) presently existing or hereafter created Liens in favor of the Administrative Agent for the benefit

of itself and the DIP Lender; (j) statutory and common law landlords' liens under, and contractual liens granted to a landlord pursuant to, leases to which Borrower is a party; (k) (i) leases, subleases, licenses, permits and similar use rights, entered into with respect to the owned real estate, that are by their express terms subject and subordinate to the Administrative Agent's Liens and do not, in the aggregate, materially detract from the value of the any parcel of owned real estate and (ii) leases, subleases, licenses, permits and similar use rights, entered into in the ordinary course of business with respect to any leased real estate, to the extent they would not have a Material Adverse Effect and would not materially and adversely affect the Administrative Agent's Liens in Collateral stored or located at such location; (l) with respect to real estate, other defects and encumbrances as may be approved by the Administrative Agent, (m) Liens in favor of depository banks (including set-off rights) arising as a matter of law; (o) Liens in favor of the Subordinated Lender and (p) Liens in favor of the Senior Lender pursuant to the Senior Debt.

"Person" means an individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or other entity, or a Governmental Entity.

"Petition Date" has the meaning set forth in the preamble hereto.

"Plan" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA, Section 412 of the Code or Section 302 of ERISA, and in respect of which any Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Property" means property of all kinds, movable, immovable, corporeal, incorporeal, real, personal or mixed, tangible or intangible (including all rights relating thereto), whether owned or acquired on or after the date of this Agreement.

"Release" means any release, threatened release, spill, emission, leaking, pumping, pouring, emitting, emptying, escape, injection, deposit, disposal, discharge, dispersal, dumping, leaching or migration of Hazardous Material in the indoor or outdoor environment, including the movement of Hazardous Material through or in the air, soil, surface water, ground water or property.

"Restricted Payment" means, with respect to Borrower (a) the declaration or payment of any dividend or the inurrence of any liability to make any other payment or distribution of cash or other property or assets in respect of its membership or profits interests; (b) any payment on account of the purchase, redemption, defeasance, sinking fund or other retirement of Borrower's membership or profits interests or any other payment or distribution made in respect thereof, either directly or indirectly; (c) any payment or prepayment of principal of, premium, if any, or interest, fees or other charges on or with respect to, and any redemption, purchase, retirement, defeasance, sinking fund or similar payment and any claim for rescission with respect to, any Debt subordinated in right of payment to the DIP Lender Debt; and (d) any payment made to redeem, purchase, repurchase or retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire membership or profits interests of Borrower now or hereafter outstanding.

“**Second Stage DIP Commitment**” means an amount not to exceed \$1,500,000.00 in the aggregate.

“**Senior Debt**” means Debt owing to the Senior Lender pursuant to the loan documents governing such Debt as in existence on the date hereof.

“**Senior Lender**” means Wells Fargo Bank, National Association, as Trustee for Nomura CRE CDO Grantor Trust, Series 2007-2.

“**Subordinated Lender**” means Robert M. Davidson and/or Janice G. Davidson as Trustees of The Davidson Family Trust, dated December 22, 1999, in its capacity as lender with respect to the Subordinated Loan.

“**Subordinated Liens**” means the liens and security interests granted by Borrower to the Subordinated Lender pursuant to the Subordinated Loan.

“**Subordinated Loan**” means the loan by the Subordinated Lender to Borrower pursuant to a Promissory Note dated November 16, 2010 in the initial principal amount of \$15 million, secured by a Mortgage, Assignment of leases and Rents, Security Agreement, Financing Statement and Fixture Filing of the same date, among other collateral and related documentation.

“**Superpriority Administrative Claim**” means an administrative priority claim pursuant to Bankruptcy Code §364(c)(1).

“**Taxes**” has the meaning set forth in Section 2.04(a).

“**Term**” has the meaning set forth in Section 12.07(a).

“**Total Commitment**” means \$2,500,000, inclusive of the Initial Advance.

“**UCC**” means the Uniform Commercial Code as in effect from time to time in effect in New York, provided, that to the extent that the UCC is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the UCC, the definition of such term contained in Article or Division 9 shall govern; provided, further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, the Administrative Agent’s or Administrative Agent’s Lien on any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term “**UCC**” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions.

Section 1.02 Other Terms. All accounting terms not specifically defined herein shall be construed in accordance with GAAP.

AMOUNTS AND TERMS OF THE LOANS

Section 2.01 Advances. The DIP Lender agrees to lend to Borrower from time to time during the Term, subject to and upon the terms and conditions set forth herein or in

the Interim DIP Order or Final DIP Order, as applicable, on any Funding Date, such amounts as in accordance with the terms hereof may be requested by Borrower from time to time (each such borrowing, an “Advance” and the aggregate outstanding principal balance of all Advances from time to time, the “DIP Loan”). Advances shall only be used for Permissible Uses. Borrower shall timely make all payments due under the Note to the DIP Lender c/o the Administrative Agent at the address specified for Administrative Agent on Schedule I hereto or such other address as shall be designated by Administrative Agent in a notice to Borrower.

(b) Subject to the limitations herein (including the conditions to funding the Advances set forth in Article VI hereof), Borrower may borrow and repay (without premium or penalty), but may not reborrow, Advances.

(c) On and after the date that the Interim DIP Order is entered, subject to the satisfaction of the conditions set forth in Sections 6.01 and 6.03, Borrower may borrow all or any portion of the First Stage DIP Commitment. On and after the date that the Final DIP Order is entered, subject to the satisfaction of the conditions set forth in Sections 6.02 and 6.03, Borrower may borrow all or any portion of the Second Stage DIP Commitment.

(d) Whenever Borrower desires an Advance be made, Borrower shall, not later than 2:00 p.m. (Hawaii time) two Business Days prior to the proposed Funding Date of the Advance, provide the Administrative Agent with a written notice (which notice, in each case, shall be irrevocable) of the desire to make a borrowing of an Advance. Each such notice shall be signed by an Authorized Officer of Borrower, shall specify the date on which Borrower desires to make a borrowing of an Advance (which in each instance shall be a Business Day) and shall specify the requested amount of the proposed Advance (which shall not be less than \$50,000 and in increments of [\$5,000]). Promptly following receipt of such notice, the Administrative Agent shall advise DIP Lender of the details thereof and of the amount of the requested Advance.

(e) On the Maturity Date, the Total Commitment shall terminate automatically and DIP Lender shall have no further obligation to fund any such remaining unadvanced principal amount. Upon such termination, the DIP Loan shall become, without further action by any Person, immediately due and payable together with all accrued interest thereon plus any fees, premiums, charges or costs provided for hereunder with respect thereto.

Section 2.02 Interest and Fees. Interest shall accrue on the DIP Loan at a rate *per annum* equal to 11%. At all times following the occurrence and during the continuation of any Event of Default, without notice to Borrower, interest on the DIP Loan shall accrue at a rate *per annum* equal to 14%. Except as provided in the last sentence of this Section 2.02, interest on the DIP Loan shall be payable by increasing the outstanding principal amount thereof by the amount of accrued interest on the last day of each calendar month. Any interest so added to the principal amount of the DIP Loan shall bear interest as provided in this Section 2.02 from the date on which such interest has been so added. No payment of interest pursuant to the above shall be deemed an Advance nor shall such payment reduce the amount available under the Total Commitment, First Stage DIP Commitment or Second Stage DIP Commitment. All accrued and unpaid interest shall be due and payable in cash on the Maturity Date. DIP Fees accrued as of the date of the Final DIP Order shall be paid before the Initial Final Order Advance is made.

Section 2.03 Computation of Interest; Payment of Fees. Interest on the DIP Loan and fees and other amounts calculated on the basis of a rate *per annum* shall be computed on the basis of actual days elapsed over a 360-day year.

(b) Whenever any payment to be made hereunder or under any other Loan Document shall be stated to be due and payable on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall in such case be included in computing interest on such payment.

(c) All fees owed by Borrower under this Agreement are, and shall be deemed hereunder for all purposes to be, fully earned and non-refundable on the due date thereof.

Section 2.04 Procedures for Payment. Each payment hereunder and under the other Loan Documents (unless otherwise noted) to shall be made not later than 10:00 a.m. (Hawaii time) on the day when due in lawful money of the United States of America without counterclaim, defense, offset, claim or recoupment of any kind and free and clear of, and without deduction for, any present or future withholding or other taxes, duties, levies, imposts, deductions, charges or other liabilities of any nature imposed on such payments or prepayments by or on behalf of any Governmental Entity, except for taxes upon or determined by reference to DIP Lender's net income imposed by the jurisdiction in which DIP Lender is organized or has its principal or registered office (all such nonexcluded taxes, levies, imposts, deductions, charges, withholdings and liabilities hereinafter referred to as "**Taxes**"). If any such Taxes are so levied or imposed on any payment to DIP Lender, Borrower will make additional payments in such amounts as may be necessary so that the net amount received by DIP Lender, after withholding or deduction for or on account of all Taxes, including deductions applicable to additional sums payable under this Section 2.04, will be equal to the amount provided for herein or in the other Loan Documents. Whenever any Taxes are payable by Borrower with respect to any payments hereunder, Borrower shall furnish promptly to the Administrative Agent information, including certified copies of official receipts (to the extent that the relevant governmental authority delivers such receipts), evidencing payment of any such Taxes so withheld or deducted. If Borrower fails to pay any such Taxes when due to the appropriate taxing authority or fails to remit to the Administrative Agent the required information evidencing payment of any such Taxes so withheld or deducted, Borrower shall indemnify the Administrative Agent and DIP Lender for any incremental Taxes, interest or penalties that may become payable by the Administrative Agent and/or DIP Lender as a result of any such failure.

(b) Notwithstanding anything to the contrary contained in this Agreement, Borrower shall pay any present or future stamp or documentary taxes, any intangibles tax or any other sales, excise or property taxes, charges or similar levies now or hereafter assessed that arise from and are attributable to any payment made hereunder or from the execution, delivery or performance of, or otherwise with respect to, this Agreement or any other Loan Document and any and all recording fees relating to any Loan Document securing DIP Lender Debt ("**Other Taxes**").

(c) Borrower shall indemnify the Administrative Agent and DIP Lender for the full amount of any and all Taxes and Other Taxes (including any Taxes and Other

Taxes imposed by any jurisdiction on amounts payable under this Section 2.04) paid or payable by the Administrative Agent or DIP Lender (whether or not such Taxes or Other Taxes were correctly or legally asserted) and any liability (including penalties, interest and expenses) arising therefrom or with respect thereto. Indemnification payments due to the Administrative Agent or DIP Lender under this Section 2.04 shall be made within ten (10) days from the date the Administrative Agent or DIP Lender makes written demand therefor.

(d) Without prejudice to the survival of any other agreement of Borrower hereunder, the agreements and obligations of Borrower contained in this Section 2.04 shall survive the Full Payment of all DIP Lender Debt.

Section 2.05 Indemnities. Borrower hereby agrees to indemnify the Administrative Agent and DIP Lender on demand against any loss or expense that the Administrative Agent or DIP Lender or an Affiliate of such Person may sustain or incur as a consequence of: (i) any default in payment or prepayment of the principal amount of the DIP Loan or any portion thereof or interest accrued thereon, as and when due and payable (at the due date thereof, by irrevocable notice of payment or prepayment, or otherwise); (ii) the effect of the occurrence of any Default or Event of Default upon the DIP Loan or any portion thereof; or (iii) the failure by Borrower to accept any Advance or any portion thereof after Borrower has requested such borrowing; in each case including any loss or expense sustained or incurred in liquidating or employing deposits from third parties acquired to effect or maintain the DIP Loan or any portion thereof. The Administrative Agent or DIP Lender, as applicable, shall provide to Borrower a statement, supported when applicable by documentary evidence, explaining the amount of any such loss or expense it incurs, which statement shall be conclusive and binding for all purposes, absent manifest error.

(b) Borrower hereby agrees to indemnify and hold harmless the Administrative Agent, DIP Lender, and each of their respective Affiliates, directors, officers, agents, advisors, representatives, counsel, employees, trustees, trustors and beneficiaries (each, an “**Indemnified Party**”), from and against any and all losses, claims, damages, costs and expenses (including reasonable counsel fees and disbursements) and liabilities that may be incurred by or asserted against such Indemnified Party with respect to or arising out of the Total Commitment hereunder, the DIP Loan contemplated hereby, the Loan Documents, the Collateral (including the use thereof by any of such Persons or any other Person, the exercise by any Indemnified Party of rights and remedies or any power of attorney with respect thereto, and any action or inaction of any Indemnified Party under and in accordance with any Loan Documents), the use of proceeds of any financial accommodations provided hereunder, any investigation, litigation or other proceeding (pending or threatened) relating thereto, and other actions taken or not taken by Administrative Agent and/or DIP Lender pursuant to or in anticipation of entering into the Loan Documents or making any Advance or the role of any such Person or Persons in connection with the foregoing whether or not they or any other Indemnified Party is named as a party to any legal action or proceeding (“**Indemnified Claims**”). Borrower will not, however, be responsible to any Indemnified Party hereunder for any Indemnified Claims to the extent that a court having jurisdiction shall have determined by a final nonappealable judgment that any such Indemnified Claim shall have arisen out of or resulted solely from actions taken or omitted to be taken by such Indemnified Party by reason of its willful misconduct or gross negligence (an “**Excluded Claim**”). Further, should any employee of an Indemnified Party, in connection with

such employee's employment by such Indemnified Party, be involved in any legal action or proceeding in connection with the transactions contemplated hereby (other than relating to an Excluded Claim), Borrower hereby agrees to pay to such Indemnified Party such reasonable *per diem* compensation as such Indemnified Party shall request for each employee for each day or portion thereof that such employee is involved in preparation and testimony pertaining to any such legal action or proceeding. Each Indemnified Party shall give Borrower prompt notice of any Indemnified Claim with respect to which such Indemnified Party is seeking indemnification hereunder, setting forth a description of those elements of the Indemnified Claim of which such Indemnified Party has knowledge. The Indemnified Party shall be permitted hereunder to select counsel to defend such Indemnified Claim at the expense of Borrower. The Indemnified Parties and Borrower and their respective counsel shall cooperate with each other in all reasonable respects in any investigation, trial and defense of any such Indemnified Claim and any appeal arising therefrom. NO INDEMNIFIED PARTY SHALL BE RESPONSIBLE OR LIABLE TO ANY OTHER PARTY TO ANY LOAN DOCUMENT, ANY SUCCESSOR, ASSIGNEE OR THIRD PARTY BENEFICIARY OF SUCH PERSON OR ANY OTHER PERSON ASSERTING CLAIMS DERIVATIVELY THROUGH SUCH PARTY, FOR INDIRECT, PUNITIVE, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES THAT MAY BE ALLEGED AS A RESULT OF ANY TRANSACTION CONTEMPLATED HEREUNDER OR UNDER ANY OTHER LOAN DOCUMENT.

Section 2.06 Maximum Interest. No provision of this Agreement shall require the payment to DIP Lender or permit the collection by DIP Lender of interest in excess of the maximum rate of interest from time to time permitted (after taking into account all consideration that constitutes interest) by laws applicable to DIP Lender Debt and binding on DIP Lender (such maximum rate being DIP Lender's "**Maximum Permissible Rate**"). If the amount of interest (computed without giving effect to this Section 2.06) payable to DIP Lender in respect of any interest computation period would exceed the amount of interest computed in respect of such period at DIP Lender's Maximum Permissible Rate, the amount of interest payable to DIP Lender in respect of such period shall be computed at DIP Lender's Maximum Permissible Rate and any excess shall be applied to reduce DIP Lender Debt (other than interest) then owing to DIP Lender in such order as it shall determine.Use of Proceeds of DIP Loan. Borrower shall use the proceeds of each Advance solely for Permissible Uses to fund the continued operation of Borrower's business including, without limitation, for working capital and other general corporate purposes of Borrower to the extent, and only to the extent, such costs and expenses are consistent in all material respects with the DIP Budget and not in contravention of any requirement of law, any DIP Order or the Loan Documents.

INTENTIONALLY DELETED

ARTICLE IV. SECURITY

Section 4.01 Grant of Security Interests. To secure the prompt and complete payment, performance and observance of all of the DIP Lender Debt, in addition to other collateral upon which a Lien is granted under the other Loan Documents, Borrower hereby grants to Administrative Agent, for itself and for the benefit of the DIP Lender, a first priority Lien (subject only to (i) valid, perfected, nonavoidable and enforceable Liens existing as of the date hereof and listed on Schedule 4.01, (ii) valid liens in existence on the date hereof to the

extent perfected thereafter as permitted by Section 546(b) of the Bankruptcy Code, (iii) the Carve-Out and (iv) Liens in favor of the Senior Lender pursuant to the Senior Debt, subject to any intercreditor agreement between Administrative Agent and the Senior Lender with respect to the DIP Loan) upon all of the following property now owned or at any time hereafter acquired by Borrower or in which Borrower now has or at any time in the future may acquire any right, title or interest:

- (a) all Accounts;
- (b) all Chattel Paper;
- (c) all Documents;
- (d) all General Intangibles (including payment intangibles and Software);
- (e) all Goods, Inventory and Equipment, including spare parts and Tooling, and other personal property, whether tangible or intangible or wherever located;
- (f) all Instruments;
- (g) all Investment Property;
- (h) all owned real property;
- (i) the Commercial Tort Claims described on Schedule 4.01(i);
- (j) all Deposit Accounts and all deposits therein;
- (k) all money, cash or cash equivalents;
- (l) all Supporting Obligations and Letter of Credit Rights;
- (m) to the extent not otherwise included, all monies and other property of any kind which is, after the date hereof, received by Borrower in connection with refunds with respect to taxes, assessments and governmental charges imposed on Borrower or any of its property or income;
- (n) to the extent not otherwise included, all causes of action (other than claims of the Borrower under Sections 502(d), 544, 545, 547, 548 and 550 of the Bankruptcy Code) and all monies and other property of any kind received therefrom, and all monies and other property of any kind recovered by Borrower; and
- (o) all property of Borrower held by the Administrative Agent or DIP Lender, including all property of every description, in the possession or custody of or in transit to the Administrative Agent or DIP Lender for any purpose, including safekeeping, collection or pledge, for the account of Borrower or as to which such Borrower may have any right or power;

(p) to the extent not otherwise included, all Proceeds of each of the foregoing, tort claims, insurance claims and other rights to payment not otherwise included in the foregoing and products of the foregoing and all accessions to, substitutions and replacements for, and rents and profits of, each of the foregoing;

provided, that "Collateral" shall not include (i) the Excluded Collateral provided that if and when any property shall cease to be Excluded Collateral, such property shall be deemed at all times from and after the date such property ceased to be Excluded Collateral to constitute Collateral and (ii) any General Intangibles or other rights arising under any contract, instrument, license or other document if the grant of a security interest therein would constitute a breach or violation of a valid and effective restriction in favor of a third party (including, without limitation, mandatory consent rights; and the parties agree that the Administrative Agent shall not require any actions to be taken with respect to such consent rights) or give rise to any indemnification obligations or any right to terminate or commence the exercise of remedies under such restrictions, but only to the extent, and for so long as, in the case of clause (ii) such restriction is not terminated or rendered unenforceable or otherwise deemed ineffective by any applicable law.

Section 4.02 Perfection of Security Interests.

(a) Borrower shall, at its expense, perform any and all steps that may be reasonably requested by the Administrative Agent at any time to perfect, maintain, protect, and enforce Administrative Agent's Lien on the Collateral, including (i) executing and filing financing or continuation statements, and amendments thereof, in form and substance satisfactory to the Administrative Agent, (ii) maintaining complete and accurate books and records, and (iii) taking such other steps as are deemed necessary or desirable to maintain Administrative Agent's Lien on the Collateral, including, without limitation, delivering items of Collateral to Administrative Agent and executing and delivering notices and agreements, including, without limitation, bailee and warehouseman notices, mortgages, account control agreements and intellectual property security agreements as Administrative Agent reasonably requests.

(b) Borrower hereby authorizes the Administrative Agent to execute and file financing statements or continuation statements, and amendments thereto, on Borrower's behalf, covering the Collateral that indicate the Collateral as all assets of Borrower or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the UCC in any applicable jurisdiction. The Administrative Agent may file one or more financing statements disclosing Administrative Agent's Lien under this Agreement without the signature of Borrower appearing thereon. Borrower shall pay the costs of, or incidental to, any recording or filing of any financing statements concerning the Collateral. Borrower agrees that a carbon, photographic, photostatic, or other reproduction of this Agreement or of a financing statement is sufficient as a financing statement

(c) Notwithstanding subsections (a) and (b) of this Section 4.02, or any failure on the part of Borrower or the Administrative Agent to take any of the actions set forth in such subsections, the Liens and security interests granted herein shall be deemed valid, enforceable and perfected by entry of the Final Order. No financing statement, notice of lien, mortgage, deed of trust or similar instrument in any jurisdiction or filing office need be filed or

any other action taken in order to validate and perfect the Liens and security interests granted by or pursuant to this Agreement or the Final Order.

Section 4.03 Covenants of Borrower with Respect to Collateral. Borrower hereby covenants and agrees that from and after the date of this Agreement and until the Full Payment of all DIP Lender Debt:

(a) Borrower will keep and maintain, at its own cost and expense, satisfactory and complete records of the Collateral, in all material respects, including a record of all payments received and all credits granted with respect to the Collateral and all other dealings concerning the Collateral. For DIP Lender's further security, Borrower agrees that DIP Lender shall have a property interest in all of Borrower's books and records pertaining to the Collateral and, upon the occurrence and during the continuation of an Event of Default, Borrower shall deliver and turn over any such books and records to the Administrative Agent or to its representatives at any time on demand of the Administrative Agent for copying and return.

(b) Borrower will defend the title to the Collateral and the Liens of the Administrative Agent in the Collateral against the claim of any Person (other than the holder of a Permitted Lien) and will maintain and preserve such Liens (it being understood that nothing in this clause (b) will prevent Borrower from disposing of Collateral as otherwise permitted by any Loan Document).

(c) Borrower shall notify Administrative Agent promptly if Borrower acquires any intellectual property after the date hereof or knows or has reason to know that any application or registration relating to any material intellectual property (now or hereafter existing) may become abandoned or dedicated, or of any adverse determination or development regarding Borrower's ownership of any material intellectual property, its right to register the same, or to keep and maintain the same.

Section 4.04 Performance by Administrative Agent of Borrower's Obligations. If Borrower fails to perform or comply with any of its agreements contained in this Agreement and the Administrative Agent, as provided for by the terms of this Agreement, shall itself perform or comply, or otherwise cause performance or compliance, with such agreement, the expenses of the Administrative Agent incurred in connection with such performance or compliance, together with interest thereon at the rate then in effect hereunder, shall be payable by Borrower to the Administrative Agent on demand and shall constitute DIP Lender Debt secured by the Collateral. Limitation on Administrative Agent's Duty in Respect of Collateral. Neither the Administrative Agent nor DIP Lender shall have any duty as to any Collateral in its possession or control or in the possession or control of any agent or nominee of it or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto, except that the Administrative Agent shall, with respect to the Collateral in its possession or under its control, deal with such Collateral in the same manner as the Administrative Agent deals with similar property for its own account.

Section 4.06 Superpriority Administrative Claim. In addition to the security set forth above, DIP Lender shall also be granted a Superpriority Administrative Claim in the Bankruptcy Case, provided, however, DIP Lender shall have a general administrative priority

claim with respect to avoidance actions of the estate pursuant to Chapter 5 of the Bankruptcy Code.

ARTICLE V. COLLECTION AND DISTRIBUTION

Section 5.01 Distribution of Funds Received. The Administrative Agent shall distribute as and when received any and all cash payments received from Borrower hereunder, and all other proceeds or other amounts with respect to the Collateral, as follows: **FIRST**, to the Administrative Agent, an amount in cash equal to expenses incurred with respect to the administration, service and maintenance of Administrative Agent's Lien on the Collateral and all fees and collection costs that are due and payable pursuant to the terms of this Agreement until such amounts have been paid in full;

SECOND, to DIP Lender until the DIP Loan is paid in full; and

THIRD, to Borrower, all remaining amounts.

ARTICLE VI. CONDITIONS PRECEDENT

Section 6.01 Conditions Precedent to the Initial Interim DIP Order Advance and all Advances Made After the Initial Interim DIP Order Advance. The making of the Initial Interim DIP Order Advance and each Advance made after the Initial Interim DIP Order Advance under the First Stage Commitment is subject to the conditions precedent that the Administrative Agent shall have received on or before the date of such Advance the following, each in form and substance satisfactory to the Administrative Agent: The Administrative Agent shall have received executed originals of the Letter of Commitment dated September 5, 2011.

(b) The Bankruptcy Court shall have entered the Interim DIP Order, which shall be in effect and unstayed as of the date of such Advance and shall be in the form originally filed with the Bankruptcy Court and shall not have been reversed, modified or amended as a whole or in part without the prior written consent of the Administrative Agent.

(c) Borrower shall have made all necessary filings and deliveries so that Administrative Agent, for itself and the benefit of the DIP Lender, shall have a perfected security interest in the Collateral (free and clear of all Liens other than Permitted Liens) with the priority set forth in Section 4.01.

(d) All of the orders entered in the Chapter 11 Case since the commencement of the Chapter 11 Case shall be in form and substance reasonably satisfactory to the Administrative Agent and its counsel.

(e) The Administrative Agent shall have received the then most recently required DIP Budget and such DIP Budget shall be satisfactory to the Administrative Agent in its sole discretion.

(f) Neither Marriott International, Inc. nor any of its Affiliates shall have any role in the management or control of the Borrower or the Hotel.

(g) Availability under the First Stage Commitment shall be greater than \$0.

(h) Subordinated Lender shall have consented to this Agreement and the DIP Loan in all respects.

Section 6.02 Conditions Precedent to the Initial Final DIP Order Advance and all Advances Made After the Initial Final DIP Order Advance. The making of the Initial Final DIP Order Advance and each Advance after the Initial Final DIP Order Advance under the Second Stage Commitment is subject to the conditions precedent that the Administrative Agent shall have received on or before the date of each such Advance the following (or evidence of the following), each in form and substance satisfactory to the Administrative Agent:

(a) All of the conditions in 6.01 have been met.

(b) The Administrative Agent shall have received executed originals of this Agreement and the other Loan Documents, and such other certificates, documents, agreements, opinions and information as the Administrative Agent may reasonably request.

(c) The Bankruptcy Court shall have entered the Final DIP Order, which shall be in effect and unstayed as of the date of each such Advance and shall be in the form originally filed with the Bankruptcy Court and shall not have been reversed, modified or amended as a whole or in part without the prior written consent of the Administrative Agent.

(d) Administrative Agent shall have received all documentation and other information required by any applicable regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations including, without limitation, the Patriot Act (as defined below), and OFAC rules and regulations.

(e) Borrower shall have delivered to Administrative Agent all due diligence items, including but not limited to: (1) receipt of and satisfaction with financial information regarding operations of the Hotel since its opening in September 2010; (2) legal diligence and (3) monthly financial projections for the next six months (including balance sheets, income statements, cash flow statements, and availability statements).

(f) Borrower shall have paid all reasonable costs of the Administrative Agent and the DIP Lender associated with this Agreement, the other Loan Documents and all Advances, including, but not limited to, the Administrative Agent’s and DIP Lender’s out-of-pocket costs and expenses (including the reasonable fees and expenses of all of its counsel, advisors, consultants and auditors) incurred in connection with the negotiation, preparation and filing and/or recordation of the Loan Documents.

(g) Administrative Agent shall have received title insurance in form and content acceptable to the Administrative Agent with respect to any mortgage in favor of Administrative Agent with respect to the Hotel.

(h) The Administrative Agent shall have received the then most recently required DIP Budget and such DIP Budget shall be satisfactory to the Administrative Agent in its sole discretion.

(i) Availability under the Second Stage Commitment shall be greater than \$0.

Section 6.03 Conditions Precedent to all Advances. Each Advance on a Funding Date shall be subject to the conditions precedent that on such Funding Date the following statements shall be true and correct (and acceptance of the proceeds of such Advance shall be deemed a representation and warranty by Borrower that such statements are then true and correct):

(a) The representations and warranties contained in Article VII hereof are true and correct on and as of the date of such Advance as though made on and as of such date (except any representation or warranty that expressly indicates that it is being made as of a specific date, in which case such representation or warranty shall be true and correct as of such specified date)

(b) All Advances shall be used only for the payment of expenses set forth in the most recently required DIP Budget approved by Administrative Agent in its sole discretion, or for other expenses deemed necessary in Administrative Agent's sole discretion, and Borrower shall provide Administrative Agent with evidence that no other funds are available to the Borrower to pay such expenses.

(c) No event has occurred and is continuing, or would result from such Advance or any actions connected therewith, that constitutes a Default or an Event of Default.

ARTICLE VII. REPRESENTATIONS AND WARRANTIES

Section 7.01 Representations and Warranties. Borrower hereby makes on the date hereof, and shall be deemed to have made, on each Funding Date, the following representations and warranties to the Administrative Agent and DIP Lender: Borrower is duly incorporated, validly existing and in good standing under the laws of the State of Hawaii. Borrower is duly qualified to do business, and is in good standing, in every jurisdiction where the nature of its business requires it to be so qualified, except where the failure to be so qualified would not have a Material Adverse Effect.

(b) The execution, delivery and performance by Borrower of the Loan Documents and any other documents to be delivered by it thereunder, upon the entry by the Bankruptcy Court of the DIP Orders (i) are within its limited liability company powers, (ii) have been duly authorized by all necessary limited liability company action, (iii) do not contravene its organizational documents, (iv) do not violate any law, rule or regulation applicable to it or any order, writ, judgment, award, injunction or decree binding on or affecting it or its Property, (v) do not conflict with or result in the breach or termination of, constitute a default under or accelerate or permit the acceleration of any performance required by, or require any payment to

be made under, any material lease, material agreement, material indebtedness or other material instrument entered into or assumed by Borrower after the commencement of the Bankruptcy Case, (vi) do not result in or require the creation of any Lien upon or with respect to any of its Properties, other than the security interests created by this Agreement, the other Loan Documents and the DIP Orders, and (vii) do not and will not result in any default, noncompliance, suspension, revocation, impairment, forfeiture or non-renewal of any permit, license, authorization or approval applicable to its operations or any of its Properties.

(c) No investment banking, brokerage, finders' or similar fees are payable to any Person in connection with the execution, delivery and performance of this Agreement, the other Loan Documents or the transactions contemplated hereby or thereby.

(d) Upon the entry by the Bankruptcy Court of the Dip Orders, this Agreement is, and the other Loan Documents will be, when delivered hereunder, the legal, valid and binding obligations of Borrower, enforceable against Borrower in accordance with their respective terms.

(e) Borrower has all power and authority, and has all permits, licenses, accreditations, certifications, authorizations, approvals, consents and agreements of all Governmental Entities and other Persons necessary or required for it (A) to own the assets that it now owns, (B) to carry on its business as now conducted and (C) to execute, deliver and perform the Loan Documents.

(f) Borrower has not been notified by any Governmental Entity or any other Person, that such Person has rescinded or not renewed, or is reasonably likely to rescind or not renew, any permit, license, authorization, approval, consent or agreement granted to it or to which it is a party and no other condition exists or event has occurred that, in itself or with the giving of notice or lapse of time or both, would result in the suspension, revocation, impairment, forfeiture or non renewal of any permit, license, authorization or approval, and to the best of Borrower's knowledge, there is no claim that any thereof is not in full force and effect.

(g) As of each Funding Date, all applicable conditions precedent set forth in Article VI have been fulfilled or waived in writing by the Administrative Agent.

(h) Other than the Bankruptcy Case, there is no pending or, to its knowledge, threatened action or proceeding or investigation, injunction, writ or order affecting Borrower before or by any court, Governmental Entity or arbitrator that could reasonably be expected to have or result in a Material Adverse Effect or that purports to affect the legality, validity or enforceability of this Agreement or any other Loan Document.

(i) Borrower is the legal and beneficial owner of the Collateral purported to be owned by it and upon the execution of the Loan Documents, the Administrative Agent will hold a valid and continuing Lien in the Collateral as security for DIP Lender Debt, free and clear of any Lien other than Permitted Liens. No effective financing statement or other instrument similar in effect covering the Collateral is on file in any recording office other than those evidencing Permitted Liens, and no competing notice or notice inconsistent with the transactions contemplated in this Agreement has been sent to Borrower.

(j) To its knowledge, Borrower has filed on a timely basis all tax returns (federal, state and local) required to be filed and has paid, or made adequate provision for payment of, all taxes, assessments and other governmental charges due from it. No tax Lien has been filed and is now effective against it or any of its properties except any Lien in respect of taxes and other charges not yet due or contested in good faith by appropriate proceedings and for which appropriate reserves in accordance with GAAP have been established. To Borrower's knowledge, there is no pending investigation by any taxing authority nor any pending but unassessed tax liability relating to Borrower.

(k) Borrower has no Plans or Multiemployer Plans, or, except as set forth on Schedule 7.01(k), any material consulting agreements, executive employment agreements, executive compensation plans, deferred compensation agreements, employee stock purchase, stock option or severance plans.

(l) Manager is the manager of the Hotel pursuant to the terms of that certain Hotel Management Agreement dated as of August 28, 2011 between Manager and Borrower ("**Hotel Management Agreement**") and such Agreement has not been amended, and the terms thereof have not otherwise been modified, since such date.

(m) Except as set forth on Schedule 7.01(m): (a) no strikes, work stoppages or other material labor disputes exist, are pending, or to the knowledge of Borrower, threatened, against Borrower, the Hotel, or the Manager except those that, in the aggregate, would not reasonably be expected to have a Material Adverse Effect; (b) there is no organizing activity involving Borrower, the Hotel, or the Manager pending or, to Borrower's knowledge, threatened by any labor union or group of employees, that, in the aggregate, would reasonably be expected to have a Material Adverse Effect; and (c) there are no material complaints or charges against Borrower, the Hotel, or the Manager pending or, to Borrower's knowledge, threatened to be filed with any Governmental Authority or arbitrator based on, arising out of, in connection with, or otherwise relating to the employment or termination of employment by Borrower, the Hotel, or the Manager of any individual, that, in the aggregate, would reasonably be expected to have a Material Adverse Effect.

(n) (i) To its knowledge, Borrower has not caused or suffered to occur any material Release of Hazardous Materials on, at, in, under, above, to, from or about the Hotel; (ii) Borrower has and has been in material compliance with all Environmental Laws; and (iii) Borrower hereby acknowledges and agrees that the Administrative Agent and the DIP Lender are not now, and has not ever been, in control of the Hotel or Borrower's affairs so as to subject the Administrative Agent or the DIP Lender to any liability under Environmental Laws.

(o) Borrower's exact name, principal place of business and chief executive office and the office where its keeps its records concerning the Collateral are located at the addresses referred to on Schedule I hereto and, except as disclosed on Schedule I hereto, there have been no other such locations for the four immediately prior months. Except as disclosed on Schedule I hereto, Borrower has not changed its principal place of business or chief executive office in the last five (5) years. Except as disclosed on Schedule I hereto, Borrower has not used and does not now use any fictitious or trade name and Borrower has not changed its name in the last twenty-four (24) months.

(p) The information prepared or furnished by or on behalf of Borrower in connection with this Agreement or the consummation of the transactions contemplated hereunder taken as a whole, does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein or herein not misleading. All facts known to Borrower material to an understanding of the financial condition, business, properties or prospects of Borrower have been disclosed to the Administrative Agent and DIP Lender.

ARTICLE VIII. AFFIRMATIVE COVENANTS

Until the Full Payment of all DIP Lender Debt, Borrower agrees to perform all covenants in this Article VIII.

Section 8.01 Compliance with Laws, etc. Except as otherwise provided by the Bankruptcy Code, Borrower shall comply in all material respects with all applicable laws (including, without limitation, ERISA, Patriot Act, and Environmental Laws), rules and regulations. Borrower shall obtain, maintain and preserve, and take all necessary action to timely renew, all material permits, licenses, authorizations, approvals, entitlements and accreditations necessary or useful in the proper conduct of its business. Offices, Records and Books of Account, Names. Borrower shall keep its principal place of business, chief executive office, and the offices where it keeps its records concerning the Collateral at the addresses set forth on Schedule I or, upon thirty (30) days' prior notice to the Administrative Agent, at any other locations in jurisdictions where all actions reasonably requested by the Administrative Agent or otherwise necessary to protect, maintain and perfect Administrative Agent's Lien on the Collateral have been taken and completed. Borrower shall maintain proper books and accounts in which full, true and correct entries in conformity with GAAP are made of all dealings and transactions in relation to its business and activities and shall not make any notation on its books and records, including any computer files, that is inconsistent with the assignment of the Collateral to DIP Lender as collateral security. Borrower shall maintain and implement administrative and operating procedures (including an ability to recreate records evidencing receivables and related contracts and pertinent documentation with respect to all other Collateral in the event of the destruction of the originals thereof), and keep and maintain all documents, books, records and other information reasonably necessary or advisable for collecting all receivables. Borrower shall keep its exact legal name as set forth on Schedule I hereto and will not change its name without providing thirty (30) days' prior written notice to the Administrative Agent and taking and completing all actions reasonably requested by the Administrative Agent or otherwise necessary to protect, maintain and perfect Administrative Agent's Lien on the Collateral. Audits; Appraisals. Borrower shall, at any time and from time to time during regular business hours as requested by the Administrative Agent, permit the Administrative Agent or its representatives, upon reasonable notice or during the continuance of any Event of Default without notice, (i) on a confidential basis, to examine and make copies of and abstracts from all books, records and documents (including computer tapes and disks) in Borrower's or any of its Affiliates' possession or under its or their control relating to the Collateral including the related contracts, and (ii) to visit Borrower's or any of its Affiliates' offices and properties for the purpose of examining and auditing such materials described in clause (i) above, and (iii) to discuss accounting, financial and general business matters and matters relating to the Collateral

or Borrower's performance under the Loan Documents or under the contracts relating to the Collateral with any of Borrower's or any of its Affiliates' officers or employees having knowledge of such matters.Reporting Requirements. Borrower shall provide a DIP Budget as required by the DIP Orders. In addition, upon request of Administrative Agent, senior management of Borrower shall provide additional written reports as shall be requested of Administrative Agent and shall meet with Administrative Agent to review the status of Borrower, including the sale of assets and restructuring of debts.

Section 8.05 Insurance. The Borrower shall, at its sole cost and expense, maintain with financially sound and reputable insurance companies that are not Affiliates of the Borrower, insurance with respect to its Properties and business against loss or damage of the kinds customarily insured against by companies of a same or similar size engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other companies. Except to the extent that doing so would cause a default under, or otherwise breach or contravene, any existing agreement to which Borrower is party, Borrower shall use commercially reasonable efforts to (i) name Administrative Agent, on behalf of DIP Lender as an additional insured, as its interests may appear, on each such policy of insurance and (ii) have each casualty insurance policy contain a loss payable clause or endorsement, satisfactory in form and substance to Administrative Agent, that names Administrative Agent, on behalf of the DIP Lenders as the loss payee thereunder and provides for at least thirty days' prior written notice to Administrative Agent of any modification or cancellation of such policy.

Section 8.06 Taxes. Borrower shall (i) file when due all federal, national and state income and other tax returns and other reports that it is required to file; and (ii) unless otherwise precluded by the Bankruptcy Court, pay, or provide for the payment, when due, of all taxes (including sales taxes), fees, assessments and other governmental charges against it or upon its Property, income or franchises, including taxes relating to the transactions contemplated under this Agreement, make all required withholding and other tax deposits, and establish adequate reserves for the payment of all such items, and provide to the Administrative Agent, upon request, satisfactory evidence of its timely compliance with the foregoing; *provided, however,* so long as Borrower has notified the Administrative Agent in writing, Borrower need not pay any such amount (x) that it is contesting in good faith by appropriate proceedings diligently pursued, (y) with respect to which it has established proper reserves as provided in GAAP, and (z) for which no Lien (other than a Permitted Lien) results from such non-payment. Borrower shall not have any obligation under any tax sharing agreement.Preservation of Existence. Borrower shall preserve and maintain its existence, rights, franchises and privileges in the jurisdiction of its organization, and qualify and remain qualified in good standing as a foreign corporation in each jurisdiction where the failure to maintain such qualification would have or result in a Material Adverse Effect.Loan Documents. Borrower shall, at its sole expense, timely and fully perform and comply with all provisions, covenants and other promises required to be observed by it under the Loan Documents, maintain the Loan Documents in full force and effect, enforce each Loan Document in accordance with its terms, take all such action to such end as may be from time to time reasonably requested by the Administrative Agent.

Section 8.09 Further Assurances. Borrower agrees that it shall, at Borrower's expense and upon the reasonable request of the Administrative Agent, duly execute and deliver,

or cause to be duly executed and delivered, to the Administrative Agent such further instruments and do and cause to be done such further acts as may be necessary or reasonably requested by Administrative Agent to carry out more effectively the provisions and purposes of this Agreement and each Loan Document, including, without limitation, doing all things necessary to preserve and keep in full force and effect at all times the Liens securing the DIP Lender Debt as provided in the Loan Documents.

Section 8.10 Engagement of Accountant. As soon as possible, but in any event no later than September __, 2011, Borrower shall engage an accountant, bookkeeper, financial advisor or other financial professional acceptable to Administrative Agent in its reasonable discretion.

Section 8.11 Environmental Laws. Except as otherwise required by the Bankruptcy Code, each Borrower shall and shall cause each Person within its control to: (a) conduct its operations and keep and maintain the Hotel in compliance with all Environmental Laws other than noncompliance that could not reasonably be expected to have a Material Adverse Effect.

Section 8.12 Financial Covenants. Borrower shall comply with the DIP Financial Covenants pursuant to, and as such term is defined in, the DIP Orders.

Section 8.13 Notices. Promptly, upon obtaining knowledge of the same, Borrower shall notify the Administrative Agent of the occurrence of any Default or Event of Default or of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect.

Section 8.14 Cash Management. Borrower shall establish and maintain during the Term a cash management system reasonably satisfactory to Administrative Agent.

ARTICLE IX. NEGATIVE COVENANTS

Until the Full Payment of all DIP Lender Debt, Borrower agrees to perform all covenants in this Article IX.

Section 9.01 Corporate Documentation; Hotel Management Agreement. Borrower shall not modify, amend or alter (i) its organizational documents in any manner that is adverse to the interests of the Administrative Agent or DIP Lender or in any other material manner or (ii) or terminate or otherwise breach the terms of the Hotel Management Agreement. Debt. Borrower shall not incur, assume or suffer to exist any Debt following the date hereof other than Permitted Debt. Liens, etc. Borrower shall not create or suffer to exist any Liens upon or with respect to any of its Properties (including any Collateral) or assign any right to receive income in respect thereof, except Permitted Liens.

Section 9.04 Capital Expenditures; Lease Obligations. Borrower shall not make or become committed to make any capital expenditures, or enter into, or suffer to exist, any lease of real or personal Property as lessee or sublessee (other than those leases in existence as of

the date hereof), unless such capital expenditures or leases and all payments due in respect thereof are approved in writing by the Administrative Agent. Asset Sales; Sale/Leaseback Transaction; Etc. Borrower shall not (except with the Administrative Agent's prior written consent, to be given or withheld in its sole discretion) sell, assign (by operation of law or otherwise), transfer, lease, sublease, liquidate or otherwise dispose of (including pursuant to any sale/leaseback transaction) any of its Properties (including any Collateral), or assign any right to receive income in respect thereof, other than replacement and disposition of worn out and obsolete equipment in the ordinary course of business. Change In Business. Borrower shall not engage in any business other than the business engaged in by it on the date hereof. Restricted Payments. Borrower shall not make any Restricted Payment.

Section 9.08 Mergers and Acquisitions; Dissolutions. Borrower shall not consummate or enter into any transaction or agreement that shall result or be intended to result in a merger, acquisition, dissolution or wind-up. Margin Loan Restrictions. No portion of the proceeds of any borrowing hereunder shall be used in any manner that might cause the borrowing or the application of such proceeds to violate Regulation U, T, or X of the Board of Governors of the Federal Reserve System or any other such regulation. Loans or Investments. Except with respect to loans and investments set forth on Schedule 9.10, Borrower shall not enter into an agreement to make any loans to or investments in any Person, other than loans and advances to employees for reasonable travel, relocation and business expenses in the ordinary course of business, *provided* that (i) such loans and advances comply with all applicable laws and regulations (including the Sarbanes Oxley Act of 2002 and any successor laws or regulations, as amended from time to time) and (ii) the aggregate outstanding amount of all such loans and advances shall not exceed \$100,000 at any time outstanding during the term of this Agreement. Transactions with Affiliates. Borrower shall not sell, transfer, distribute, or pay any money or property, including any fees or expenses of any nature (including any fees or expenses for management services), to any Affiliate, or lend or advance money or property to any Affiliate, or invest in (by capital contribution or otherwise) or purchase or repurchase any equity interest or indebtedness, or any Property, of any Affiliate, or become liable under any guaranty for the obligations of any Affiliate provided, however, that Borrower may engage in transactions with Affiliates in the ordinary course of business, in amounts and upon terms fully disclosed to the Administrative Agent, and no less favorable to Borrower than would be obtained in a comparable arm's-length transaction with a third party who is not an Affiliate. ERISA, Etc. Neither Borrower nor any of its ERISA Affiliates shall become a party to, or otherwise be obligated on, any Plan or Multiemployer Plan. Borrower shall not become a party to or otherwise become obligated on any material: consulting agreement, executive employment agreement, executive compensation plan, deferred compensation agreement, or any employee stock purchase, stock option or severance plan not in existence on the date hereof.

EVENTS OF DEFAULT

Section 10.01 Events of Default. Each of the following shall be an "Event of Default": Borrower shall default in the due and punctual payment of any payment, fee or expense owing to the Administrative Agent or DIP Lender pursuant to any of the Loan Documents, when and as the same shall become due and payable, whether pursuant to Article II of this Agreement, at maturity, by acceleration or otherwise.

(b) Any material provision of this Agreement or any other Loan Document shall at any time fail for any reason to be in full force and effect, or this Agreement or any other Loan Document shall terminate, be terminated or become void or unenforceable by the Administrative Agent or DIP Lender for any reason whatsoever without the prior written consent of the Administrative Agent.

(c) This Agreement and the other Loan Documents shall, for any reason, cease to create a valid Lien on any of the Collateral purported to be covered thereby with the priority provided for herein or such Lien shall cease to be a perfected Lien against Borrower, or Borrower shall so allege in any pleading filed in any court.

(d) Borrower shall default in the performance or observance of any covenant, agreement or provision contained in: (i) Article IV, Article V, Sections 8.02, 8.03, 8.04, 8.07, 8.10, 8.12, Article IX, or (ii) any other Section or Article of this Agreement or any other Loan Document or in any other instrument or document evidencing or creating any obligation, guaranty or Lien in favor of Administrative Agent in connection with or pursuant to this Agreement or DIP Lender Debt, and, in the case of any default referred to in this clause (ii), such default continues for a period of three (15) Business Days.

(e) Any representation or warranty made or deemed made by Borrower under or in connection with this Agreement or any other Loan Document or any information or report delivered by Borrower pursuant to this Agreement or any other Loan Document shall prove to have been incorrect or untrue in any material respect when made or deemed made or delivered.

(f) There shall have occurred any event, or any condition shall exist, that has had or resulted in, or could reasonably be expected to have or result in, a Material Adverse Effect since the date hereof.

(g) A final unstayed postpetition judgment or judgments for the payment of money in excess of \$[50,000.00] in the aggregate at any time are outstanding against Borrower (which judgments are not covered by insurance policies as to which liability has been accepted by the insurance carrier), and the same are not, within thirty (30) days after the entry thereof, discharged or bonded pending appeal, or such judgments are not discharged prior to the expiration of any such stay.

(h) Borrower (or any of its successors or assigns) files a motion or application or adversary proceeding challenging the validity, enforceability, perfection or priority of any claim or Lien securing or pertaining to this Agreement, the other Loan Documents and the credit facility evidenced hereby and thereby or DIP Lender Debt.

(i) The Bankruptcy Case shall be dismissed (or the Bankruptcy Court shall make a ruling requiring the dismissal of the Bankruptcy Case) or converted to a case under chapter 7 of the Bankruptcy Code, or any Borrower shall file any pleading requesting any such relief; a trustee under chapter 7 or chapter 11 of the Bankruptcy Code, a responsible officer or an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in section 1106(a)(3) and (4) of the Bankruptcy Code) under section 1106(b) of the

Bankruptcy Code shall be appointed in the Bankruptcy Case; or an application shall be filed by Borrower for the approval of, or the Bankruptcy Court shall enter an order granting, (i) any claim having priority senior to or pari passu with the claims of the Administrative Agent and the DIP Lender under the Loan Documents (other than the Senior Debt) or, without the prior written consent of the Administrative Agent, any other claim having priority over any or all administrative expenses of the kind specified in sections 503(b) or 507(b) of the Bankruptcy Code (other than the Carve-Out) or (ii) any Lien on the Collateral having a priority senior to or pari passu with the Liens and security interests granted herein, except as otherwise expressly provided herein.

(j) Borrower shall file a motion seeking, or the Bankruptcy Court shall enter, an order (i) approving any payment (as adequate protection or otherwise) on account of any claim against Borrower arising or deemed to have arisen prior to the Petition Date, other than a payment in respect of the Senior Debt or any Debt held by the Subordinated Lender, (ii) granting relief from the automatic stay applicable under section 362 of the Bankruptcy Code to any holder of any security interest to permit foreclosure or obtain liens on any Collateral provided that, if Borrower would otherwise be permitted under this Agreement to make a payment to the holder of a security interest in cash, and the obligation to make such payment is secured by such cash, then in lieu of making such payment, Borrower may direct or authorize such secured party to, and such secured party may, apply such cash to satisfy such payment obligation (including by way of setoff against or foreclosure on such cash), (iii) authorizing the sale of all or a material portion of Borrower's assets, or (iv) approving the implementation of liquidation under chapter 11 of the Bankruptcy Code.

(k) Any DIP Order shall cease to be in full force and effect, or (ii) Borrower shall fail to comply with the terms of any DIP Order, or (iii) any DIP Order shall be amended, supplemented, stayed, reversed, vacated or otherwise modified (or Borrower shall apply for authority to do so) in any manner that affects the rights or duties of the Administrative Agent or the DIP Lender, in each case, without the prior written consent of the Administrative Agent.

(l) Any change in the composition of the Advisory Board, the Manager or the majority ownership of the Class A Members (as each such term is defined in the Second and Amended Restated Operating Agreement of the Borrower dated as of November 16, 2010) shall occur after the date hereof.

(m) Manager ceases to be the manager of the Hotel without the appointment of a successor satisfactory to the Administrative Agent.

Section 10.02 Events of Default; Remedies If any Event of Default has occurred and is continuing, without further order of, application to, or action by, the Bankruptcy Court, the Administrative Agent may, by notice to Borrower, take any of the following actions: (x) subject to the terms of any intercreditor agreement between the Administrative Agent and the Senior Lender, declare the Maturity Date to have occurred and all DIP Lender Debt shall become immediately due and payable in full in cash; (y) terminate all commitments and obligations of DIP Lender hereunder. Upon any such declaration or designation, the Administrative Agent and DIP Lender shall have, in addition to the rights and remedies that they may have under this

Agreement, all other rights and remedies provided in equity or at law, which rights and remedies shall be cumulative, and without notice except as required by the DIP Orders, exercise any such rights and remedies. In addition to the remedies set forth above, the Administrative Agent may exercise any remedies provided for by this Agreement and the other Loan Documents in accordance with the terms hereof and thereof or any other remedies provided by applicable law.

(b) Borrower hereby irrevocably authorizes and instructs the Administrative Agent and DIP Lender to set off the full amount of DIP Lender Debt that has become due and payable against any proceeds of Collateral. No further notification, act or consent of any nature whatsoever is required prior to the exercise by the Administrative Agent or DIP Lender of such right of set off; *provided, however*, the Administrative Agent shall notify Borrower: (1) that a set off pursuant to this Section 10.02(b) occurred, (2) the amount of such set off, and (3) a description of DIP Lender Debt that was due and payable.

ARTICLE XI. THE ADMINISTRATIVE AGENT

Section 11.01 Agency Provisions.

(a) DIP Lender hereby irrevocably appoints the Administrative Agent as its administrative and collateral agent and authorizes the Administrative Agent to take such actions on behalf of DIP Lender and to exercise such powers as are delegated to the Administrative Agent by the terms hereof and the other Loan Documents, together with such actions and powers as are reasonably incidental thereto.

(b) DIP Lender authorizes and directs the Administrative Agent to enter into this Agreement and the other Loan Documents, for the benefit and obligation of the Administrative Agent and DIP Lender. DIP Lender agrees that any action taken by the Administrative Agent in accordance with the terms of this Agreement or the other Loan Documents, and the exercise by the Administrative Agent of its powers set forth herein or therein, together with such other powers that are reasonably incidental thereto, shall be binding upon DIP Lender.

(c) The Administrative Agent shall not have any duties or obligations except those expressly set forth herein or in the other Loan Documents. The Administrative Agent shall not be deemed to have knowledge of any Default or Event of Default unless and until notice thereof is given to the Administrative Agent by Borrower.

(d) The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. The Administrative Agent may consult with legal counsel (who may be counsel for Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

(e) The Administrative Agent may perform any and all of its duties and exercise its rights and powers by or through any one or more sub-agents appointed by the Administrative Agent. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent.

(f) With respect to the release of Collateral, DIP Lender hereby irrevocably authorize the Administrative Agent to release any Lien granted to or held by the Administrative Agent for itself and the benefit of DIP Lender upon any Collateral covered by this Agreement or the other Loan Documents (i) upon Full Payment of all DIP Lender Debt; or (ii) constituting Property being sold or disposed of in compliance with the provisions of the Loan Documents (and the Administrative Agent may rely in good faith conclusively on any certificate stating that the Property is being sold or disposed of in compliance with the provisions of the Loan Documents, without further inquiry); *provided, however*, that (x) the Administrative Agent shall not be required to execute any release on terms that, in the Administrative Agent's opinion, would expose the Administrative Agent to liability or create any obligation or entail any consequence other than the release of such Liens without recourse or warranty, and (y) such release shall not in any manner discharge, affect or impair any Liens upon all interests retained, all of which shall continue to constitute part of the Collateral covered by the Loan Documents.

(g) With respect to perfecting security interests in Collateral that, in accordance with Article 9 of the UCC or any comparable provision of any Lien perfection statute in any applicable jurisdiction, can be perfected only by possession, DIP Lender hereby appoint the Administrative Agent as its agent for the purpose of perfecting such interest. Should either DIP Lender obtain possession of any such Collateral, such DIP Lender shall notify the Administrative Agent, and, promptly upon the Administrative Agent's request, shall deliver such Collateral to the Administrative Agent or in accordance with the Administrative Agent's instructions.

(h) Subject to the appointment and acceptance of a successor agent as provided in this paragraph, the Administrative Agent may resign at any time by notifying DIP Lender and Borrower; *provided* that unless such resignation is accepted by DIP Lender, such resignation shall not become effective until the appointment of a successor Administrative Agent pursuant to the terms of this Section 11.01(h). Upon any such notice of resignation, DIP Lender shall have the right to appoint a successor for the Administrative Agent. If no successor shall have been so appointed by DIP Lender and shall have accepted such appointment within thirty (30) days after the Administrative Agent gives notice of its resignation, then the Administrative Agent may, on behalf of DIP Lender, appoint a successor Administrative Agent. Upon the acceptance of its appointment as the Administrative Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder. The fees payable by Borrower to a successor Administrative Agent shall be the same as those payable to Administrative predecessor unless otherwise agreed in writing between Borrower and such successor. After any Administrative Agent's resignation hereunder, the provisions of this Article XI and Sections 2.05 and 12.05 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Persons in respect of any actions taken or omitted to be taken by any of them while it was acting as the Administrative Agent.

**ARTICLE XII.
MISCELLANEOUS**

Section 12.01 Amendments, etc.

(a) (1) No amendment or waiver of any provision of this Agreement or consent to any departure therefrom by a party hereto shall be effective unless in a writing signed by the Administrative Agent, DIP Lender and Borrower, and then such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(b) No failure on the part of the Administrative Agent, either DIP Lender or Borrower to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right.

Section 12.02 Notices, etc. All notices and other communications hereunder shall, unless otherwise stated herein, be in writing (which may include email, facsimile and telephone calls followed promptly by hard copy or facsimile communication) and shall be delivered to each applicable party, at the address set forth under its name on Schedule I hereto or at such other address as shall be designated by such party in a notice to the other parties hereto. All notices by Borrower to the Administrative Agent shall be delivered by an Authorized Officer. Notices and communications by email and facsimile shall be effective when sent (and shall be immediately followed by hard copy sent by regular mail), and notices and communications sent by other means shall be effective when received. Without in any way limiting Borrower's obligation to confirm in writing any telephonic notice of a borrowing, the Administrative Agent may act without liability upon the basis of telephonic notice believed by the Administrative Agent in good faith to be from an Authorized Officer of Borrower prior to receipt of written confirmation.Nonassignability. This Agreement is nonassignable by the Borrower with the prior written consent of the Administrative Agent and the DIP Lender. Further Assurances; Financing Statements. Borrower shall, at its own expense, promptly execute and deliver all further instruments and documents, and take all further action that the Administrative Agent or DIP Lender may request, from time to time, as may be necessary or proper in the reasonable opinion of the Administrative Agent or DIP Lender to carry out more effectively the provisions and purposes of this Agreement and the other Loan Documents, in order to perfect, protect or more fully evidence the assignment as security of the Collateral, or to enable the Administrative Agent and DIP Lender to exercise or enforce their respective rights hereunder and under the other Loan Documents. Without limiting the generality of the foregoing, Borrower shall, upon the request of the Administrative Agent, execute and file such UCC financing or continuation statements, or amendments thereto or assignments thereof, and such other documents or notices, as may be, in the reasonable opinion of the Administrative Agent, necessary or appropriate. Borrower hereby authorizes the Administrative Agent to file one or more financing or continuation statements and amendments thereto and assignments thereof, relative to all or any of the Collateral now existing or hereafter arising without Borrower's signature where permitted by law. If Borrower fails to perform any of its agreements or obligations under this Agreement, the Administrative Agent may (but shall not be required

to) itself perform, or cause performance of, such agreement or obligation, and the expenses of the Administrative Agent incurred in connection therewith shall be payable by Borrower.

Section 12.05 Costs and Expenses; Collection Costs. Borrower agrees to pay on demand (i) all reasonable non-legal costs and expenses of the Administrative Agent and DIP Lender in connection with the preparation, execution, delivery and administration of this Agreement and the Loan Documents; (ii) the reasonable fees and expenses of counsel for DIP Lender in connection with this Agreement and the transactions contemplated hereby; (iii) all reasonable costs and out-of-pocket expenses, if any (including reasonable counsel fees and expenses), of the Administrative Agent and DIP Lender in connection with any waiver, modification, supplement or amendment hereto, or any action to collect, enforce, protect, maintain, preserve or foreclose its interests with respect to any Loan Document or Collateral and (iv) any and all wire fees initiated by Administrative Agent or DIP Lender to or for the benefit of Borrower. Without limiting the generality of the foregoing, the expenses, costs, charges and fees referred to in this Section 12.05 may include the following: recording costs, appraisal costs, paralegal fees, costs and expenses; accountants' fees, costs and expenses; court costs and expenses; photocopying and duplicating expenses; court reporter fees, costs and expenses; long distance telephone charges; air express charges; telegram charges; telecopier charges; secretarial overtime charges; and expenses for travel, lodging and food. Remedies; Conflict of Terms. The Administrative Agent's and DIP Lenders' rights and remedies under this Agreement shall be cumulative and nonexclusive of any other rights and remedies that the Administrative Agent or DIP Lender may have under any other agreement, including the other Loan Documents, by operation of law or otherwise. Recourse to the Collateral shall not be required. Except as otherwise provided in this Agreement or any of the other Loan Documents by specific reference to the applicable provisions of this Agreement, if any provision contained in this Agreement conflicts with any provision in any of the other Loan Documents, the provision contained in this Agreement shall govern and control. Notwithstanding the foregoing, to the extent any representation, warranty, covenant, obligation or other requirement of Borrower contained in any Loan Document is more restrictive than in any other Loan Document, the more restrictive term shall govern.

Section 12.07 Term and Termination; Early Termination and Prepayment Fees.

(a) This Agreement shall have a term commencing on the date hereof and expiring on the Maturity Date (the "**Term**").

(b) The obligations of Administrative Agent and the DIP Lender under this Agreement shall continue in full force and effect from the date the Interim DIP Order is entered until the Maturity Date.

(c) The termination of this Agreement shall not affect any rights of the Administrative Agent or DIP Lender or any obligations of Borrower arising on or prior to the effective date of such termination, and Borrower's duties and obligations hereunder shall continue to be fully operative until Full Payment of all DIP Lender Debt (including all DIP Lender Debt incurred on or prior to such termination).

(d) The Liens and rights to be granted to the Administrative Agent for itself and the benefit of DIP Lender shall continue in full force and effect, notwithstanding the

termination of this Agreement, until the Full Payment of all DIP Lender Debt. Upon Full Payment of all DIP Lender Debt, the Administrative Agent shall, at Borrower's sole cost and expense, execute and deliver such documents as Borrower shall reasonably request to evidence such termination.

(e) All indemnities of Borrower contained herein shall survive termination hereof and Full Payment of all DIP Lender Debt unless otherwise provided. In furtherance and not in limitation of the foregoing, if after receipt of any payment of all or any part of DIP Lender Debt, the Administrative Agent or DIP Lender is for any reason compelled to surrender such payment to any Person or entity because such payment is determined to be void or voidable as a preference, an impermissible set off, a diversion of trust funds or for any other reason, this Agreement shall continue in full force (except that the Total Commitment shall have been terminated), and Borrower shall be liable to, and shall indemnify and hold the Administrative Agent and DIP Lender harmless for the amount of such payment surrendered until DIP Lender and the Administrative Agent shall have been finally and irrevocably paid in full in cash. The provisions of the foregoing sentence shall be and remain effective notwithstanding any contrary action that may have been taken by the Administrative Agent or DIP Lender in reliance upon such payment, and any such contrary action so taken shall be without prejudice to the Administrative Agent's and DIP Lender's rights under this Agreement and shall be deemed to have been conditioned upon such payment having become final and irrevocable.

Section 12.08 No Liability. Neither this Agreement nor any document executed in connection herewith shall constitute an assumption by the Administrative Agent or DIP Lender of any obligation of Borrower. Entire Agreement; Severability. This Agreement, including all exhibits and schedules hereto and the other Loan Documents, embody the entire agreement and understanding of the parties concerning the subject matter contained herein. This Agreement supersedes any and all prior agreements and understandings between the parties, whether written or oral. If any provision of this Agreement shall be declared invalid or unenforceable, the parties hereto agree that the remaining provisions of this Agreement shall continue in full force and effect. GOVERNING LAW. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN ANY OF THE LOAN DOCUMENTS, IN ALL RESPECTS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THE LOAN DOCUMENTS AND THE OBLIGATIONS SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN THAT STATE AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA.

Section 12.11 JURISDICTION AND VENUE. BORROWER HEREBY CONSENTS AND AGREES THAT UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF HAWAII SHALL HAVE NON-EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN BORROWER, ON THE ONE HAND, AND THE ADMINISTRATIVE AGENT AND DIP LENDER, ON THE OTHER HAND, PERTAINING TO THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR TO ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS; PROVIDED, THAT THE ADMINISTRATIVE AGENT, DIP LENDER AND THE BORROWER ACKNOWLEDGE

THAT ANY APPEALS FROM SUCH COURT MAY HAVE TO BE HEARD BY A COURT LOCATED OUTSIDE OF HAWAII AND; PROVIDED, FURTHER THAT NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE THE ADMINISTRATIVE AGENT OR DIP LENDER FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE DIP LENDER DEBT, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF THE ADMINISTRATIVE AGENT AND/OR THE DIP LENDER. BORROWER EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN SUCH COURT, AND BORROWER HEREBY WAIVES ANY OBJECTION THAT BORROWER MAY HAVE BASED UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS AND HEREBY CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT. BORROWER HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS, COMPLAINT AND OTHER PROCESS ISSUED IN ANY SUCH ACTION OR SUIT AND AGREES THAT SERVICE OF SUCH SUMMONS, COMPLAINTS AND OTHER PROCESS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO THE BORROWER AT THE ADDRESS FOR BORROWER SET FORTH IN THIS AGREEMENT AND THAT SERVICE SO MADE SHALL BE DEEMED COMPLETED UPON THE EARLIER OF THE BORROWER'S ACTUAL RECEIPT THEREOF OR THREE (3) DAYS AFTER DEPOSIT IN THE UNITED STATES MAILED, PROPER POSTAGE PREPAID. WAIVER OF JURY TRIAL. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, EACH OF THE PARTIES HERETO HEREBY WAIVES ALL RIGHTS TO A TRIAL BY JURY IN THE EVENT OF ANY LITIGATION (A) ARISING UNDER THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR (B) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR THERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE AND EACH PARTY HEREBY CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT OR SUCH OTHER LOAN DOCUMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 12.12 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENTS OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. Execution in Counterparts. This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement. Accounting Information. Borrower hereby authorizes the Administrative Agent and DIP Lender to discuss the financial condition of Borrower with their respective independent public accountants and agrees that such discussion or communication shall be without liability to such Person or the independent public accountants. USA PATRIOT ACT. Borrower

acknowledges and consents that, in accordance with the reporting requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “**Patriot Act**”), Administrative Agent and/or DIP Lender may require, obtain, verify and record information that identifies Borrower, which information includes the name and addresses of Borrower and its principals, as well as any other information that will allow the Administrative Agent and/or DIP Lender to identify Borrower and its principals in accordance with, and otherwise comply with the requirements of, the Patriot Act.[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

BORROWER:

M WAIKIKI LLC

By: _____
Name: _____
Title: _____

ADMINISTRATIVE AGENT:

THE DAVIDSON GROUP

By: _____
Name: _____
Title: _____

DIP LENDER:

ROBERT M. DAVIDSON AND/OR JANICE G.
DAVIDSON AS TRUSTEE OF THE DAVIDSON
FAMILY TRUST DATED DECEMBER 22, 2011,
AS AMENDED

By: _____
Robert M. Davidson
Trustee

SCHEDULE 1.01
PERMITTED DEBT

SCHEDULE 4.01
COMMERCIAL TORT CLAIMS

SCHEDULE 7.01(M)
EMPLOYMENT ISSUES

SCHEDULE 9.10
LOANS OR INVESTMENTS

SCHEDULE I
ADDRESSES FOR NOTICE

If to DIP Lender or Administrative Agent:

The Davidson Family Trust
c/o The Davidson Group
P.O. Box 4300
Incline Village, Nevada 89450
Attn: Mark R. Herron, President and CEO

Physical Address:
800 Southwood Boulevard, Suite 204
Incline Village, NV 89451

With a copy to:

Lisa Hill Fenning, Esq.
Arnold & Porter LLP
777 S. Figueroa St., 44th Floor
Los Angeles, CA 90017
Tel. 213.243.4019
Lisa.Fenning@aporter.com

If to M Waikiki LLC, to

M Waikiki LLC

c/o _____

With a copy to: