

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID J. MITCHELL; LAS VEGAS
LAND PARTNERS, LLC; MEYER
PROPERTY LTD; ZOE PROPERTY,
LLC; LEAH PROPERTY, LLC;
WINK ONE, LLC; AQUARIUS
OWNER, LLC; LVLP HOLDINGS,
LLC; AND LIVE WORKS TIC
SUCCESSOR, LLC,

Appellants,

vs.

RUSSELL L. NYPE; REVENUE
PLUS, LLC; AND SHELLEY D.
KROHN,

Respondents.

Case No. 80693

Electronically Filed
Oct 28 2021 06:49 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable ELIZABETH GONZALEZ, District Judge
District Court Case No. A-16-740689-B

**RESPONDENTS' APPENDIX – VOLUME 5
(BATES RANGE) RA 000749 – RA 000927**

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Undated	Plaintiffs' Trial Exhibit 30028	Volume 60, RA 11500 – RA 11534
Undated	Plaintiffs' Trial Exhibit 30029	Volume 60, RA 11535 – RA 11562

Undated	Plaintiffs' Trial Exhibit 30030	Volume 60, RA 11563 – RA 11587
Undated	Plaintiffs' Trial Exhibit 30032	Volume 60, RA 11588 – RA 11603
Undated	Plaintiffs' Trial Exhibit 30033	Volume 60, RA 11604 – RA 11618
Undated	Plaintiffs' Trial Exhibit 30034	Volume 60, RA 11619 – RA 11624
Undated	Plaintiffs' Trial Exhibit 30037	Volume 60, RA 11625 – RA 11635
Undated	Plaintiffs' Trial Exhibit 30038	Volume 60, RA 11636 – RA 11639
Undated	Plaintiffs' Trial Exhibit 30039	Volume 60, RA 11640 – RA 11646
Undated	Plaintiffs' Trial Exhibit 30045	Volume 60, RA 11647
Undated	Plaintiffs' Trial Exhibit 30046	Volume 60, RA 11648
Undated	Plaintiffs' Trial Exhibit 30047	Volume 60, RA 11649
Undated	Plaintiffs' Trial Exhibit 30048	Volume 60, RA 11650
Undated	Plaintiffs' Trial Exhibit 30049	Volume 60, RA 11651 – RA 11654
Undated	Plaintiffs' Trial Exhibit 30060	Volume 60, RA 11655 – RA 11661
Undated	Plaintiffs' Trial Exhibit 30061	Volume 60, RA 11662 – RA 11665
Undated	Plaintiffs' Trial Exhibit 30064	Volume 61, RA 11666 – RA 11669

Undated	Plaintiffs' Trial Exhibit 30065	Volume 61, RA 11670 – RA 11673
Undated	Plaintiffs' Trial Exhibit 30068	Volume 61, RA 11674 – RA 11677
Undated	Plaintiffs' Trial Exhibit 30069	Volume 61, RA 11678 – RA 11698
Undated	Plaintiffs' Trial Exhibit 30076	Volume 61, RA 11699
Undated	Plaintiffs' Trial Exhibit 30088	Volume 61, RA 11700 – RA 11702
Undated	Plaintiffs' Trial Exhibit 30099	Volume 61, RA 11703 – RA 11704
Undated	Plaintiffs' Trial Exhibit 30100	Volume 61, RA 11704 – RA 11705
Undated	Plaintiffs' Trial Exhibit 30112	Volume 61, RA 11706 – RA 11720
Undated	Plaintiffs' Trial Exhibit 30113	Volume 61, RA 11721 – RA 11734
Undated	Plaintiffs' Trial Exhibit 40011	Volume 61, RA 11735 – RA 11736
Undated	Plaintiffs' Trial Exhibit 40012	Volume 61, RA 11737 – RA 11738
Undated	Plaintiffs' Trial Exhibit 40013	Volume 61, RA 11739 – RA 11740
Undated	Plaintiffs' Trial Exhibit 40015	Volume 61, RA 11741 – RA 11747
Undated	Plaintiffs' Trial Exhibit 40016	Volume 61, RA 11748 – RA 11789

Undated	Plaintiffs' Trial Exhibit 40044	Volume 61, RA 11790
Undated	Plaintiffs' Trial Exhibit 40053	Volume 61, RA 11791
Undated	Plaintiffs' Trial Exhibit 50026	Volume 62, RA 11792 – RA 12065
Undated	Plaintiffs' Trial Exhibit 50029	Volume 62, RA 12066 – RA 12077
Undated	Plaintiffs' Trial Exhibit 50030	Volume 62, RA 12078 – RA 12087
Undated	Plaintiffs' Trial Exhibit 50031	Volume 62, RA 12088 – RA 12132
Undated	Plaintiffs' Trial Exhibit 50032	Volume 62, RA 12133 – RA 12145
Undated	Plaintiffs' Trial Exhibit 50033	Volume 62, RA 12146 – RA 12153
Undated	Plaintiffs' Trial Exhibit 50039	Volume 62, RA 12154 – RA 12183
Undated	Plaintiffs' Trial Exhibit 50041	Volume 63, RA 12184 – RA 12264
Undated	Plaintiffs' Trial Exhibit 60003	Volume 63, RA 12265 – RA 12266
Undated	Plaintiffs' Trial Exhibit 60017	Volume 63, RA 12267 – RA 12269
Undated	Plaintiffs' Trial Exhibit 60018	Volume 63, RA 12270 – RA 12272
Undated	Plaintiffs' Trial Exhibit 60041	Volume 63, RA 12273 – RA 12283

Undated	Plaintiffs' Trial Exhibit 60042	Volume 63, RA 12284
Undated	Plaintiffs' Trial Exhibit 60043	Volume 63, RA 12285 – RA 12289
Undated	Plaintiffs' Trial Exhibit 60044 – Part 1	Volume 64, RA 12290 – RA 12533
Undated	Plaintiffs' Trial Exhibit 60044 – Part 2	Volume 65, RA 12534 – RA 12634
Undated	Plaintiffs' Trial Exhibit 60063	Volume 65, RA 12635 – RA 12646
Undated	Plaintiffs' Trial Exhibit 70002	Volume 65, RA 12647 – RA 12649
Undated	Plaintiffs' Trial Exhibit 70004	Volume 65, RA 12650
Undated	Plaintiffs' Trial Exhibit 70006	Volume 65, RA 12651 – RA 12671
Undated	Plaintiffs' Trial Exhibit 70007	Volume 65, RA 12672 – RA 12674
Undated	Plaintiffs' Trial Exhibit 70011	Volume 65, RA 12675 – RA 12683
Undated	Plaintiffs' Trial Exhibit 70012	Volume 65, RA 12684 – RA 12687
Undated	Plaintiffs' Trial Exhibit 70018	Volume 65, RA 12688
Undated	Plaintiffs' Trial Exhibit 70019	Volume 65, RA 12689
Undated	Plaintiffs' Trial Exhibit 70020	Volume 65, RA 12690
Undated	Plaintiffs' Trial Exhibit 70025	Volume 65, RA 12691 – RA 12714

Undated	Plaintiffs' Trial Exhibit 70026	Volume 65, RA 12715 – RA 12733
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DATED this 28th day of October 2021.

JOHN W. MUIJE & ASSOCIATES

/s/ John W. Muije, Esq.
JOHN W. MUIJE
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Attorney for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of October, I have caused a true and correct copy of the foregoing RESPONDENTS' APPENDIX – VOLUME 5 to be served by electronic service by the Supreme Court of Nevada Electronic Filing System to the following:

H. STAN JOHNSON, ESQ.
Nevada Bar No. 265
KEVIN M. JOHNSON, ESQ.
Nevada Bar No. 14551
COHEN JOHNSON
375 East Warm Springs Road, Suite 104
Las Vegas, Nevada 89119
Telephone: (702) 823-3500
Facsimile: (702) 823-3400
Email: sjohnson@cohenjohnson.com
Attorneys for Appellants

/s/ Melanie Bruner
As an agent for and on behalf of
JOHN W. MUIJE & Associates

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FIRST AMENDMENT TO OPERATING AGREEMENT
OF
PQ LAS VEGAS, LLC

THIS FIRST AMENDMENT TO OPERATING AGREEMENT (this "Amendment") is made and entered into as of the 28th day of April, 2010, by and between FC VEGAS 39, LLC, a New York limited liability company ("FC 39"), FC VEGAS 20, LLC, a Nevada limited liability company ("FC 20"), and LIVEWORK, LLC, a Delaware limited liability company ("Livework"). Capitalized terms used herein and not otherwise defined herein shall have the respective meanings ascribed to such terms in the Operating Agreement (as defined below).

RECITALS

A. FC 39, FC 20 and Livework entered into that certain Operating Agreement of PQ Las Vegas, LLC dated as of November 30, 2009 (the "Operating Agreement").

B. FC 39, FC 20 and Livework desire to amend the Operating Agreement as set forth herein.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the parties hereby agree as follows:

1. Amendment to Section 6(a). Section 6(a) of the Operating Agreement is hereby amended by deleting it in its entirety and substituting the following therefor:

"(a) Initial Contributions. FC 20, FC 39 and Livework shall contribute their respective TIC Interests in the Property to the Company. In consideration thereof, each Member shall have the initial Percentage Interests in the Company in accordance with Section 4, and each Member shall have an initial Capital Account equal to the excess of its Percentage Interest share of the gross fair market value of the Property on the date hereof over its Percentage Interest share of the outstanding debt secured by such Property as of such date."

2. Ratification. Except as modified by this Amendment, the Operating Agreement is hereby ratified in all other respects and shall continue in full force and effect.

3. Captions. The captions in this Amendment are for convenience of reference only, and shall not define or limit any of the terms or provisions hereof.


4. Counterparts. This Amendment may be executed in multiple counterparts, and each fully executed counterpart shall be deemed to be an original document. It shall not be necessary, in making proof of this Amendment, to produce or account for more than one fully executed counterpart.

IN WITNESS WHEREOF, the parties hereto have set their hands as of the day and year first above written.

FC VEGAS 20, LLC,
a Nevada limited liability company

By: Canton Centre Mall Limited Partnership,
its Managing Member


By: F.C. Canton Centre, Inc.,
Its Managing Member

By: 
Name: David J. LaRue
Title: President


FC VEGAS 39, LLC,
a New York limited liability company

By: Rolling Acres Properties Co. Limited
Partnership, its Managing Member

By: Artus, Inc., its Managing Member

By: 
Name: David J. LaRue
Title: Vice President

LIVEWORK, LLC
a Delaware limited liability company

By: 
David J. Mitchell, Managing Member

By: _____
Barnet L. Liberman, Managing Member

Available Cash: As of any date means the sum of all cash on hand of the Company and any Subsidiary, excluding Capital Proceeds, and not subject to any restriction on use or distribution pursuant to any loan or other agreements by which the Company, any Subsidiary or the Members are bound, less the sum of (i) amounts of operating expenses then due and payable, and (ii) all amounts held in reserves for future or contingent capital expenditures, expenses and costs pursuant to a Budget or approved Major Decision.

Budget: A development budget or annual budget prepared by the Managing Member pursuant to Sections 5(d)(i) and (ii) hereof.

CPI: The Consumer Price Index for all Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100, as published by the Bureau of Labor Statistics.

Capital Call: shall have the meaning set forth in Section 6(b)(i) hereof.

Capital Contribution: The amount of cash and property rights contributed by a Member to the capital of the Company.

Capital Proceeds: The proceeds, notes or other property of the Company and any Subsidiary from any sale or other disposition of all or any portion of the Property or interest in the Property or from any Financing, any casualty or other insurance proceeds from insurance on or with respect to the Property, and any condemnation proceeds or payments made in lieu of condemnation remaining after deducting the sum of (i) the transaction costs relating to such event, (ii) the amount required to be paid under the terms of the Financing documents in connection with such event, (iii) any additional prepayments authorized by the Managing Member to be paid at such time, and (iv) amounts authorized by the Managing Member to be reserved in a Company account for future costs and expenses pursuant to this Agreement.

Code: shall have the meaning in Section C-1 of Exhibit C hereof.

Company Expenses: Those operating and administrative expenses incurred by the Company and/or any Subsidiary or by the Members on behalf of the Company and/or its Subsidiaries.

Contiguous Parcels: shall have the meaning set forth in Section 5(b)(ii)(C) hereof.

Development Preferred Additional Contribution Return: shall have the meaning set forth in Section 6(b)(ii) hereof.

Development Preferred Return Rate: On each day of the period for which the Development Preferred Additional Contribution Return is calculated, the rate on such day which is twenty percent (20%) per annum, compounded monthly.

Discretionary Costs: The costs and expenses of the Company and any Subsidiary which are incurred in accordance with this Agreement or the operating agreement of any Subsidiary for (i) development of any portion of the Existing Properties, (ii) the acquisition of any portion of the Contiguous Parcels by the Company, and/or (iii) the development of any portion of the Contiguous Parcels which have been acquired by the Company.

Effective Date: shall have the meaning set forth in the introductory paragraph of this Agreement.

Essential Costs: All required or reasonably appropriate costs and expenses of the Company and any Subsidiary relating to the ownership or operation of the Existing Properties as well as any Contiguous Parcels if and when such property is acquired by the Company, including, without limitation: (i) amounts due under any Financing, including without limitation any refinancing, loan modification or extension thereof; (ii) real estate taxes; (iii) premiums or other amounts payable under insurance policies; (iv) life safety costs for emergency situations; (v) amounts required to comply with building safety, building code or other applicable laws, regulations or ordinances; and (vi) costs and expenses related to any other Permitted Activity other than those related to Discretionary Costs.

Existing Mortgage Loan: That certain mortgage loan relating to the Existing Properties in the original maximum principal amount of \$114,800,000 for the benefit of KeyBank National Association as Agent for each of the lending institutions named therein.

Existing Properties: shall have the meaning set forth in Section 5(b)(ii)(C) hereof.

Fair Market Value of a Membership Interest: shall have the meaning set forth in Section 10(a)(iv)(C) hereof.

Fair Market Value of the Property: shall have the meaning set forth in Section 6(c)(ii) hereof.

Family Member: As to any natural individual, the parents, siblings, nieces and nephews, spouse, children (including natural and adopted children and stepchildren), grandchildren and descendants of the designated natural person and the spouse of any such child, grandchild or other descendant, and any trust for the exclusive benefit of one (1) or more such persons.

Financing: The Existing Mortgage Loan and any other financing relating to all or any portion of the Property, including, without limitation, any financing permitted or otherwise approved by the Members in accordance with Section 5(b)(ii)(B) hereof.

Fiscal Year: The fiscal year beginning on February 1 of a calendar year and ending on January 31 of the succeeding calendar year. However, if for any reason the Company shall be required to change such year under the Internal Revenue Code of 1986, as amended and Treasury Regulations thereunder, the Fiscal Year for all purposes of this Agreement shall be the calendar year or other fiscal year that the Company is permitted to adopt, as agreed upon by all of the Members. In case of any such change in the Fiscal Year, the time periods specified for delivery of the proposed Budget and the review of the Company's tax returns specified in Sections 5(d)(ii) and 9(c) hereof, respectively, shall be appropriately modified.

Independent Manager: A Person who is not, will not be while serving, and for the prior five (5) years has not been, (i) a partner, member, manager (other than an independent manager of the applicable Person), employee, attorney, or counsel of the Company or its Affiliates, (ii) a creditor, customer, supplier, or other Person who derives any of its purchases or revenues from its activities with the Company or its Affiliates (other than revenues

received for serving as an independent director or independent manager or for corporate services), (iii) a member of the immediate family of any member, partner, manager, employee, attorney, customer, supplier or other Person referred to above, or (iv) a Person controlling or under the common control of anyone listed in (i) through (iii) above. A Person that otherwise satisfies the foregoing shall not be disqualified from serving as an independent manager solely because such individual is at the time of initial appointment, or at any time while serving as an independent manager or an independent director of a "special purpose entity" affiliated with the Company or an Affiliate of the Company, provided that such Person is provided by a nationally-recognized company that provides professional independent directors or independent managers and corporate services.

Initial Contributions: shall have the meaning set forth in Section 6(a)(i) hereof.

Major Decisions: shall have the meaning set forth in Section 5(b) hereof.

Management Agreement: shall have the meaning set forth in Section 5(e)(iv) hereof.

Management Company: shall have the meaning set forth in Section 5(e)(iv) hereof.

Members: FC20 and LIVEWORK, and any permitted successor or assign thereof who acquires a membership interest in the Company in accordance with Section 6(f) or Section 10 hereof, but excluding the Independent Managers.

Permitted Activity: shall have the meaning set forth in Section 3 hereof.

Person: An individual, corporation, trust, association, unincorporated association, estate, partnership, joint venture, limited liability company or other legal entity, including a governmental entity.

Preferred Additional Contributions: shall have the meaning set forth in Section 6(b)(ii).

Preferred Additional Contribution Return: shall have the meaning set forth in Section 6(b)(ii).

Preferred Initial Contributions: shall have the meaning set forth in Section 6(a)(ii) hereof.

Preferred Initial Contribution Return: shall have the meaning set forth in Section 6(a)(ii) hereof.

Preferred Return Rate: On each day of the period for which the Preferred Return is calculated, the rate on such day which is ten percent (10%) per annum, compounded monthly.

Principal: As to any Member, any Person who owns, directly or indirectly through one or more other Persons, more than a five percent (5%) beneficial ownership interest in the

profits, capital or equity of the Member or who exercises control over the Member (including veto or approval rights).

Property: shall have the meaning set forth in Section 3 hereof.

Subsequent Contribution: shall have the meaning set forth in Section 6(b)(iii) hereof.

Subsidiary: Any entity directly or indirectly owned, in whole or in part, by the Company and having a direct or indirect ownership interest in any portion of the Property.

TIC Assets: shall have the meaning set forth in Recital A hereof.

Transfer: Any sale, assignment, pledge, grant of a security interest or other transfer or disposition, or grant of an option or entry into an agreement to do any of the foregoing.

Unpaid Development Preferred Additional Contribution Return: As of any date and as to FC20, an amount (but not less than zero) equal to the excess of (i) the aggregate amount of FC20's Development Preferred Additional Contribution Return before such date, over (ii) the aggregate amount of cash distributed to FC20 pursuant to Section 8(a)(i) prior to such date.

Unpaid Preferred Additional Contribution Return: As of any date and as to FC20, , an amount (but not less than zero) equal to the excess of (i) the aggregate amount of FC20's Preferred Additional Contribution Return before such date, over (ii) the aggregate amount of cash distributed to FC20 pursuant to Section 8(a)(ii) prior to such date.

Unpaid Preferred Initial Contribution Return: As of any date and as to FC20, an amount (but not less than zero) equal to the excess of (i) the aggregate amount of FC20's Preferred Initial Contribution Return before such date, over (ii) the aggregate amount of cash distributed to FC20 pursuant to Section 8(a)(iii) prior to such date.

Unreturned Preferred Additional Contributions: With respect to FC20, as of any date, an amount (but not less than zero) equal to the excess of (i) the aggregate amount of FC20's Preferred Additional Contributions before such date, over (ii) the aggregate amount of cash distributed to FC20 pursuant to Section 8(a)(iv) prior to such date.

Unreturned Preferred Initial Contributions: With respect to FC20, as of any date, an amount (but not less than zero) equal to the excess of (i) the aggregate amount of FC20's Preferred Initial Contributions before such date, over (ii) the aggregate amount of cash distributed to FC20 pursuant to Section 8(a)(v) prior to such date.

Unreturned Subsequent Contributions: With respect to each Member, as of any date, an amount (but not less than zero) equal to the excess of (i) the aggregate amount of all of such Member's Capital Contributions before such date, excluding Initial Contributions, Preferred Initial Contributions and Preferred Additional Contributions, over (ii) the aggregate amount of cash distributed to such Member pursuant to Section 8(a)(vi) prior to such date.

2. **Term.** The Company shall continue in existence until the occurrence of any of the following events (subject to the provisions of Section 5(m) hereof):

(a) the sale or other disposition of all or substantially all of the assets of the Company (including by foreclosure or deed-in-lieu) unless the Members unanimously agree to continue the Company's business by written election within sixty (60) days after the closing of any such sale or other disposition; or

(b) the unanimous written election of the Members to dissolve the Company. The withdrawal, dissolution, insolvency or bankruptcy of a Member shall not dissolve the Company, but the occurrence of any of such events with respect to all Members (for example, the occurrence of the dissolution of one Member followed by a bankruptcy of the second Member) shall dissolve the Company upon the occurrence of any such event with respect to the last of the Members to be so affected.

3. **Purposes.** The purposes of the Company are to directly or indirectly (through one or more Subsidiaries) (a) hold, operate, manage, lease, develop or improve, subdivide or partition, and ultimately sell or otherwise dispose of the TIC Assets, or portions thereof or interests therein, as well as any other real property and appurtenances related thereto located in Las Vegas, Nevada which are acquired by the Company or any Subsidiary in accordance with this Agreement (together with the TIC Assets, collectively, the "**Property**"), (b) own, directly or indirectly, limited liability company or other interests in, and to act as a member or other interest holder of and to manage, each Subsidiary, (c) obtain Financings, and (d) undertake all other activities reasonably related, incidental or supplemental to any of the foregoing, all in accordance with the terms of this Agreement. The Company shall be a limited liability company only for the purposes specified in this Section 3 (the "**Permitted Activities**"). The Company shall not engage in any activity or business other than the Permitted Activities, and no Member shall have any authority to hold itself out as a general agent of any Member for any purpose or as an agent of the Company in any business or activity other than the Permitted Activities.

4. **Percentage Interests.** The "**Percentage Interests**" of the Members are as follows, unless and until adjusted to reflect any changes in accordance with Section 8(d) hereof, changes due to any transfer of all or any portion of a Member's membership interest or admission of a new member in accordance with this Agreement, or an amendment to this Agreement:

FC20	90%
LIVEWORK	10%

5. **Management.**

(a) **General.** FC20 is hereby appointed the "**Managing Member**" of the Company and, subject to the limitations set forth in Sections 5(b) and 5(m) hereof and except as otherwise expressly provided herein to the contrary, the management and business affairs of the Company is and shall be exclusively vested in the Managing Member (such authority, herein referred to as the Managing Member's "**Scope of Authority**"). Each Subsidiary will be managed by the Company (and therefore by the Managing Member, subject to Sections 5(b) and 5(m) below). The right of any other Member to receive from the Managing Member and comment on any information, materials, financial and tax records, agreements or other documents or instruments shall not affect the Scope of Authority of the Managing Member. The Managing Member may execute and deliver

agreements and instruments on behalf of the Company that will be binding on the Company so long as such instruments or agreements are within the Managing Member's Scope of Authority. The Managing Member shall maintain one or more separate accounts in the name and on behalf of the Company to collect or receive all funds and/or hold reserves, out of which it will pay expenses and other costs of the Property in accordance with Budgets or approved Major Decisions, and make distributions to the Members. All funds payable to or received by the Company shall be deposited into and held in Company accounts until used or disbursed as provided in accordance with a Budget or this Agreement. Notwithstanding the foregoing, if the Company enters into a management agreement with an Affiliate of FC20, all funds collected on behalf of the Company by such Affiliate may be deposited in a pooled bank account in the name of such Affiliate and maintained by such Affiliate for use as a depository for all properties managed by such Affiliate provided that (i) any interest earned on such pooled deposits shall be allocated on a pro rata basis among all the pooled funds such that the Company receives the benefit of interest on its share of such funds, and (ii) such Affiliate may not pledge, grant a security interest in or lien on such account and must cease depositing the Company's funds into such account if any lien or other encumbrance is imposed on such account, and (iii) FC20 and its Affiliate shall be jointly and severally liable to the Company for any funds in such account that are taken by any creditor who obtains a judgment lien or any other lien on such account, and (iv) FC20 and its Affiliate shall jointly and severally defend and hold the Company harmless, at their sole expense, from the costs and liability of defending any action to obtain the funds in such account, other than an action by a creditor of the Company with respect to obligations of the Company. The Managing Member shall, with respect to material activities relating to a Major Decision (each a "**Significant Activity**"), and to the extent reasonably feasible, keep the other Member advised of the status of any Significant Activity, including dates of meetings among principals negotiating matters relating to a Major Decision. In addition, the Managing Member shall promptly provide the other Member with copies of any material letter of intent, proposal, or draft or proposed agreement and other material documents or information related to a Major Decision and provide the other Member an opportunity of at least five (5) business days to review and comment upon the same. LIVEWORK may, on at least five (5) business days' notice but not more than once a month, request that the Members meet or converse by conference call with one another to obtain a status report and to discuss the Company's progress toward its goals and upon receipt of such a request, the Managing Member shall promptly respond to LIVEWORK to establish a mutually acceptable time and place for the meeting or call.

(b) Decisions Requiring Unanimity.

(i) Changing the purpose of the Company and/or any Subsidiary may not be taken without the prior written consent of all of the Members, regardless of the Percentage Interests of such Members. Notwithstanding the preceding sentence, the taking of any action constituting a Permitted Activity under this Agreement, including without limitation, the sale, transfer, conveyance or assignment of all or substantially all of the Property (including by foreclosure or deed-in-lieu), shall not be deemed changing the purpose of the Company and/or of any Subsidiary.

(ii) As of any date that LIVEWORK and/or any Affiliate of LIVEWORK shall acquire, in the aggregate, Percentage Interest(s) equal to or greater than twenty percent (20%), the following additional actions or decisions may not be taken without the prior written consent of all of the Members:

(A) the sale, transfer or exchange of all or substantially all of the Property;

(B) entering into any recourse Financing arrangement for the development of any portion of the Property which requires personal liability for the repayment of the debt by the Company, any Subsidiary or the individual Members (other than usual and customary non-recourse “**carve-outs**” for fraud, misappropriation, environmental liability and other items);

(C) acquiring or developing property other than (x) the TIC Assets and those property interests and assets owned by PQ Ground Lessee, LLC, a Delaware limited liability company, as of the Effective Date (collectively, the “**Existing Properties**”); and (y) those parcels contiguous to the Existing Properties and identified by the Clark County Assessor as APNs 139-34-210-016, 139-34-311-004, 139-34-311-005, 139-34-311-006, 139-34-311-050 and 139-34-311-048 (collectively, the “**Contiguous Parcels**”); and

(D) applying for or consenting to the appointment of a receiver, trustee or liquidator of all or substantially all of the Property, or making a general assignment of all or substantially all of the Company’s and any Subsidiary’s interest in the Property for the benefit of creditors.

For purposes of this Agreement, the term “**Major Decisions**” shall mean the actions or decisions described in the preceding clauses (b)(i) and (b)(ii), as the case may be.

(c) Procedure for Making Major Decisions; Delivery of Documents and Information. The Managing Member shall initiate consideration of a proposed Major Decision by notifying the other Member of the decision to be considered, in writing, and delivering copies of any agreements, instruments and other documents that are the subject of such decision and any other information or documents that the Managing Member deems relevant to the proposed decision, at least five (5) business days prior to any meeting to discuss, or submission of any action in writing upon, the proposed Major Decision.

(d) Certain Responsibilities of Managing Member.

(i) Development Plan and Development Budget. The Managing Member shall develop, implement, oversee, monitor and supervise any development plan and development Budget in a manner consistent with a prudent owner of comparable properties in the location of the Property, including without limitation, activities of the contractors, professionals, brokers and vendors performing or providing work, materials or services thereunder. Copies of any such development plan and development Budget shall be provided by the Managing Member to the other Member for its review and comment, but such comments shall not be binding on the Managing Member.

(ii) Annual Budget. The Managing Member shall formulate and prepare an annual Budget of the Company for each succeeding Fiscal Year. Not later than December 1, 2010 and December 1 of each succeeding calendar year, the Managing Member shall prepare and provide a copy to LIVEWORK for the Fiscal Year commencing on the following February 1, an annual Budget for the Property with a variance report showing actual results for the current calendar year to such calendar year’s annual Budget. The annual Budget shall include, without limitation, all projected revenue and expenses in such upcoming calendar year and leasing guidelines, if applicable, and shall specifically identify any expenses set forth therein which are payable to the Members or their Affiliates. LIVEWORK may comment on the Annual Budget to the Managing Member for its consideration, but such comments shall not be binding on the Managing Member.

(iii) Notices of Litigation, Assessments, Violations of Applicable Laws. The Managing Member shall give prompt written notice to the other Member of:

- (A) any litigation involving or relating to the Property, and any written notice threatening any such litigation;
- (B) any written notice related to property taxes, tax or other governmental assessments; and
- (C) any violation of any building code or other legal requirements affecting the Property and/or use thereof, or of the commencement by any governmental authority of any proceedings or investigations which relate to compliance with any such legal requirements.

(iv) Reporting Under Financing Documents and Other Agreements. The Managing Member shall timely furnish, or cause to be timely furnished, the other Member with copies of financial statements and other instruments, reports or information required by applicable Financing documents or other agreements relating to the Property to which the Company is subject, and deliver copies thereof to the other Member promptly following the delivery thereof to the lender or other contract party.

(v) Material Notices; Notification of Events. The Managing Member shall promptly deliver, or cause to be delivered, copies of all written notices of default given or received with respect to any material agreement by which the Company is bound, and notify the other Member, either in writing, telephonically or orally, within five (5) business days after any actual event of default under any material agreement by which the Company is bound. Further, the Managing Member shall promptly notify the other Member upon receipt of written notice or actual knowledge of: (1) any material damage or destruction of the Property (in whole or any part thereof) by fire or other casualty, and (2) the commencement of, or the threatened commencement of, any proceeding for the expropriation or condemnation of the Property or any portion thereof.

(e) Payments to Members and Affiliates. No Member or Independent Manager shall receive any payment for its services under this Agreement except as expressly provided in this Agreement, or in any service agreements relating to the development, construction, leasing and management of the Property.

(i) Notwithstanding anything to the contrary herein, the Managing Member may, however, on behalf of the Company, purchase, or pay compensation or commissions for, goods or services from any Affiliate or Member, such as legal, tax and accounting fees, if such purchase or payment is at rates and on terms generally prevailing for similar goods or services in the geographic area where such services are performed or goods are obtained. The Members hereby deem as currently prevailing the fees indicated on the schedule attached hereto as **Exhibit D** ("**Approved Fee Schedule**"), which fees, to the extent expressed in dollars (and not as a percentage), may be increased from time to time by the Managing Member on thirty (30) days' notice to LIVEWORK by a percentage equal to the percentage increase in the CPI for the preceding calendar year. Notwithstanding anything herein to the contrary, all fees described in the Approved Fee Schedule shall be payable solely to Affiliates of FC20; provided, however, LIVEWORK shall be entitled to share in any development fee for new project construction on any portion of the Property

(each, a “**Development Fee**”) earned by FC20 or any Affiliate of FC20 (the “**FC Developer**”) as follows: (A) in the event, as of the date of any development agreement relating to a Development Fee, LIVEWORK’s Percentage Interest is less than twenty percent (20%), LIVEWORK shall receive a share of any Development Fee in an amount equal to LIVEWORK’s Percentage Interest multiplied by the net profit on the Development Fee realized by the FC Developer, as such net profit is reasonably determined by FC Developer, and (B) in the event, as of the date of any development agreement relating to a Development Fee, LIVEWORK’s Percentage Interest is equal to or greater than twenty percent (20%), LIVEWORK shall receive a share of any Development Fee in an amount equal to LIVEWORK’s Percentage Interest multiplied by the gross Development Fee actually received by the FC Developer. LIVEWORK shall be paid its share of any Development Fee, as aforesaid, within fifteen (15) business days of FC Developer’s receipt of final payment under any development agreement provided (X) LIVEWORK is not in default of any Capital Contribution funding obligation pursuant to this Agreement, and (Y) LIVEWORK actively participates (by attending meetings and conference calls with appropriate employees or officers of outside parties and/or FC20 or Affiliates of FC20) in the development of the applicable new project on behalf of the Company.

(ii) Upon submitting reasonable written documentation evidencing proof of payment, the Members shall be entitled, in addition to all other distributions and reimbursements to which they may otherwise be entitled hereunder by reason of their Percentage Interest, to reimbursement for all Company Expenses approved by the Managing Member, which approval shall not be unreasonably withheld or delayed, and paid by the Members on behalf of the Company.

(iii) Amounts paid to Members or Affiliates for goods or services in transactions authorized pursuant to this Section shall be treated for all purposes as amounts paid to the non-Members and any amounts so received by any Member or Affiliate shall belong to it and not to the Company.

(iv) The Members acknowledge and agree that the Company and an Affiliate of FC20 (“**Management Company**”) have entered into, or will enter into as of the Effective Date, a Management Agreement substantially in the form attached hereto as **Exhibit F** (“**Management Agreement**”), and that the Company will pay the Management Company for the services to be performed thereunder, all in accordance with the terms and conditions of such Management Agreement. The Members further agree that LIVEWORK shall receive from the Company the following payments in connection with the Las Vegas City Hall transaction: (A) a one-time payment of Two Hundred Fifty Thousand Dollars (\$250,000.00) as reimbursement for Company Expenses incurred by LIVEWORK, such payment to be made within fifteen (15) business days following the date of the Managing Member’s receipt of this Agreement fully completed and executed by LIVEWORK and its beneficial owners; and (B) a development fee equal to ten percent (10%) of the net profit earned by Forest City Commercial Construction Co., Inc. (“**FCCCC**”), as such net profit is reasonably determined by FCCCC, pursuant to that certain Development Services Agreement dated November 5, 2009 (“**Development Agreement**”) by and between QH Las Vegas, LLC and FCCCC, such payment to be made within fifteen (15) business days of FCCCC’s receipt of the “**Final Payment**” (as set forth in the Development Agreement).

(f) Independent Activities.

(i) General Scope of Independent Activities. The Members hereby expressly acknowledge that each Member (either directly or through its Affiliates) is involved in transactions,

investments and business ventures and undertakings of every nature, which include, without limitation, activities which are not associated in any manner with real estate, as well as the ownership, construction, development, marketing, sale and operation of real property and improvements of every type and nature thereon (all such investments and activities, except activities relating to the development, ownership and operation of the Property, being referred to hereinafter as the "**Independent Activities**").

(ii) Waiver of Rights with Respect to Independent Activities. Subject to Section 5(f)(iii) below, nothing in this Agreement shall be construed to: (A) prohibit any Member or its Affiliates from continuing, acquiring, owning or otherwise participating in any Independent Activity that is not owned or operated by the Company; or (B) require any Member or its Affiliates to allow the Company or the other Member to participate in the ownership or profits of any such Independent Activity. To the extent any Member would have any rights or claims arising under this Agreement or out of such Member's status as such against the other Member as a result of the Independent Activities of such Member or its Affiliates, whether arising by statute, common law or in equity, the same are hereby waived, except to the extent prohibited under Section 5(f)(iii) below.

(iii) Exclusion from Waiver. Each Member acknowledges that it has one or more Affiliates that are engaged in the business of owning, operating, developing, leasing and/or selling real estate. The Members acknowledge that, in connection with and as a precondition to entering into this Agreement, the Members agree that it is in the best interests of the Company that the Members and their Affiliates be restricted from engaging in certain activities which might be deemed competitive to the business of the Company within a certain geographical proximity to the Property. Therefore, the Members agree that, so long as each is a Member, that (A) neither they nor any of their Affiliates shall acquire, own, develop or participate, directly or indirectly, in any activity relating to real property which is contiguous with the Property and/or real property located within the area depicted on **Exhibit B** attached hereto (collectively, the "**Covered Properties**") or is otherwise related to any transaction with a third party involving any portion of the Property, and (B) the Members and their Affiliates shall acquire, develop or otherwise exploit any such opportunities relating to Covered Properties only through or with the Company. The foregoing restriction shall not apply to any opportunity involving any portion of the Covered Properties in which (x) any of the Members or their Affiliates are acting solely in a consulting or agency capacity, or (y) the acquisition of any such property by the Company is a Major Decision pursuant to Section 5(b)(ii)(C) and the Members have failed to obtain unanimous consent for such acquisition by the Company. Upon the occurrence of the event described in the preceding clause "(y)," the Member favoring such acquisition by the Company shall be free to participate, directly or indirectly, in any activity related to such portion of the Covered Properties.

(iv) Limitation on Company Opportunities. Each Member hereby represents and warrants to each other Member that such Member has not been offered, as an inducement to enter into this Agreement, the opportunity to participate with the other Member in the ownership or profits of any Independent Activity of any kind whatsoever of such Member or its Affiliates. The Members expressly acknowledge that the opportunities of the Company shall be limited to the Property and shall not extend to any other property, investment or activity (except as expressly provided in Section 5(f)(iii) or as otherwise agreed to by the Members in writing).

(v) Acknowledgment of Reasonableness. Each Member hereby expressly acknowledges, represents and warrants that: it is a sophisticated developer and investor; it understands the terms, conditions and waivers set forth in this Section 5(f); and that the provisions

of this Section 5(f) are reasonable, taking into account the relative sophistication and bargaining position of the Members.

(g) Limitations on Power of Members. Except as expressly authorized by this Agreement, no Member shall, directly or indirectly, in its capacity as a Member, (i) withdraw from the Company or require the Company to purchase its membership interest, (ii) dissolve, terminate or liquidate the Company, (iii) petition a court for the dissolution, termination or liquidation of the Company, or (iv) cause any property of the Company to be subject to the authority of any court, trustee or receiver (including suits for partition and bankruptcy, insolvency and similar proceedings).

(h) Termination of Management Rights of the Managing Member. The Managing Member shall exercise the management rights provided to it as the Managing Member hereunder unless and until such rights are terminated in accordance with this Section 5(h). The management rights of the Managing Member may be terminated by the delivery of written notice thereof by LIVEWORK if and only if (i) a receiver or trustee in bankruptcy or liquidator is appointed for the Managing Member, or (ii) the Managing Member has (A) materially breached this Agreement and not cured such breach within thirty (30) days after receiving written notice of describing such breach in reasonable detail or if such breach cannot be reasonably cured within thirty (30) days, has not commenced to cure such breach within such period and does not continue with diligence to cure such breach; (B) committed fraud or embezzlement against the Company or any of its Members in their capacities as such, (C) has committed a felony; (D) has been grossly negligent in the performance of its duties as the Managing Member and such gross negligence has resulted in material harm to the Company, or (E) has materially violated a fiduciary duty to the Company or any of its Members in their capacities as such (any of the events described in clauses A - E hereinafter referred to as "**Cause**"). If the management rights of the Managing Member are terminated hereunder, LIVEWORK shall have the right to cause the Company to hire a Person to act as "**Manager**" of the Company, on such terms and conditions as it deems appropriate, who shall exercise all of the management rights and powers to be exercised by the Managing Member under this Agreement. LIVEWORK shall have the authority to amend this Agreement and, if required, the Company's articles of organization to reflect the substitution of the Manager for the Managing Member without the approval or consent of any other Member.

(i) Effect of Termination of Management Rights on Former Managing Member. Termination of the Managing Member's management authority shall not constitute a withdrawal, abandonment or forfeiture of such Member's membership interest in the Company. However, if the Managing Member's management rights are terminated for Cause, then the amount of any salary or other compensation payable to the Manager shall be borne by such former Managing Member and constitute a charge and offset against the distributions to which the former Managing Member would otherwise be entitled to under this Agreement as a Member. Except as provided in Section 5(h), the approval of the former Managing Member shall be required to approve all Major Decisions under Section 5(b) hereof and the former Managing Member shall retain all approval or disapproval rights with respect to any action or decision which by the express terms of this Agreement requires the consent or action of the Members or all Members. In addition, in any case where the Managing Member is required by this Agreement to provide notice or deliver information or documents to "the other Member," the Manager shall provide such notice, document or information to all Members.

(j) Limited Liability of Managing Member.

(i) Except as otherwise specifically provided herein or under the Act, neither the Managing Member nor its agents, representatives, directors, officers or employees shall be liable, responsible or accountable in damages or otherwise to the Company or to any Member for any act or omission performed or omitted on behalf of the Company in good faith and in a manner reasonably believed to be within the scope of the authority granted by this Agreement and in the best interests of the Company, unless a court of competent jurisdiction, upon entry of a final judgment, shall find that such act or omission was due to willful misconduct, gross negligence, fraud, breach of fiduciary duty, or was outside of the purpose of the Company as provided in this Agreement.

(ii) Except as otherwise specifically provided herein or under the Act, the Managing Member shall not be personally liable for the return or payment of all or any portion of the capital contribution or distributions to any Member (or any successor, assignee or transferee thereof), it being expressly agreed that any such return of capital contribution or distributions pursuant to this Agreement shall be made solely from the assets of the Company (which assets shall not include any right of contribution from the Managing Member) or from the Member receiving the distribution.

(k) Limited Liability of Members. Except upon the express written agreement by any Member expressly affected thereby, or as otherwise required by a nonwaivable provision of the Act, no Member or Independent Manager shall be personally liable for the debts, liabilities, contracts or other obligations of the Company, whether arising in tort, contract or otherwise, solely by reason of being such Member or Independent Manager. This provision applies to the extent the Member and/or Independent Manager is acting within the scope of its capacity in the Company or is participating in the conduct of the business of the Company.

(l) Management of Subsidiaries. The provisions of this Agreement regarding the management and governance of the Company shall apply to the management and governance of each of the Subsidiaries, whether any such Subsidiary is managed or controlled directly or indirectly by the Company, as member, manager, partner, stockholder or otherwise. Any action to be taken by any of the Subsidiaries shall be construed as an action taken by the Company and shall be subject to the same rights and limitations granted and imposed on the Members under this Agreement to the extent permitted by the operative documents governing the Property. Any and all references herein to the Company or the Managing Member causing or directing any action on behalf of a Subsidiary shall be deemed to refer to the Company causing (or the Managing Member causing the Company to cause), in its capacity as the sole member of such Subsidiary, such action to be taken for and on behalf of such Subsidiary. In the event that the Company conducts its business through one or more Subsidiaries, the Managing Member shall perform, with no additional compensation, the same or substantially identical services for each such Subsidiary as the Managing Member performs for the Company, subject to the terms, conditions, limitations and restrictions set forth in this Agreement and provided that if and to the extent any one or more of the Managing Member's services are to be performed by the Management Company pursuant to the Management Agreement, then the Management Company shall perform the same. Notwithstanding anything contained herein to the contrary, any action to be taken or decision to be made by or on behalf of a Subsidiary that, if taken or made by or on behalf of the Company would constitute a Major Decision, then such action or decision shall require the approval of all of the Members.

(m) Special Purpose Entity; Independent Managers. Notwithstanding any provision to the contrary contained in this Agreement, and for so long as the Existing Mortgage Loan shall be outstanding:

(i) the Company shall not: (A) engage in any business other than the Permitted Activities; (B) acquire or own a material asset, directly or indirectly, other than the Existing Properties and incidental personal property; (C) operate the Existing Properties except as a single asset generating substantially all of the Company's gross income, it being the intent that the Property shall constitute "**single asset real estate**" for purposes of Section 362(d)(3) of the Bankruptcy Code; (D) maintain or commingle its assets with the assets of any other Person in a way difficult to segregate and identify; (E) fail to hold itself out to the public as a legal entity separate from any other Person; (F) fail to conduct business solely in its name or fail to maintain records, accounts or bank accounts separate from any other Person; (G) file or consent to a petition pursuant to applicable bankruptcy, insolvency, liquidation or reorganization statutes, or make an assignment for the benefit of creditors without the unanimous consent of the Independent Managers; (H) incur additional indebtedness except for trade payables in the ordinary course of business of owning and operating the Existing Properties; (I) dissolve, liquidate, consolidate, merge or sell all or substantially all of its assets without the unanimous consent of the Independent Managers; or (J) modify, amend or revise any of the provisions of this Section 5(m) without the written consent of the administrative agent for the lenders under the Existing Mortgage Loan;

(ii) the Managing Member shall cause the Company at all times to have at least two (2) Independent Managers who will be appointed by the Managing Member. To the fullest extent permitted by the Act, the Independent Managers shall consider only the interests of the Company, including its respective creditors, in acting or otherwise voting on the matters referred to in clauses (i)(G), (I) and (J) of Section 5(m) immediately above. No resignation or removal of an Independent Manager and no appointment of a successor Independent Manager shall be effective until such successor shall have accepted his or her appointment as an Independent Manager by a written instrument. In the event of a vacancy in the position of an Independent Manager, the Managing Member shall, as soon as practical, appoint a successor Independent Manager. All rights, powers and authority of the Independent Managers shall be limited to the extent necessary to exercise those rights and perform those duties specifically set forth in this Agreement for Independent Managers. In exercising their rights and performing their duties under this Agreement, each Independent Manager shall have a fiduciary duty of loyalty and care similar to that of a director of a business corporation. No Independent Manager shall at any time serve as a trustee in bankruptcy for any Affiliate of the Company. The initial Independent Managers designated by the Managing Member are: Victor A. Duva and Jennifer A. Schwartz; and

(iii) each Independent Manager shall have no interest in the profits, losses and capital of the Company and shall have no right to receive any distributions of Company assets. An Independent Manager shall not be required to make any Capital Contributions to the Company and shall not receive a limited liability company interest in the Company. Except as expressly required by this Agreement or any mandatory provision of the Act, an Independent Manager, in such capacity, (A) may not bind the Company, and (B) shall

have no right to vote on, approve or otherwise consent to any action by, or matters relating to, the Company. In order to implement the admission of the initial Independent Managers named in subparagraph (ii) above, each such individual shall execute a counterpart of this Agreement.

6. Capital Contributions.

(a) Initial Contributions.

(i) The capital accounts of the Members have been credited as follows reflecting Capital Contributions made by each such Member prior to February 1, 2009 (“**Initial Contributions**”):

<u>Member</u>	<u>Initial Contributions</u>
FC20	\$26,352,000.00
LIVEWORK	\$ 6,588,000.00

(ii) The capital accounts of the Members have been further credited as follows reflecting Capital Contributions made by each such Member between February 1, 2009 and September 30, 2010, inclusive (“**Preferred Initial Contributions**”):

<u>Member</u>	<u>Preferred Initial Contributions</u>
FC20	[\$26,086,352.00]
LIVEWORK	\$0.00

FC20 shall be entitled to receive priority distributions of its Preferred Initial Contributions as provided in Section 8(a)(v) below. In addition, ten percent (10%) of the Preferred Initial Contributions of FC20 shall earn a preferred return on such amount at the Preferred Return Rate (the “**Preferred Initial Contribution Return**”), and such Preferred Initial Contribution Return shall be entitled to a priority distribution as provided in Section 8(a)(iii) below.

(b) Additional Contributions.

(i) Subject to the provisions of Section 5 above, the Managing Member shall have the authority and responsibility to make capital calls (each, a “**Capital Call**”) from time to time that are reasonably necessary and appropriate to preserve the Company’s rights and assets and to responsibly conduct Permitted Activities and effectuate the purposes of the Company. Capital Calls shall be made upon written notice to the Members not later than thirty (30) days prior to the date such funds are required to be paid by the Company as specified in the Capital Call notice. Subject to the provisions of this Section 6(b), Capital Contributions made pursuant to a Capital Call (“**Additional Contributions**”) shall be made by the Members, pro rata, based on their Percentage Interests, in readily available funds not later than five (5) business days prior to the date(s) specified in the Capital Call notice.

(ii) Except as otherwise provided in this Section 6(b), FC20 shall be obligated to make any and all Additional Contributions to the Company. This obligation includes the obligation of FC20 to contribute on behalf of LIVEWORK its proportionate share of any Capital Call that LIVEWORK may choose in its sole and absolute discretion, to the extent it has the right to do so

pursuant to Section 6(b)(iii) and (iv) below, not to make. To the extent LIVEWORK has the discretionary right hereunder not to fund a Capital Call, a failure by LIVEWORK to fund its pro rata share of a Capital Call by the date required in the Capital Call notice shall be deemed LIVEWORK's election not to fund. For each Capital Call fully funded by FC20 on its own behalf and on behalf of LIVEWORK, one hundred percent (100%) of such capital contributed by FC20 ("**Preferred Additional Contributions**") shall be credited to FC20's capital account and FC20 shall be entitled to receive priority distributions of such amounts as provided in Section 8(a)(iv) below. In addition, the portion of each Preferred Additional Contribution made by FC20 equal to the Percentage Interest of LIVEWORK as of the date of each such Preferred Additional Contribution shall earn (x) a preferred return on such amount at the Preferred Return Rate (the "**Preferred Additional Contribution Return**") if it is for Essential Costs, and (y) a preferred return on such amount at the Development Preferred Return Rate (the "**Development Preferred Additional Contribution Return**") if it is for Discretionary Costs, and such Preferred Additional Contribution Return and/or Development Preferred Additional Contribution Return shall be entitled to a priority distribution as provided in Sections 8(a)(i) and (ii) below.

(iii) Except as hereinafter set forth, LIVEWORK shall have the right, but not the obligation, to make any Additional Contributions to the Company. If LIVEWORK, regardless of its Percentage Interest, and FC20 fund any Capital Calls in accordance with their respective Percentage Interests, one hundred percent (100%) of such capital contributed by a Member (each, a "**Subsequent Contribution**") shall be credited to such Member's capital account and each such Member shall be entitled to receive priority distributions of its Subsequent Contributions as provided in Section 8(a)(vi) below. If and when, pursuant to the terms of this Agreement, LIVEWORK and/or any Affiliate of LIVEWORK shall acquire, in the aggregate, Percentage Interests equal to or greater than twenty percent (20%), LIVEWORK and such Affiliate, as applicable, shall be obligated to fund, as a Subsequent Contribution, their pro rata shares of all funds required pursuant to any Capital Call related to Essential Costs. Notwithstanding anything in this Section 6(b) to the contrary, in the event any maturing Financing cannot be extended or refinanced upon terms and conditions acceptable to the Managing Member (or both Members under the circumstances described in Section 5(b)(ii) hereof), then in such event neither Member shall be obligated to make Additional Contributions to the Company for the purpose of paying the outstanding balance of any maturing Financing.

(iv) In the event (x) a Capital Call is made by the Managing Member, and (y) such Capital Call includes a request for funds to pay Discretionary Costs (the portion of such Capital Call relating to Discretionary Costs, a "**Discretionary Cost Capital Call**"), then, notwithstanding anything to the contrary in this Section 6, LIVEWORK shall have the right, but not the obligation, to fund its pro rata share of the Discretionary Cost Capital Call irrespective of its Percentage Interest on the date of such Discretionary Cost Capital Call. In the event LIVEWORK elects to fund its pro rata share of the Discretionary Cost Capital Call, the amount funded by LIVEWORK shall be credited to its capital account and LIVEWORK shall be entitled to receive a priority distribution of any such amount as a Subsequent Contribution pursuant to Section 8(a)(vi) below. In the event LIVEWORK fails to fund its pro rata share of the Discretionary Cost Capital Call by the date required, such failure shall be deemed LIVEWORK's election not to fund its pro rata share. In such event, FC20 shall have the option, in its sole discretion, of either (A) funding one hundred percent (100%) of the Discretionary Cost Capital Call as a Preferred Additional Contribution, or (B) acquiring LIVEWORK's interest in the applicable asset to which the Discretionary Cost Capital Call relates based on the fair market value of such asset which shall be determined using the same procedure described in Section 6(c)(ii) below for determining the "**Fair**

Market Value of the Property". In the event FC20 proceeds as described in the preceding clause "(A)", one hundred percent (100%) of such capital contributed by FC20 shall be credited to FC20's capital account and FC20 shall be entitled to receive priority distributions of such Preferred Additional Contributions as provided in Section 8(a)(iv) below. In addition, the portion of each such Preferred Additional Contribution by FC20 equal to the Percentage Interest of LIVEWORK shall earn a preferred return on such amount at the Development Preferred Return Rate, and such amount shall be entitled to a priority distribution as a Development Preferred Additional Contribution Return as provided in Section 8(a)(i) below. In the event FC20 proceeds as described in the preceding clause "(B)", it shall do so by first providing written notice of such election to LIVEWORK. The closing of the acquisition of the applicable asset shall occur on the first month-ending date that is more than ten (10) days after the date on which the fair market value of the applicable asset is determined at such time and place as specified by FC20, or as FC20 and LIVEWORK might otherwise agree. FC20 and LIVEWORK shall reasonably cooperate and provide each other with such documents and instruments as may be reasonably required by the other party or escrow agent in order to consummate such transaction.

(c) Funding Defaults.

(i) If any Member (a "**Defaulting Member**") shall fail to contribute all or any portion of its share of any Capital Call required pursuant to Section 6(b) within ten (10) business days after the date due (a "**Defaulted Contribution**"), the other Members (the "**Non-Defaulting Members**") may, in their sole discretion, fund all or any portion of the Defaulted Contribution and treat the entire amount of the Defaulted Contribution that it funded as a Preferred Additional Contribution made by it hereunder on which the Non-Defaulting Member shall be entitled to a priority distribution and Preferred Additional Contribution Return (or Development Preferred Additional Contribution Return, as the case may be) thereon. The election shall be made by notifying the Defaulting Member, in writing, within twenty (20) business days after the date that the Non-Defaulting Member funds any portion of the Defaulted Contribution.

(ii) Any time after the date that a Non-Defaulting Member has made a Preferred Additional Contribution, the Non-Defaulting Member that made such Preferred Additional Contribution may elect to adjust the Defaulting Member's Percentage Interest in accordance with this Section 6(c)(ii) by delivery of written notice (the "**Adjustment Notice**") to the other Members. Such adjustment shall be effective upon the date of such Adjustment Notice (the "**Adjustment Notice Date**"). To make such adjustment, the Percentage Interest of the Non-Defaulting Member shall be increased by the number of percentage points (rounded to the nearest one-thousandth of one percent) which results from multiplying 100 by the Defaulting Member's Percentage Interest as in effect immediately prior to the Adjustment Notice Date and further multiplying such result by a fraction, (A) the numerator of which is the outstanding amount of the Defaulted Contribution (including the accrued and unpaid Preferred Additional Contribution Return thereon) as of the Adjustment Notice Date, and (B) the denominator of which is equal to the amount which results from multiplying (x) the Fair Market Value of the Property (as described below) on the Adjustment Notice Date by (y) the Defaulting Member's Percentage Interest immediately prior to the Adjustment Notice Date. The amount of the increase to the electing Non-Defaulting Member's Percentage Interest shall be subtracted from the Defaulting Member's Percentage Interest. The "**Fair Market Value of the Property**" shall be initially determined by the Non-Defaulting Member in the Adjustment Notice. The Defaulting Member shall have thirty (30) days following the Adjustment Notice Date to notify the Non-Defaulting Member that it disputes the Fair Market Value of the Property in the Adjustment Notice. Failure of the Defaulting Member to dispute such Fair Market Value of the Property, in

writing, within such time period shall be deemed acceptance of same by the Defaulting Member. In the event the Defaulting Member provides notice to the Non-Defaulting Members that it disputes the Fair Market Value of the Property set forth in the Adjustment Notice, and the Members cannot thereafter agree for any reason upon a value within thirty (30) days (the “**Appraisal Period**”) after the Non-Defaulting Member’s receipt of such notice, LIVEWORK and FC20 shall each select an independent appraiser (the “**Initial Appraisers**”) within seven (7) days after the expiration of the Appraisal Period, which Initial Appraisers shall each make a determination of the Fair Market Value of the Property within thirty (30) days of the appointment of the last such appraiser. In the event a party shall fail to select an independent appraiser within such seven (7) day period, the appraisal from the other party shall be the Fair Market Value of the Property. In the event the fair market values calculated by the Initial Appraisers differ by less than ten percent (10%) of the highest of such values, the fair market values of the Initial Appraisers shall be averaged and the resulting amount shall be the Fair Market Value of the Property. In the event that any of the fair market values determined by the Initial Appraisers differ by ten percent (10%) or more of the highest of such values, then the Initial Appraisers shall jointly select one appraiser (the “**Final Appraiser**”) within ten (10) days after the delivery of the last appraisal. Within fifteen (15) days after its appointment, the Final Appraiser shall choose the appraisal of the Initial Appraiser that the Final Appraiser determines to be closest in value to the fair market value of the Property, which value so selected shall constitute the Fair Market Value of the Property. Costs of the Initial Appraisers shall be borne by the Member(s) who appointed them. Costs of the Final Appraiser shall be divided equally between LIVEWORK and FC20.

(d) Guarantees and Indemnities.

(i) No Member or Principal of a Member shall be required to guarantee or indemnify any Company debt or the performance of any Company obligation, or to pledge any personal assets as security upon any Company debt or obligation.

(ii) If any breach of any term, covenant or condition of any nonrecourse carve-out guaranty or environmental indemnity in any Financing is incurred by reason of or is attributable to any act or omission of any Member or any of their respective Principals, then, unless such act or omission was specifically approved, in writing, by all Members, any payments on such guaranty or indemnity made by (x) the Member responsible for such breach or whose Principal(s) are responsible for such breach (the “**Breaching Member**”), and (y) the Breaching Member’s Principals shall be deemed to be the sole responsibility of such Member and such Member’s Principals, shall not be treated as a capital contribution by such Member to the Company, and neither such Member nor such Member’s Principals shall otherwise be entitled to reimbursement or contribution from the Company, the other Member or the other Member’s Principals. In addition, the Breaching Member and the Breaching Member’s Principals agree, jointly and severally, to indemnify and hold the other Member and other Member’s Principals harmless from any loss, cost, damage, liability or expense (including reasonable attorney’s fees and disbursements) which the Company, the other Member or other Member’s Principals may sustain or incur by virtue of any such breach of the nonrecourse carve-out guaranty or environmental indemnity. The Breaching Member and the Breaching Member’s Principals shall be jointly and severally liable for any legal or other costs incurred by the other Member or other Member’s Principals in enforcing their rights under this Section 6(d)(ii).

(iii) Notwithstanding any provision in this Agreement to the contrary, if any Member or Principal of a Member (the “**Guarantor Payor**”) makes any payment on any guaranty, completion guaranty, nonrecourse carve-out guaranty or environmental indemnity required

by the Company's lender or any other third party in connection with a Permitted Activity, the Guarantor Payor (or related Member) shall provide written notice of such payment to the non-paying member ("**Non-Paying Member**") within fifteen (15) days of the payment. If the Non-Paying Member is FC20, FC20 shall have the obligation to reimburse the Guarantor Payor within thirty (30) days of the date of receipt of such notice an amount equal to FC20's Percentage Interest of such payment. If FC20 shall fail to make any such payment, LIVEWORK shall have the remedies described in Section 6(c) hereof. If the Non-Paying Member is LIVEWORK, LIVEWORK shall have the right, but not the obligation, to reimburse FC20 within thirty (30) days of the date of receipt of such notice an amount equal to LIVEWORK's Percentage Interest of such payment. If LIVEWORK shall fail to make any such payment as aforesaid, the payment by the Guarantor Payor shall be treated as a Preferred Additional Contribution by FC20 and the portion thereof representing LIVEWORK's Percentage Interest shall be entitled to a Preferred Additional Contribution Return or Development Preferred Additional Contribution Return, as applicable, and priority distributions of such amounts as provided in Section 8(a) below. Notwithstanding anything herein to the contrary, to the extent any such payment by the Guarantor Payor is the result of a default under any agreement by the Guarantor Payor or any Principal or Affiliate of the Guarantor Payor not otherwise caused by the acts or omissions of the Non-Paying Member or any Principal or Affiliate of the Non-Paying Member, then in such event the Non-Paying Member shall have no obligation to reimburse the Guarantor Payor as otherwise required herein, nor shall any portion of such payment by the Guarantor Payor be treated as a Preferred Additional Contribution or be entitled to a Preferred Additional Contribution Return or Development Preferred Additional Contribution Return.

(e) No Interest on Capital; No Right to Demand Return of Capital. No Member shall receive any interest on any Capital Contribution to the Company except as permitted in this Agreement or unless the Members shall unanimously agree otherwise. No Member shall have the right to withdraw or demand a return of its contributions or the right to demand to receive property other than cash for its membership interest. Unless and except to the extent otherwise provided by law, no Member shall be personally liable for the return or repayment of all or any part of any other Member's capital account or Capital Contributions, it being expressly agreed that any such return of capital pursuant to this Agreement shall be made solely from the assets (which shall not include any right of contribution from a Member) of the Company.

(f) Admission of New Members. The Company shall not issue any additional membership interests in the Company to any other Person except upon terms and conditions which are approved by the Members. The limitations of the preceding sentence do not apply to admissions of transferees of all or any portion of membership interests as Members pursuant to Section 10 hereof.

7. Allocations of Profits and Losses; Tax Matters Partner. Profits and losses shall be allocated to the Members as provided in Exhibit C hereto. So long as its management rights have not been terminated pursuant to Section 5(i) hereof, the Managing Member shall be the "**tax matters partner**" of the Company pursuant to Section 6231(a)(7) of the Code (the "**TMP**"). The TMP shall be the liaison between the Company and the Internal Revenue Service and the coordinator of the Company's action pursuant to a tax audit of the Company. The TMP shall have the duties specifically delegated to a "**tax matters partner**" under the Code and applicable treasury regulations (as well as such other duties as may from time to time be delegated to it by the Members). The TMP may enter into any agreement extending the period of limitations for the assessment or collection of taxes but shall not enter into any other agreement with the Internal Revenue Service that is binding on the Company without first discussing such agreement with LIVEWORK, its accountants or other tax

advisors and without the prior consent of LIVEWORK, which, however, shall not be unreasonably withheld or delayed so long as LIVEWORK retains its rights to contest the tax treatment of items of income, gain, loss or deduction or credit affected by such agreement.

8. Distributions.

(a) Manner of Distributions. The Managing Member shall disburse all Available Cash to the Members within fifteen (15) days following the end of each quarter of the Fiscal Year, and may distribute Available Cash more frequently as it determines in its sole and absolute discretion. The Managing Member shall disburse all Capital Proceeds to the Members within fifteen (15) days following the receipt thereof. Except as provided in Section 12 (relating to distributions following liquidation of the Company), when made, all distributions of Available Cash and Capital Proceeds shall be made to the Members as follows:

- (i) First, to FC20, its Unpaid Development Preferred Additional Contribution Return, until its Unpaid Development Preferred Additional Contribution Return is reduced to zero;
- (ii) Second, to FC20, its Unpaid Preferred Additional Contribution Return, until its Unpaid Preferred Additional Contribution Return is reduced to zero;
- (iii) Third, to FC20, its Unpaid Preferred Initial Contribution Return, until its Unpaid Preferred Initial Contribution Return is reduced to zero;
- (iv) Fourth, to FC20, its Unreturned Preferred Additional Contributions, until its Unreturned Preferred Additional Contributions are reduced to zero;
- (v) Fifth, to FC20, its Unreturned Preferred Initial Contributions, until its Unreturned Preferred Initial Contributions are reduced to zero;
- (vi) Sixth, to the Members, pro rata, in proportion to their Subsequent Contributions, until their Unreturned Subsequent Contributions are reduced to zero;
- (vii) Seventh, the next Seven Million and No/100 Dollars (\$7,000,000.00) of Available Cash and Capital Proceeds shall be distributed sixty percent (60%) to FC20 and forty percent (40%) to LIVEWORK;
- (viii) Eighth, the next Fourteen Million and No/100 Dollars (\$14,000,000.00) of Available Cash and Capital Proceeds shall be distributed ninety percent (90%) to FC20 and ten percent (10%) to LIVEWORK; and
- (ix) Finally, the balance of any Available Cash and Capital Proceeds shall be distributed eighty percent (80%) to FC20 and twenty percent (20%) to LIVEWORK, or as their Percentage Interests may be from time to time hereunder.

(b) Withholding Taxes. In the event that the Company is required to deposit or pay any tax on behalf of a Member with respect to the taxable income of the Company allocable to such Member for any calendar year, such deposit or payment shall be treated as an advance recoverable from future distributions of cash to the Member. To the extent that such advances to a Member for a Fiscal Year exceed the cash distributable to the Member for such year, and have not been recovered from any other distributions of cash, such advances shall be repaid by the Member to the Company within one hundred five (105) days of the end of the Fiscal Year.

(c) Withdrawal and Return of Capital. Except for the right to receive distributions in accordance with this Section 8, no Member shall have the right to withdraw any of its Capital Contributions except upon dissolution, winding up and liquidation of the Company as provided in this Agreement.

(d) Increase in LIVEWORK's Percentage Interest. Notwithstanding anything to the contrary herein, once FC20 has received distributions equal to its Unpaid Development Preferred Additional Contribution Return, if any, Unpaid Preferred Additional Contribution Return, Unpaid Preferred Initial Contribution Return, Unreturned Preferred Additional Contributions and Unreturned Preferred Initial Contributions pursuant to Sections 8(a)(i)-(v):

(i) LIVEWORK's Percentage Interest shall increase from ten percent (10%) to twenty percent (20%) and the Percentage Interest of FC20 shall decrease from ninety percent (90%) to eighty percent (80%);

(ii) for a period of three (3) years commencing on the date LIVEWORK's Percentage Interest equals twenty percent (20%), LIVEWORK shall have a one-time right, upon written notice to the Managing Member and as long as it shall not be in default of any obligation under this Agreement, to purchase up to an additional twenty percent (20%) in the Company (the "**Additional Interest**") from FC20. The purchase price for the Additional Interest shall be the sum of the following amounts: (A) the Percentage Interest which LIVEWORK is acquiring from FC20 multiplied by the sum of (x) the outstanding capital account balance, as of the date of LIVEWORK's acquisition of the Additional Interest, of FC20's Initial Contributions, and (y) the outstanding capital account balance, as of the date of LIVEWORK's acquisition of the Additional Interest, of FC20's Additional Contributions (excluding any such amounts contributed by FC20 on behalf of LIVEWORK); plus (B) an amount equal to an internal rate of return of twenty percent (20%) on the sum of (x) the Percentage Interest which LIVEWORK is acquiring from FC20 multiplied by the total Preferred Initial Contributions of FC20, and (y) the Percentage Interest which LIVEWORK is acquiring from FC20 multiplied by the total Additional Contributions of FC20 (excluding any such amounts contributed by FC20 on behalf of LIVEWORK); and

(iii) upon any increase in LIVEWORK's Percentage Interest pursuant to clauses (d)(i) and (d)(ii) above, the Members shall promptly execute an amendment to this Agreement reflecting the revised Percentage Interests of the Members.

(e) Distributions Binding on Subsidiaries. Distributions of Available Cash and Capital Proceeds, as set forth in Section 8(a) above, shall be binding on the Company's Subsidiaries. Accordingly, Available Cash and Capital Proceeds, and the assets of the Company and its Subsidiaries, shall be treated as a single pool for purposes of all distributions under this Section 8 and Section 12, or as otherwise provided in this Agreement or in the operating agreement of any Subsidiary.

(f) RTC Distributions. Reference is hereby made to that certain Tenancy-in-Common Agreement dated as of April 28, 2008 by and among FC RTC 39, LLC, FC RTC 20, LLC and Wink One, LLC, as amended by a First Amendment to Tenancy-in-Common Agreement dated as of September 1, 2010 (as amended, the "**RTC TIC Agreement**"). FC RTC 20, LLC and FC RTC 39, LLC are Affiliates of FC20 and Wink One, LLC is an Affiliate of LIVEWORK. Notwithstanding anything in this Agreement to the contrary, including the distribution waterfall described in Section 8(a) hereof, one hundred percent (100%) of any payments made by Wink One, LLC to the Company pursuant to the RTC TIC Agreement shall be distributed to FC20 and credited against its capital account balance for Initial Contributions until such amount is reduced to zero. In no event shall any such payments be credited to LIVEWORK's capital account balance for Initial Contributions, or otherwise, or affect LIVEWORK's or FC20's Percentage Interest.

9. Books and Records; Accountants and Attorneys; Reports.

(a) Books and Records. The Managing Member shall keep true and correct books of account with respect to the operations of the Property at such place(s) as the Managing Member shall determine. LIVEWORK shall have the right to examine and copy, or have its duly authorized representatives examine and copy, such books and records at any reasonable time but shall coordinate any such review with the Managing Member in order to minimize any disruption to the activities of the Managing Member. Such books shall be kept on the accrual method in accordance with generally accepted accounting principles, consistently applied, and for the Fiscal Year. Any Member shall have the right to a private audit of such books and records, provided such audit is made at the office of the Managing Member at which such books and records are located and at the expense of the Member desiring it and is made at reasonable times on business days, after written notice given to the Company at least five (5) business days in advance.

(b) Banking. Except as otherwise permitted in Section 5(a), all funds payable to or received by the Company shall be deposited in segregated accounts and not commingled with any other funds of the Managing Member in such commercial bank or invested in security brokerage accounts with brokerage companies which are members of a major securities exchange, or deposited in savings and loan accounts, as the Managing Member may determine. All withdrawals from any such bank account shall be made upon a check or order signed by the Managing Member or by any other individual(s) designated by the Managing Member from time to time; but the Managing Member may restrict the amounts that can be withdrawn by any such individual. All such withdrawn funds shall only be used for the purposes provided in this Agreement and in accordance with the terms hereof. The Managing Member shall arrange with the banks or other financial institutions at which accounts are maintained, including any accounts maintained by any FC Affiliate or other person hired to provide property management services and who will collect funds on behalf of the Company, to send monthly statements of account directly to LIVEWORK, and shall deliver copies of any such statements to LIVEWORK promptly following any request.

(c) Accountants. The Managing Member shall retain such independent accountants (the "**Company Accountants**") as the Managing Member may from time to time determine to prepare financial statements and federal and state income tax information relating to the Company and to provide other outside accounting services from time to time required by the Managing Member with respect to the Property and the activities of the Members under this Agreement. The Company Accountants or Managing Member shall present the tax information for

each Fiscal Year to LIVEWORK or its designated accountants by May 31 of the succeeding Fiscal Year. LIVEWORK accountants shall review the information and not later than ten (10) business days following LIVEWORK's or its designated accountants' receipt of such information, discuss any changes they request with the Company's Accountants before the Managing Member files any income tax returns based on such information. LIVEWORK or its designated accountants' failure to discuss any changes within such time period shall be deemed LIVEWORK's acceptance of the tax information it received from the Managing Member or Company Accountants.

(d) Attorneys. The Managing Member shall designate and appoint the attorneys who shall represent and provide all the legal services required by the Company in connection with the activities of the Company. The foregoing right of appointment shall not apply to claims of one Member against another relating to this Agreement.

(e) Reports to Members. The Managing Member shall prepare or cause to be prepared and distributed to the Members (i) within forty-five (45) days after the end of each of the first three calendar quarters of each Fiscal Year, quarterly Property reports and statements of cash flow, (ii) within one hundred twenty (120) days after the end of each Fiscal Year, certified annual financial statements of the Company, including a balance sheet, a statement of income and expense and a statement of source and application of funds, with appropriate notes, and (iii) the information necessary to enable the Members to complete their federal and state income tax returns for such Fiscal Year.

10. Transfers of Interests.

(a) Transfers of Interests in the Company or in the Members.

(i) Except as provided in this Section 10, no Member may Transfer all or any portion of its membership interest in the Company, and no Member or other beneficial owner of an interest in a Member may transfer his membership or beneficial ownership interest in the Member, without the prior written consent of the other Member, which may be granted or withheld in its sole and absolute discretion; provided, however, that any Member's membership interest in the Company or any of the interests in such Member may be transferred in whole or in part to and among Affiliates of such Member or beneficial owner of the interest in the Member at any time without the consent of any other Member. Notwithstanding whether the Transfer of a membership interest is otherwise permitted by this Section 10, all Transfers shall be subject to and comply with the provisions of Section 10(d) hereof.

(ii) (A) If a Member (referred to as a "**Selling Member**") desires to Transfer all or any part of its membership interest (the "**Offered Interest**") to a person that is not a permitted transferee described in Section 10(a)(i), as a condition precedent to consummating such Transfer, the Selling Member shall give written notice (the "**Offer Notice**") to the other Members (the "**Non-Selling Members**") advising the Non-Selling Members of the Selling Member's desire to complete such Transfer and of the resulting right of first offer under this Agreement. The members or beneficial owners of each Member shall join in this Agreement to acknowledge and agree to be bound by the terms and conditions of this Section 10.

(B) For a period ending ten business days after the Offer Notice is given (the "**Offer Period**"), any Non-Selling Member may advise the Selling Member in writing, with a copy to all Non-Selling Members, of the price (which price shall include the assumption of the

Selling Member's share of any indebtedness on the Property) at which the Non-Selling Member (a "**Non-Selling Member Offeror**") would be willing to purchase all, but not less than all, of the Offered Interest.

(C) Within five (5) business days after the end of the Offer Period, the Selling Member shall accept or reject, by written notice given to the Non-Selling Member Offeror, the highest offer for the Offered Interest timely given to the Selling Member from such offerors. If the Selling Member fails to give a notice of acceptance or rejection to the Non-Selling Member Offeror within such five-business day period, the highest offer shall be deemed rejected. If the Selling Member timely accepts, in writing, the highest offer, then the Selling Member and the Non-Selling Member Offeror whose offer has been accepted shall close the sale of the Offered Interest at a time, place and date mutually agreeable to the selling and purchasing parties, but not more than ninety (90) days after the end of the Offer Period. If two or more Non-Selling Member Offerors timely offer the same price, and such offer is timely accepted, then such Non-Selling Member Offerors shall divide the right to purchase the Offered Interest in proportion to their respective Percentage Interests, or as they might otherwise agree. If the Selling Member rejects or is deemed to have rejected the highest offer, then the Selling Member shall be entitled to sell the Offered Interest to a third party in an all-cash transaction for a purchase price (which price shall include the assumption of the Selling Member's share of any indebtedness on the Property) that is greater than the highest offer, which transaction shall be completed, if at all, within ninety (90) days after the end of the Offer Period.

(D) If the Non-Selling Members do not respond to the Selling Member's Offer Notice within the Offer Period, then the Selling Member shall be entitled to sell the Offered Interest to a third party in an all-cash transaction for a purchase price acceptable to the Selling Member (which price shall include the assumption of the Selling Member's share of any indebtedness on the Property), which transaction shall be completed, if at all, within ninety (90) days after the end of the Offer Period.

(E) If any proposed Transfer of the Offered Interest is not consummated within the time period set forth herein through no fault of the Non-Selling Members, then the Selling Member must once again comply with the terms and conditions of this Section 10 before selling all or any part of its membership interest. If the proposed transfer of the Offered Interest is not consummated within the time period set forth herein as a result of the fault of any Non-Selling Member, the Selling Member shall be entitled to sell the Offered Interest to a third party in an all cash transaction for a purchase price acceptable to the Selling Member (which price shall include the assumption of the Selling Member's share of any indebtedness on the Property), which transaction shall be completed at any time within one hundred eighty (180) days after the end of the Offer Period.

(iii) (A) In the event a Member (a "**Breaching Member**") commits a Prohibited Act (as defined below), such Breaching Member shall give written notice of such Prohibited Act to the Non-Breaching Members (as herein defined) within ten (10) days after the date the Prohibited Act was committed. Thereafter, the other Members (the "**Non-Breaching Members**") may, at their option, elect to purchase the membership interest of such Breaching Member, for an amount equal to the Fair Market Value of a Membership Interest, determined in accordance with Section 10(a)(iii)(C) below as of the time such option (the "**Prohibited Act Call Option**") is exercised.

(B) For purposes of this Agreement, a **"Prohibited Act"** shall mean an Event of Bankruptcy (as defined below). The Members agree that each of the following events shall constitute an **"Event of Bankruptcy"** with respect to any Member (and with respect to any successor-in-interest of such Member) undergoing such event: (i) any receiver, liquidator or trustee is appointed for the Member; (ii) the Member becomes insolvent, makes an assignment for the benefit of creditors or admits in writing its, his or her inability to pay its, his or her debts generally as they become due or (iii) any petition for bankruptcy, reorganization, liquidation or arrangement pursuant to federal bankruptcy law, or similar federal or state law is filed by or against, consented to or acquiesced in by, the Member; provided, however, that if such appointment, adjudication, petition or proceeding was involuntary and not consented to by such Member then, upon the same not being discharged, stayed or dismissed within sixty (60) days thereof.

(C) For purposes of this Agreement, **"Fair Market Value of a Membership Interest"** shall mean the Fair Market Value of the Property minus all amounts then owing on any debts and expenses of the Company (including, without limitation, any Financing), multiplied by a percentage equal to the Breaching Member's Percentage Interest. The **"Fair Market Value of the Property"** shall be initially determined by the Non-Breaching Member, and thereafter in the same manner provided in Section 6(c)(ii) hereof.

(D) Any Non-Breaching Member electing to exercise the Prohibited Act Call Option pursuant to this Section 10(a)(iii) shall do so by giving written notice of such election (the **"Prohibited Act Call Option Notice"**) to the Breaching Member and to the other Non-Breaching Members (if any) within ten (10) days after the giving of written notice by the Breaching Member (or the Managing Member of any Breaching Member) of the commission of the Prohibited Act (the **"Prohibited Act Call Option Period"**). If more than one Non-Breaching Member timely elects to exercise the Prohibited Act Call Option, the membership interest of the Breaching Member shall be available for purchase by such Non-Breaching Members in proportion to their respective Percentage Interests, or as they might otherwise agree.

(E) The closing of the acquisition of any membership interest pursuant to this Section 10(a)(iii) (the **"Prohibited Act Call Option Closing"**) shall occur on the first month-ending date (the **"Prohibited Act Call Option Closing Date"**) that is more than ten (10) days after the date on which the Fair Market Value of the membership interest is determined at such time and place specified by the Non-Breaching Members, or as the selling and buying parties might otherwise agree. At the Prohibited Act Call Option Closing, each Non-Breaching Member that timely exercised the Prohibited Act Call Option shall pay, to a qualified escrow agent chosen by the Non-Breaching Members (the **"Prohibited Act Call Option Escrow Agent"**), a purchase price for the Breaching Member's membership interest equal to the Fair Market Value of the membership interest. The Prohibited Act Call Option Escrow Agent shall then transfer the aggregate cash to the Breaching Member in exchange for its membership interest, which membership interest shall then be transferred in the appropriate portions to the appropriate Non-Breaching Members. Should the Breaching Member fail to accept tender of the purchase price from the Non-Breaching Members, the purchase shall nonetheless be deemed to have closed upon deposit of the necessary funds by the Non-Breaching Members with the Prohibited Act Call Option Escrow Agent, under instructions that the same shall be payable to the Breaching Member upon demand.

(F) No remedy conferred upon any Member pursuant to this Section 10(a)(iii) is intended to be exclusive of any other remedy and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise.

(b) Other Permitted Transfers. LIVEWORK may issue additional membership interests and admit Persons as members thereof so long as David Mitchell and/or Barnet Liberman retain management control of LIVEWORK. Any Person who owns, directly or indirectly through one or more other entities, a membership, stock, partnership or other beneficial interest in a Member may pledge such direct or indirect membership, stock, partnership or other beneficial interest in the Member to any lender providing Financing as required by the loan documents relating to such Financing, and any direct or indirect Transfer of any Principal's interest in FC20 that occurs in connection with or as a result of a merger, consolidation or sale of all or substantially all of the assets of Forest City Enterprises, Inc. ("FCE") or Forest City Rental Properties Corporation, or any sale of publicly traded shares of stock of FCE shall not be subject to the restrictions set forth in Section 10(a)(i) hereof.

(c) Loan Document Restrictions. Notwithstanding anything in this Agreement to the contrary, no Member and no Principal of a Member shall make any Transfers except in compliance with the applicable provisions of any Financing by which the Company or the Members are bound.

(d) Admission of New Member. No transferee of a membership interest in the Company shall be admitted to this Company as a member without complying with the following:

(i) filing with the Company a duly executed and acknowledged written instrument of assignment in a form approved by the Managing Member, specifying the membership interest or portion thereof being assigned, and setting forth the intention of the transferor that the transferee succeed to all or part of the transferor's membership interest as a Member;

(ii) execution and acknowledgment by the transferor and transferee of any instruments reasonably required by the Managing Member, including the execution of this Agreement and any supplement of it, in which the transferee agrees to be bound by the terms and conditions of this Agreement, as the same has been amended;

(iii) repayment of any Defaulted Contribution and interest owing thereon made by the non-transferring Member to the transferring Member pursuant to Section 6(c) hereof;

(iv) at the election of the Managing Member, payment of all Company costs incurred in connection with the Transfer, not to exceed, however, \$5,000; and

(v) if requested by the non-transferring Member, providing an opinion of counsel, acceptable to the non-transferring Member, that the Transfer will not violate any federal or state securities law, or jeopardize the characterization of the Company as a limited liability company under any federal or state law, regulation or ruling; provided, however, that no such opinion shall be required for Transfers to Affiliates of Members or of members of Members as permitted by Section 10(a) or Transfers permitted by Section 10(b) hereof.

(e) Voting Rights of Newly Admitted Member. Notwithstanding anything in this Agreement to the contrary, any new member shall not be granted the authority to consent to a Major Decision as set forth in Section 5(b) hereof, nor shall a new member's consent be required for any Major Decision, unless such authority is explicitly consented to in writing by the non-transferring Member(s).

(f) Effect of Non-Admission of Transferee of Member's Interest. If, pursuant to a Transfer of a membership interest in the Company by operation of law and without violation of this Agreement (or pursuant to a Transfer that the Company is required to recognize notwithstanding any contrary provisions of this Agreement), a Person acquires an interest in the Company, but is not admitted as a Member by consent of the existing Members, then such Person:

(i) shall have no right to participate in the business and affairs of the Company or to exercise any rights, except as provided in clause (ii) below, of a Member under this Agreement or the Act; and

(ii) shall share in distributions from the Company and allocations of Profits and Losses and items thereof with respect to the transferred interest on the same basis as the transferring Member, provided that any damages to the Company as a result of such Transfer shall be offset against amounts that would otherwise be distributed to such Member.

11. Buy-Sell. For purposes of this Section 11, a "Deadlock" exists if, for any Major Decision pursuant to Section 5(b) hereof, one of the Members approves (the "Approving Member") and the other Member disapproves (the "Disapproving Member") of the proposed decision in writing. Notwithstanding any other provision of this Agreement, no Member may initiate a buy-sell pursuant to this Section 11 until after the second anniversary of the date of this Agreement.

(a) Invocation of Buy-Sell Procedure. The buy-sell procedure established in this Section 11 is initiated by either the Approving Member or the Disapproving Member (the Member initiating the buy-sell, hereinafter referred to as the "Initiating Member") delivering a written notice (an "Election Notice") to the other Member (the "Receiving Member") which states an amount (the "IM's Property Price") to be used in computing the Net Equity (as defined in Section 11(c) hereof) of the Members' membership interests in the Company (their "Interests"). The date that an Election Notice is delivered is herein referred to as the "Election Day." If a Deadlock continues for a period of one hundred twenty (120) days without either Member delivering an Election Notice, the Members shall be deemed to have waived their rights to invoke the buy-sell procedure of this Section 11 with respect to that particular Deadlock.

(b) Determination of Property Price. Within thirty (30) days after the receipt of the Election Notice, the Receiving Member shall send a written notice informing the Initiating Member whether it agrees with the IM's Property Price. If the Receiving Member fails to timely deliver such notice, the Receiving Member will be deemed to have accepted the IM's Property Price and the IM's Property Price shall be the "Property Price" used for purposes of determining the Net Equity of the Members' respective Interests in accordance with Section 11(c) hereof. If the Receiving Member timely delivers such written notice disputing the IM's Property Price ("Price Dispute Notice"), and the Initiating Member and Receiving Member do not agree, in writing, within fifteen (15) days after receipt of the Price Dispute Notice on the Property Price used for purposes of determining the Net Equity of their respective Interests pursuant to Section 11(c) hereof, then the Members shall submit the determination of the Property Price to binding arbitration as provided in

Exhibit E attached hereto (“**Baseball Arbitration**”), and the price as so determined shall be the “**Property Price**” used for purposes of determining the Net Equity of the Members’ respective Interests in accordance with Section 11(c) hereof. A copy of the determination of Property Price determined pursuant to such arbitration shall be promptly submitted (by any Member) to the certified public accountants who do the regular accounting for the Company under this Agreement (the “**Accountants**”).

(c) Net Equity. The price at which the Interest of any Member is purchased and sold under this Section 11 is the Net Equity thereof, determined as of the Election Day. The “**Net Equity**” of a Member’s Interest, as of any day, is determined as if (1) the Members sold the Property for the Property Price determined pursuant to Section 11(b) hereof, (2) the Company paid all outstanding Financings and other accrued, but unpaid, liabilities as of the Election Day (including, for this purpose, transfer taxes on the assumed sale of the Property), and (3) the amount of all remaining Capital Proceeds and Available Cash, including for this purpose all amounts held in reserves, were distributed to the Members pursuant to Section 12 hereof, all as of such day. The Net Equity of a Member’s Interest shall be determined by the Accountants, without audit or certification, from the books and records of this Company, within twenty (20) days after the day the Accountants are informed, in writing, of the Property Price, and the amount of such Net Equity shall be disclosed to each of the Members by written notice sent by overnight courier (the “**Net Equity Notice**”). The cost of determining Net Equity shall be payable by the Company and shall be treated as an expense for purposes of such determination. The Initiating and Receiving Member shall each have the right to contest the determination of the amount of the Net Equity made by the Accountants if such Member believes that the determination of the Accountants is in error, provided that the Initiating and Receiving Members shall first discuss and attempt to resolve the issue among themselves within ten (10) days after receipt of the Net Equity Notice. Following such ten-day period, if either Member still desires to contest the determination, such dispute shall be resolved by Baseball Arbitration. Notwithstanding any such contest, the purchase and sale of the Interest as contemplated by this Section 11, shall continue and be consummated on the basis of the undisputed portion of the Net Equity determination and the parties shall escrow the amount in dispute and make appropriate provision with the escrow agent to disburse such funds in accordance with the resolution of the dispute by Baseball Arbitration or other agreement by the parties.

(d) Receiving Member’s Election to Purchase or Sell. For a period (the “**Election Period**”) ending at 11:59 p.m. (local time at the Company’s principal place of business) on the tenth (10th) business day following the date the Members receive the Net Equity Notice, the Receiving Member shall have the right to elect to purchase the entire Interest of the Initiating Member pursuant to the Election Notice, by giving written notice thereof (the “**Purchase Notice**”) to the Initiating Member. If the Receiving Member indicates therein that it is willing to purchase the entire Interest of the Initiating Member, the Receiving Member shall become the “**Purchasing Member**” and shall be obligated to purchase the entire Interest of the Initiating Member and the Initiating Member shall become the “**Selling Member**” and shall be obligated to sell its entire Interest to the Purchasing Member. If the Receiving Member does not timely deliver the Purchase Notice or notifies the Initiating Member, in writing, after it has received the Net Equity Notice that it waives its right to purchase, the Initiating Member shall become the Purchasing Member and shall be obligated to purchase the entire Interest of the Receiving Member, who shall become the Selling Member and shall be obligated to sell its entire Interest to such Purchasing Member.

(e) Deposit. The Purchasing Member shall deposit an amount, in cash, equal to ten percent (10%) of the Selling Member's Net Equity with the attorney (or law firm) for the Selling Member, as escrow agent ("**Escrow Agent**"), before the close of business on the tenth (10th) business day after the date that the Member that is the Purchasing Member is determined pursuant to Section 11(d) (the "**Deposit**"), provided that the Selling Member has identified an attorney or law firm to act as Escrow Agent. If not, the Deposit will be deposited with the attorneys designated by the Purchasing Member.

(f) Terms of Purchase; Closing. The closing of the purchase and sale of the Selling Member's Interest (the "**Buy-Sell Closing**") shall occur on a date and time mutually agreeable to the Purchasing Member and the Selling Member, which shall not be later than 10:00 A.M. (local time at the place of the closing) on the first to occur of (i) the date which is five (5) business days after the date that the Purchasing Member has notified the Selling Member, in writing, that the Purchasing Member is ready to close (provided that the Purchasing Member has made the Deposit by such date) or (ii) the first business day after the date that is ninety (90) days following the last day of the Election Period. The closing procedure set forth in this Section 11(f) is subject to the Selling Member's rights under Section 11(j) below; provided, however, that in no event shall the Buy-Sell Closing occur later than the first business day after the date that is ninety (90) days following the last day of the Election Period. The Buy-Sell Closing shall occur at such place as is designated by the Purchasing Member's lender, if any, or if no such lender, at such place as is mutually agreeable to the Purchasing Member and Selling Member, or upon the failure to agree, at the offices of the Purchasing Member's attorneys. At the Buy-Sell Closing, the Escrow Agent shall release and distribute the Deposit to the Selling Member and the Purchasing Member shall pay the balance of the Selling Member's Net Equity to the Selling Member, in each case by cash, certified or bank check, drawn on a New York Clearing House member bank, or by wire transfer of immediately available funds, and the Selling Member shall deliver to the Purchasing Member good title to the Selling Member's Interest thus purchased, free and clear of any liens, claims, encumbrances, security interests or options, other than those imposed pursuant to the terms of this Agreement or granted or imposed in connection with any Financing. The Purchasing Member shall acquire the Selling Member's Interest subject to any and all liens, security interests, or other encumbrances imposed pursuant to the terms of this Agreement or granted or imposed by the Selling Member in connection with any Financing. At the Buy-Sell Closing the Members shall execute such documents and instruments of conveyance as may be necessary or appropriate to confirm the transactions contemplated hereby, including, without limitation, the transfer of the Interest of the Selling Member to the Purchasing Member and the assumption by the Purchasing Member of the Selling Member's obligations with respect to the Selling Member's Interest so transferred to the Purchasing Member. The reasonable costs of such transfer and closing, including, without limitation, attorneys' fees and filing fees, shall be divided equally between the Selling Member and the Purchasing Member; except that the Selling Member and Purchasing Member shall each be responsible for payment of their own attorney fees. The Selling Member will pay any transfer taxes imposed on the sale of its Interest to the Purchasing Member.

(g) Termination of Guarantees or Security Interests. In the event that any Principals of the Selling Member or any of their Affiliates have guaranteed, or pledged or assigned any collateral to secure, any Financing or other obligations under agreements binding upon both Members, the Principals of the Purchasing Member shall, at their sole cost and expense, no later than, and as a condition to, the Buy-Sell Closing, obtain the complete release of such guarantees and/or collateral. Written evidence of such releases reasonably satisfactory to the Selling Member shall be provided at the Buy-Sell Closing.

- (h) Intentionally Deleted.
- (i) Failure to Make Deposit or to Close.

(i) If the Purchasing Member fails to make the Deposit as required by Section 11(e), the Purchasing Member shall forfeit its right to be the Purchasing Member and, at the written election of the Selling Member delivered to the Purchasing Member within ten (10) business days after the date the Purchasing Member fails to make the Deposit (a “**Reversal Notice**”), the Purchasing Member shall instead be deemed to have irrevocably elected to be the Selling Member, and the original Initiating Member shall become the Purchasing Member, but shall not be obligated to make the Deposit. If the Selling Member does not timely deliver a Reversal Notice, neither party shall purchase the Interest of the other pursuant to this Section 11 with respect to the event which originally gave rise to the exercise of the rights to purchase under this Section 11.

(ii) If the Purchasing Member fails to pay the entire Net Equity of the Selling Member’s Interest or otherwise fails to close on the Buy-Sell Closing (“**Closing Default**”), then the Selling Member and the Purchasing Member agree that the Escrow Agent shall promptly pay the entire Deposit to the Selling Member as liquidated damages for the Purchasing Member’s Closing Default. The Purchasing Member hereby acknowledges and agrees that such amount and such termination of approval rights are fair and reasonable liquidated damages for any such default, agrees not to contest any payment thereof or termination of such approval rights and waives any defenses it has to contest the payment of such liquidated damages to the Selling Member. In addition, the Selling Member may elect, by written notice to the Purchasing Member delivered within ten (10) business days after the Closing Default, to purchase all, but not less than all, of the Interest of the Purchasing Member at the Net Equity for such Interest, in which case the Purchasing Member shall become the Selling Member and the Selling Member shall become the Purchasing Member under this Section 11 effective immediately upon delivery of such notice, provided, however, that the new Purchasing Member shall not be required to make the Deposit required by Section 11(e) hereof. The Buy-Sell Closing for such transaction shall occur on a date and time mutually agreeable to the Purchasing Member and the Selling Member, which shall not be later than 10:00 A.M. (local time at the place of the closing) on the first business day occurring on or after the ninetieth (90th) day following the date the notice was delivered to the former Purchasing Member, and otherwise in accordance with the terms and conditions of this Section 11 (other than those relating to the Deposit).

(j) Tax-Deferred Exchange. If the Selling Member desires to structure the sale of its Interest in a manner that qualifies as a tax-deferred exchange under the Code and the Treasury Regulations thereunder, the Purchasing Member will cooperate with the Selling Member and shall execute any and all documents reasonably requested by the Selling Member to effect such exchange, and otherwise assist and cooperate with Selling Member in effecting such exchange, provided that any additional reasonable costs and expenses incurred by Purchasing Member as a result of structuring such transaction as an exchange, as opposed to an outright sale, shall be borne by the Selling Member and the Selling Member shall indemnify, defend and hold the Purchasing Member harmless from any additional tax liability that the Purchasing Member incurs as a result of structuring such transaction as an exchange, as opposed to an outright sale.

12. **Liquidation.** Following dissolution of the Company in accordance with Section 2 above, the Company's business shall be wound up and the Company liquidated, in a manner designed to realize the fair value of the Company's assets. The proceeds of the liquidation shall be distributed in the following manner:

- (a) first, to the payments of the expenses of liquidation;
- (b) second, to pay the debts and obligations of the Company, including debts owing to Members;
- (c) third, to the establishment of any reserve which the Managing Member shall deem reasonably necessary for contingent or unforeseen liabilities; and
- (d) finally, to the Members in accordance with the terms of Section 8(a).

13. **Miscellaneous.**

(a) **Representations of Members.** Each of the Members hereby represents and warrants for the benefit of the Company and each other Member that: (i) it has full power and authority to enter into this Agreement and perform its obligations hereunder; (ii) all transactions contemplated by this Agreement to be performed by it have been duly authorized by all necessary action of its members, partners or directors and stockholders (as the case may be), if required; (iii) the consummation of such transaction will not result in a material breach or violation of, or a material default under, its charter, bylaws, codes of regulation, articles of organization, operating agreement, partnership agreement, or any other agreement by which it is governed or by which it or any of its properties is bound or any statute, regulation, order or other law to which it is subject; and (iv) this Agreement is a binding and enforceable agreement on its part in accordance with the terms hereof, except as (A) the enforceability thereof may be limited by bankruptcy, insolvency, moratorium, fraudulent conveyance or similar laws affecting the enforcement of creditors' or secured parties' rights or debtors' obligations generally, and (B) the availability of specific performance or other equitable remedies may be limited by equitable principles of general applicability (whether in a court of law or in equity).

(b) **Further Assurances.** Each of the Members agrees to execute, acknowledge, deliver, file, record and publish such further certificates, instruments, agreements and other documents in recordable form (if necessary), and to take all such further action as may be reasonably required in furtherance of the purposes and the objectives and intentions contemplated or underlying this Agreement and not inconsistent with the terms hereof.

(c) **Notices.** All notices required or permitted to be given or delivered under this Agreement shall be in writing and shall be deemed to have been given or delivered, as the case may be on the first business day following the day when sent by overnight courier or messenger delivery service, or three (3) business days following the day when sent by the United States Postal Service by registered or certified mail, postage prepaid, return receipt requested, or upon receipt when personally delivered, and addressed to the Members at their respective addresses as set forth in the preamble to this Agreement, or at such different address as to either Member as it shall have theretofore notified the other Member. Copies of such notices shall be simultaneously sent (by the same means) to the Member's attorneys, at the following addresses (unless such attorneys or the Member advises the other Member, in writing, to send such copies to a different address):

Attorneys for LIVEWORK:

Katsky Korins LLP
605 Third Avenue
New York, New York 10158
Attention: Randolph Amengual, Esq.
Fax: 212-716-3343

Attorneys for FC20:

Forest City Enterprises, Inc.
50 Public Square, Suite 1360
Cleveland, Ohio 44113
Attention: General Counsel
Fax: 216-263-6206

(d) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Members and Independent Managers and their respective representatives, successors and permitted assigns.

(e) Waiver. The waiver by any Member of any matter provided herein shall be effective only if made in writing and signed by such Member. The failure of any party to this Agreement to enforce any of its terms, provisions or covenants shall not be construed as a waiver of the same or of the right of such party to enforce the same. Waiver by either party hereto of any breach or default by the other party of any term or provision of this Agreement shall not operate as a waiver of any other breach or default.

(f) Entire Agreement. This Agreement (including the Exhibits hereto) sets forth the entire agreement and understanding of the Members and supersedes all prior agreements or understanding, whether oral or written, between the parties with respect to the terms and conditions of this Agreement.

(g) Amendment. Except as otherwise required by Section 5(m) hereof, this Agreement may only be amended by a writing signed by all of the Members and designated as an amendment or modification of this Agreement.

(h) No Third Party Beneficiaries. Subject to Section 5(m) hereof, the provisions of this Agreement are not intended to be for the benefit of any creditor or any other Person (other than a Member in his capacity as such) to whom any debts, liabilities or obligations are owed by (or who otherwise has any claim against) the Property or any of the Members; and no such creditor or other Person shall obtain any right under any of such provisions or shall by reason of any of such provisions make any claim in respect of any debt, liability or obligation (or otherwise) against the Property or any of the Members.

(i) Governing Law; Consent to Jurisdiction. This Agreement is governed by and shall be construed in accordance with the internal laws of the State of Delaware excluding its rules applicable to conflict-of-laws. Each of the parties hereto (i) irrevocably consents and agrees that any legal or equitable action or proceeding arising under or in connection with this Agreement shall be brought in any Federal or state court in the County of Clark, State of Nevada, (ii) by execution and

delivery of this Agreement, irrevocably and unconditionally submits to the jurisdiction and venue of such courts, and (iii) agrees that any action brought against such party may be commenced by service of process by any method permitted by applicable law and as set forth in the notice section of this Agreement.

(j) Attorneys' Fees. In the event of any litigation or arbitration relating to this Agreement or the relationship of the Members established by this Agreement, the prevailing party shall be entitled to recover the reasonable attorneys' fees and other costs incurred by it in prosecuting or defending against the action.

(k) Counterparts. This Agreement may be executed in one or more counterparts and by facsimile, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

[Signature on following pages.]

IN WITNESS WHEREOF, the undersigned have executed this Agreement effective as of the date first written above.

MEMBERS:

FC VEGAS 20, LLC,
a Nevada limited liability company

By: Rolling Acres Properties Co. Limited
Partnership, its Managing Member

By: Artus, Inc., its general partner

By: _____
Name: Layton McCown
Title: Vice President and
Assistant Secretary

LIVEWORK, LLC, a Delaware limited
liability company

By: _____
David J. Mitchell, Managing Member

By: _____
Barnet L. Liberman, Managing Member

INDEPENDENT MANAGERS:

Jennifer A. Schwartz, Independent Manager

Victor A. Duva, Independent Manager

Signature Page

Solely for purposes of the last sentence of Section 10(a)(ii)(A), the undersigned members of the Members, or beneficial owners of the Members, execute this Agreement as of the date first written above.

Canton Centre Mall Limited Partnership

By: F.C. Canton Centre, Inc., its
general partner

By: _____
Name: Layton McCown
Title: Executive Vice President
and Assistant Secretary

Rolling Acres Properties Co. Limited
Partnership

By: Artus, Inc., its general partner

By: _____
Name: Layton McCown
Title: Vice President and
Assistant Secretary

Barnet L. Liberman

David J. Mitchell

Signature Page

48-0034
Case No.: A

RA 000784

EXHIBITS

Exhibit A – Land

Exhibit B – Covered Properties

Exhibit C – Allocations of Profits and Losses and Certain Tax Matters

Exhibit D – Approved Fee Schedule

Exhibit E – Baseball Arbitration Procedure

Exhibit F – Form of Management Agreement

EXHIBIT A

Land

Attached

Exhibit A

Parcel 1:

LOTS SEVEN (7) AND EIGHT (8) IN BLOCK TEN (10) OF CLARK'S LAS VEGAS TOWNSITE, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 37, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

Parcel 2:

Lot Fourteen (14) and the South Fifteen (15) feet of Lot Thirteen (13) in Block Ten (10) of CLARK'S LAS VEGAS, TOWNSITE, as shown by map on file in Book 1 of Plats, Page 37, in the Office of the County Recorder of Clark County, Nevada.

Parcel 3:

Lot Fifteen (15) and Sixteen (16) in Block Ten (10) of CLARK'S LAS VEGAS TOWNSITE, as shown by map thereof on file in Book 1 of Plats, Page 37, in the Office of the County Recorder of Clark County, Nevada.

Parcel 4:

The West 100 feet of Lots One (1) and Two (2) in Block Ten (10) of CLARK'S LAS VEGAS TOWNSITE, as shown by map thereof on file in Book 1 of Plats, Page 37, in the Office of the County Recorder of Clark County, Nevada.

Parcel 5:

The East Forty (40) feet of Lots One (1) and Two (2) in Block Ten (10) of CLARK'S LAS VEGAS TOWNSITE, as shown by map thereof on file in Book 1 of Plats, Page 37, in the Office of the County Recorder of Clark County, Nevada.

Parcel 6:

Lots Seventeen (17) through Twenty-One (21) inclusive in Block Eight (8) of CLARK'S LAS VEGAS TOWNSITE, as shown by map thereof on file in Book 1 of Plats, Page 37, in the Office of the County Recorder of Clark County, Nevada.

Parcel 7:

Being a portion of the North half (N1/2) of the Southwest Quarter (SW1/4) of Section 34, Township 20 South, Range 61 East, M.D.M., City of Las Vegas, Clark County, Nevada, more particularly described as follows: Beginning at the Northern most corner of Lot Twenty-five (25) of Block Ten (10) of Clark's Las Vegas Townsite, as shown in Book 1 of Plat Maps, Page 37 and also being a point on the East right-of-way line of the 20 foot wide public alley; Thence North 27°54'30" East, along the East line of said public alley, a distance of 174.96 feet to a point on the South right-of-way line of Clark Avenue (80 feet wide); Thence South 62°07'28" East, along said right-of-way line, a distance of 139.99

Exhibit A

feet to a point on the West right-of-way line of Casino Center Boulevard (80 feet wide); Thence South 27°54'30" West, along said right-of-way line a distance of 175.00 feet; Thence North 62°06'34" West, a distance of 139.99 feet to the point of beginning; Pursuant to that certain Reversionary Map in Book 82 of Plats, Page 49, in the Office of the County Recorder, Clark County, Nevada and recorded December 17, 1997 in Book 971217 as Document No. 00665, Official Records. Note: The above metes and bounds description was prepared by Robert C. Johnson PLS, at Baughman and Turner 1210 Hinson Street, Las Vegas, Nevada.

PARCEL 8:

LOT TWENTY-EIGHT(28) AND TWENTY-NINE (29) IN BLOCK SEVEN (7) OF CLARK'S LAS VEGAS TOWNSITE, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 37, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL 9:

THE NORTH ONE AND ONE-HALF FEET TO LOT NINETEEN (19), ALL OF LOT TWENTY (20) AND THE SOUTH HALF (S 1/2) OF LOT TWENTY-ONE (21), ALL IN BLOCK SEVEN (7) OF CLARK'S LAS VEGAS TOWNSITE, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 37, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL 10:

LOT TWENTY-TWO (22) AND THE NORTH HALF (N 1/2) OF LOT TWENTY-ONE (21) AND THE SOUTH HALF (S 1/2) OF LOT TWENTY-THREE (23) ALL IN BLOCK SEVEN (7) OF CLARK'S LAS VEGAS TOWNSITE, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 37, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL 11:

THE NORTH HALF (N 1/2) OF LOT TWENTY-THREE (23) AND ALL OF LOTS TWENTY-FOUR (24) AND TWENTY-FIVE (25) IN BLOCK SEVEN (7) OF CLARK'S LAS VEGAS TOWNSITE, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 37, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL 12:

LOTS TWENTY-SIX (26) AND TWENTY-SEVEN (27) IN BLOCK SEVEN (7) OF CLARK'S LAS VEGAS TOWNSITE, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 37, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

Exhibit A

Parcel 13:

Lots Five (5) and Six (6) in Block Ten (10) of CLARK'S LAS VEGAS TOWNSITE, as shown by map thereof on file in Book 1 of Plats, Page 37, in the Office of the County Recorder of Clark County, Nevada.

Parcel 14:

LOT ELEVEN (11) IN BLOCK SEVEN (7) OF CLARK'S LAS VEGAS TOWNSITE, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 37, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

Parcel 15:

LOTS 19 AND 20 IN BLOCK 10 OF CLARK'S LAS VEGAS TOWNSITE AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 37 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

Parcel 16:

Lots One (1), Two (2), Three (3) and Four (4) in Block Seven (7) of Clark's Las Vegas Townsite, as shown by map thereof on file in Book 1 of Plats, Page 37, in the Office of the County Recorder of Clark County, Nevada.

Parcel 17:

Lots Five (5) and Six (6) in Block Seven (7) of Clark's Las Vegas Townsite, as shown by map thereof on file in Book 1 of Plats, Page 37, in the Office of the County Recorder of Clark County, Nevada. Excepting therefrom the interest in and to the Northwesternly 5.00 feet as conveyed to the City of Las Vegas by deed recorded January 27, 1976 in Book 590 as Document No. 549027 of Official Records.

Parcel 18:

Lots Thirty (30), Thirty-one (31) and Thirty-two (32) in Block Seven (7) of Clark's Las Vegas Townsite, as shown by map thereof on file in Book 1 of Plats, Page 37, in the Office of the County Recorder of Clark County, Nevada.

Parcel 19:

Lots Nine (9), Ten (10), Eleven (11), Twelve (12) and the Northerly Ten (10) feet of Lot Thirteen (13) in Block Ten (10) of CLARK'S LAS VEGAS TOWNSITE, as shown by map thereof on file in Book 1 of Plats, Page 37, in the Office of the County Recorder of Clark County, Nevada.

Exhibit A

48-0039
Case No.: A

RA 000789

PARCEL 20:

LOTS FOUR (4) THROUGH SIXTEEN (16) IN BLOCK EIGHT (8) OF CLARK'S LAS VEGAS TOWNSITE, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 37, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA. EXCEPTING THE INTEREST IN THE NORTHWESTERLY 5.00 FEET OF SAID LAND AS CONVEYED BY DEED RECORDED MAY 10, 1978 AS DOCUMENT NO. 844496, OFFICIAL RECORDS.

PARCEL 21:

LOTS TWENTY-EIGHT (28), TWENTY-NINE (29) AND THIRTY (30) IN BLOCK EIGHT (8) OF CLARK'S LAS VEGAS TOWNSITE AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 37, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

Parcel 22

Lot Seventeen (17) and the South 10 1/2 feet of Lot Eighteen (18) in Block Seven (7) of Clark's Las Vegas Townsite, as shown by map thereof on file in Book 1 of Plats, Page 37, in the office of the County Recorder of Clark County, Nevada. Excepting therefrom that portion as conveyed to The City of Las Vegas by that certain Grant Deed recorded June 6, 1991 in Book 910606 as Instrument No. 00707 of Official Records.

Parcel 23:

The North 14 1/2 feet of Lot Eighteen (18) and the South 23 1/2 feet of Lot Nineteen (19), Block Seven (7), Clark's Las Vegas Townsite, as shown by map thereof on file in Book 1 of Plats, Page 37 in the office of the County Recorder of Clark County, Nevada.

Parcel 24:

Lots Three (3), Four (4), Five (5) and Six (6) in Block Six (6) of Clark's Las Vegas Townsite, as shown by map thereof on file in Book 1 of Plats, Page 37, in the Office of the County Recorder of Clark County, Nevada.

Parcel 25:

Lots Seventeen (17) through Twenty-Eight (28) in Block Six (6) of Clark's Las Vegas Townsite, as shown by map thereof on file in Book 1 of Plats, Page 37, in the Office of the County Recorder of Clark County, Nevada.

Parcel 26:

Exhibit A

Lot Three (3) and Four (4) in Block Ten (10) of Clark's Las Vegas Townsite as shown by map thereof on file in Book 1 of Plats, Page 37, in the Office of the County Recorder, Clark County, Nevada.

Parcel 27:

Lots Seven (7) through Sixteen (16), inclusive in Block Six (6) of Clark's Las Vegas Townsite, as shown by map thereof on file in Book 1 of Plats, Page 37, in the office of the County Recorder of Clark County Nevada. Excepting therefrom the Northeasterly Five (5) feet of the herein above referenced lots as conveyed to the City of Las Vegas.

PARCEL 28:

LOT 10 IN BLOCK 7 OF CLARK'S LAS VEGAS TOWNSITE AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 37, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL 29:

THE EAST HALF (E 1/2) OF LOTS 15 AND 16 IN BLOCK 7 OF CLARK'S LAS VEGAS TOWNSITE AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 37, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL 30:

LOTS 8 AND 9 IN BLOCK 7 OF CLARK'S LAS VEGAS TOWNSITE AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 37, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

Parcel 31:

Lots Twenty-Two (22) and Twenty-Three (23) inclusive in Block Eight (8) of CLARK'S LAS VEGAS TOWNSITE, as shown by map thereof on file in Book 1 of Plats, Page 37, in the Office of the County Recorder of Clark County, Nevada.

Parcel 32:

Lots Twenty-Four (24) through Twenty-Seven (27) inclusive in Block Eight (8) of CLARK'S LAS VEGAS TOWNSITE, as shown by map thereof on file in Book 1 of Plats, Page 37, in the Office of the County Recorder of Clark County, Nevada.

Parcel 33:

Exhibit A

LOTS ONE (1), TWO (2), THREE (3), THIRTY-ONE (31), AND THIRTY-TWO (32)
IN BLOCK 8 OF CLARK'S LAS VEGAS TOWNSITE, AS SHOWN BY MAP
THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 37, IN THE OFFICE OF THE
COUNTY RECORDER OF CLARK COUNTY, NEVADA.

APNS:

139-34-311-027,030,031,023,024, 011,019, 020, 021, 022, 026, 003, 049, 028, 029, 010,
014, 015, 017, 018, 025, 002, 007,001,012,013,008,009,016

139-34-302-009

139-34-210-017, 014, 015, 018, 009, 019, 020, 021, 010, 011, 012, 013

Exhibit A

48-0042
Case No.: A

RA 000792

EXHIBIT B

Covered Properties

Attached

Exhibit B

Exhibit B

Covered Properties



Exhibit B

EXHIBIT C

Allocations of Profits and Losses and Certain Tax Matters

C-1. Taxation; Capital Accounts; Definitions. It is the intention of the Members that the Company be classified as a partnership for purposes of federal and state income tax law. The Company shall establish and maintain a separate capital account (each, a “**Capital Account**”) for each Member in accordance with Section 704 of the Internal Revenue Code of 1986, as amended (the “**Code**”) and the rules set forth in Treasury Regulations Section 1.704-1(b)(2)(iv). If the Members unanimously determine that it is prudent to modify the manner in which the Capital Accounts, or any charges or credits thereto (including charges or credits relating to liabilities which are secured by contributions or distributed property or which are assumed by the Company or by Members), are computed in order to comply with such Treasury Regulations, the Members may make such modification. Subject to obtaining the unanimous consent of the Members, the Members also shall (i) make any adjustments that may be necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Regulations Section 1.704-1(b)(2)(iv)(q), and (ii) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Regulations Section 1.704-1(b). As used herein, the following terms have the meanings ascribed below:

Allocation Year means (i) the period commencing on the date of this Agreement and ending on January 31, 2011, (ii) any subsequent twelve (12) month period commencing on February 1 and ending on January 31, or (iii) any portion of the period described in clauses (i) or (ii) for which the Company is required to allocate Profits, Losses, and other items of Company income, gain, loss, or deduction pursuant to this Exhibit C.

Depreciation means, for each Allocation Year, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such Allocation Year, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Allocation Year, Depreciation shall be an amount that bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Allocation Year bears to such beginning adjusted tax basis, provided, however, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such Allocation Year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Members.

Gross Asset Value means with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

- (i) The initial Gross Asset Value of any asset contributed by a Member to the Company or already held by the Company shall be the gross fair market value of such asset, as determined by the Members, provided that the initial Gross Asset Values of the Property shall be as set forth in Section 6(a);

Exhibit C

(ii) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values (taking Section 6(a) of the Agreement into account), as determined by the Members, as of the following times: (A) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution; (B) the distribution by the Company to a Member of more than a de minimis amount of Company property as consideration for an interest in the Company; (C) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g) ; and (D) in connection with the grant of an interest in the Company (other than a de minimis interest) as consideration for the provision of services to or for the benefit of the Company by an existing Member acting in a member capacity, or by a new Member acting in a member capacity in anticipation of being a Member; provided that an adjustment described in clauses (A), (B), and (D) of this paragraph shall be made only if the Members reasonably determines that such adjustment is necessary to reflect the relative economic interests of the Members in the Company;

(iii) The Gross Asset Value of any item of Company assets distributed to any Member shall be adjusted to equal the gross fair market value (taking Code Section 7701(g) into account) of such asset on the date of distribution as determined by the Members; and

(iv) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to (A) Regulations Section 1.704-1(b)(2)(iv)(m) and (B) subparagraph (vi) of the definition of “**Profits**” and “**Losses**” provided, however, that Gross Asset Values shall not be adjusted pursuant to this subparagraph (iv) to the extent that an adjustment pursuant to subparagraph (ii) is required in connection with a transaction that would otherwise result in an adjustment pursuant to this subparagraph (iv).

If the Gross Asset Value of an asset has been determined or adjusted pursuant to subparagraph (i), (ii), or (iv), such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset, for purposes of computing Profits and Losses.

Partially Adjusted Capital Account means, with respect to any Member for any Allocation Year, the Capital Account balance of such Member at the beginning of such period, adjusted for all contributions and distributions during such period and all special allocations pursuant to Section C-4 with respect to such period but before giving effect to any allocation with respect to such period pursuant to Sections C-2 and C-3.

Target Capital Account means, with respect to any Member for any Allocation Year, an amount (which may be a positive or negative balance or zero) equal to the difference of (i) the hypothetical distribution (if any) such Member would receive if all Company assets, including cash, were sold for cash equal to their book values (taking into account any adjustments to book values for such period), all Company liabilities were satisfied in

Exhibit C

cash according to their terms (limited, with respect to each Nonrecourse Liability or Member Nonrecourse Liability of the Company (as defined below), to the book values of the assets securing such liability), and the net proceeds of such sale to the Company (after satisfaction of said liabilities) were distributed in full pursuant to Section 12 of the Agreement on the last day of such period, minus (ii) the sum of (A) such Member's share of Company Minimum Gain and of Member Minimum Gain (as defined below) immediately prior to such deemed sale, plus (B) the amount, if any, which such Member is obligated pursuant to a Capital Call to contribute to the capital of the Company pursuant to the terms of this Agreement as of the last day of such period (but only to the extent such capital contribution obligation has not been taken into account in determining such Member's share of Member Minimum Gain).

Nonrecourse Liability shall have the meaning ascribed to such term set forth in Regulations Section 1.704-2(b)(3).

Member Nonrecourse Liability shall have the same meaning ascribed to "**partner nonrecourse liability**" set forth in Regulations Section 1.704-2(b)(4).

Profits and Losses mean, for each Allocation Year, an amount equal to the Company's taxable income or loss for such Allocation Year, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments (without duplication):

(i) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this definition of "**Profits**" and "**Losses**" shall be added to such taxable income or loss;

(ii) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i) , and not otherwise taken into account in computing Profits or Losses pursuant to this definition of "**Profits**" and "**Losses**," shall be subtracted from such taxable income or loss;

(iii) In the event the Gross Asset Value of any Company asset is adjusted pursuant to subparagraphs (ii) or (iii) of the definition of "**Gross Asset Value**," the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the Gross Asset Value of the asset) or an item of loss (if the adjustment decreases the Gross Asset Value of the asset) from the disposition of such asset and shall be taken into account for purposes of computing Profits or Losses;

(iv) Gain or loss resulting from any disposition of property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;

(v) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into

Exhibit C

account Depreciation for such Allocation Year, computed in accordance with the definition of Depreciation;

(vi) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(4) , to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Member's interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) from the disposition of such asset and shall be taken into account for purposes of computing Profits or Losses; and

(vii) Notwithstanding any other provision of this definition, any items that are specially allocated pursuant to Section C-4 hereof shall not be taken into account in computing Profits or Losses.

The amounts of the items of Company income, gain, loss, or deduction available to be specially allocated pursuant to Section C-4 hereof shall be determined by applying rules analogous to those set forth in subparagraphs (i) through (vi) above.

C-2. Allocations of Profits. The Profit of the Company for each Allocation Year in which the Company has a Profit shall be allocated among, and credited to the Capital Accounts of, the Members so as to reduce, proportionately, the differences between their respective Target Capital Accounts and Partially Adjusted Capital Accounts for the period under consideration. To the extent possible, each Member shall be allocated a pro rata share of all Company items allocated pursuant to this Section C-2. No portion of such Profits, if any, shall be allocated to a Member whose Partially Adjusted Capital Account for the period under consideration is greater than or equal to its Target Capital Account for such period.

C-3. Allocation of Losses. The Loss of the Company for each Allocation Year in which the Company has a Loss shall be allocated among, and charged to the Capital Accounts of, the Members so as to reduce, proportionately, the differences between their Partially Adjusted Capital Accounts and Target Capital Accounts for the period under consideration. To the extent possible, each Member shall be allocated a pro rata share of all Company items pursuant to this Section C-3. No portion of such Loss, if any, shall be allocated to a Member whose Target Capital Account for the period under consideration is greater than its Partially Adjusted Capital Account for such period.

C-4. Special Allocations to Comply with Section 704 Regulations.

(a) Minimum Gain Chargeback. Notwithstanding any other provision of this Agreement to the contrary, if there is a net decrease in Company Minimum Gain during any Allocation Year, then there shall be specially allocated to each Member items of Company income and gain for such year (and, if necessary, subsequent Allocation Years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain (determined in accordance with Regulations Section 1.704-2(g) as if the Company were a partnership). The items to be so allocated shall be determined in accordance with Regulations Section 1.704-2(f)(6) and 1.704-2(j)(2)(i) and (iii). This Section C-4(a) is intended to comply with the minimum gain chargeback requirement in Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

Exhibit C

(b) Member Minimum Gain Chargeback. Notwithstanding any other provision of this Agreement to the contrary, if there is a net decrease in Member Minimum Gain during any Allocation Year, then each Member shall be specially allocated items of Company income and gain for such year (and, if necessary, for subsequent Allocation Years) in an amount equal to that Member's share, if any (determined in accordance with Regulations Section 1.704-2(i)(4)), of the net decrease in Member Minimum Gain. The items to be so allocated shall be determined in accordance with the provisions of Regulations Section 1.704-2(i)(4) and 1.704-2(j)(2)(i). This Section C-4(b) is intended to comply with the minimum gain chargeback requirement in Regulations Section 1.704-2(i) and shall be interpreted consistently therewith.

(c) Limitation on Losses. Notwithstanding the provisions of Section C-3, if the allocation of a Loss to a Member for any Allocation Year pursuant to Section C-3 would cause or increase a negative balance in the Member's Adjusted Capital Account on the last day of such year, then the portion of the Loss that would have such effect shall instead be specially allocated among the Members who have positive balances in their Adjusted Capital Accounts on the last day of the Allocation Year. The Loss to be specially allocated pursuant to the preceding sentence shall be allocated among the Members referred to in the preceding sentence, pro rata, in proportion to their respective Adjusted Capital Accounts.

(d) Gross Income Allocation/Qualified Income Offset. If, at the end of any Allocation Year, one or more Members would otherwise have a negative balance in their Adjusted Capital Accounts (as defined below), then income (including, if necessary, gross income) and gain for such Allocation Year (and, if necessary, subsequent Allocation Years) shall be allocated as quickly as possible among all Members who have such negative balances in their Adjusted Capital Accounts, pro rata, in proportion to their respective negative balances to the extent necessary to eliminate such negative balances as of the end of such Allocation Year; provided that an allocation pursuant to this Section C-4(d) shall be made only if and to the extent that such Member would have such a negative balance in the Member's Adjusted Capital Account after all other allocations provided for in this Exhibit C have been tentatively made (including allocations of Profit (determined prior to giving effect to this Section C-4(d)) pursuant to Section C-2 or Loss (determined prior to giving effect to this Section C-4(d)) pursuant to Section C-3 as if this Section C-4(d) were not a part of this Agreement. The allocations referred to in this paragraph shall be interpreted and applied, *inter alia*, to satisfy the requirements of Regulations Section 1.704-1(b)(2)(ii)(d)(3).

(e) Member Nonrecourse Deductions. Notwithstanding any other provision of this Agreement to the contrary, Company losses and deductions that are attributable to a particular Member Nonrecourse Liability (as determined in accordance with Regulations Section 1.704-2(i)(2)) shall be specially allocated to the Member(s) who bear(s) the economic risk of loss for such liability. This Section C-4(e) is intended to comply with the allocation provision of Regulations Section 1.704-2(i)(1) and shall be interpreted consistently therewith.

(f) Nonrecourse Deductions. Nonrecourse deductions (as defined in Regulations Section 1.704-2(b)(1) and 1.704-2(c)) for any Allocation Year shall be specially allocated to the Members in accordance with their Percentage Interests.

(g) Adjusted Capital Account. The term "**Adjusted Capital Account**" shall mean the balance in such Member's Capital Account as of the end of the relevant Allocation Year, after giving effect to the following adjustments: (i) crediting to such Capital Account any amounts that such Member is obligated to restore or is deemed to be obligated to restore pursuant to

Exhibit C

Regulations Sections 1.704-1(b)(2)(ii)(b)(3), 1.704-1(b)(2)(ii)(c), 1.704-2(g)(1) and 1.704-2(i)(5) and (ii) debiting to such Capital Account the items described in Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6) to the extent such items are not otherwise reflected in such Capital Account.

(h) Curative Allocations. Any special allocations pursuant to Section C-4(a) through Section C-4(f) shall be taken into account in computing subsequent allocations pursuant to this Exhibit C, so that the net amount of any items so allocated and all other items allocated pursuant to this Exhibit C shall, to the extent possible, be equal to the net amount that would have been allocated to each Member pursuant to this Exhibit C if such special allocations had not been made. For this purpose, future special allocations under Section C-4(a) and Section C-4(b) that are likely to offset current special allocations shall be taken into account.

(i) Other Special Allocations.

(A) If the Company has Profits for any Allocation Year (determined prior to giving effect to this Section C-4(i)), each Member whose Partially Adjusted Capital Account (determined prior to giving effect to this Section C-4(i)) is greater than its Target Capital Account shall be allocated, proportionately, items of Company expense or loss for such year equal to the difference between its Partially Adjusted Capital Account (determined prior to giving effect to this Section C-4(i)) and Target Capital Account. If the Company has insufficient items of expense or loss for such year to satisfy the previous sentence with respect to all such Members, the available items of expense or loss shall be allocated among such Members in proportion to such differences.

(B) If the Company has a Loss for any Allocation Year (determined prior to giving effect to this Section C-4(i)), each Member whose Partially Adjusted Capital Account (determined prior to giving effect to this Section C-4(i)) is less than its Target Capital Account shall be allocated, proportionately, items of Company gain or income for such year equal to the difference between its Partially Adjusted Capital Account (determined prior to giving effect to this Section C-4(i)) and Target Capital Account. If the Company has insufficient items of income or gain for such year to satisfy the previous sentence with respect to all such Members, the available items of income or gain shall be allocated among such Members in proportion to such differences.

C-5 Allocations; Code Section 704(c). Except as otherwise provided in this Section C-5 each item of income, gain, loss and deduction of the Company for federal income tax purposes shall be allocated among the Members in the same manner as such items are allocated for book purposes under this Exhibit C. In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company or whose value is restated shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Gross Asset Value (computed in accordance with the definition of Gross Asset Value) using the traditional method. In the event the Gross Asset Value of any Company asset is adjusted pursuant to subparagraph (ii) of the definition of Gross Asset Value, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder. Any elections or other decisions relating to such allocations shall be made by the Members in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section C-5 are solely for purposes of federal, state, and local taxes and

Exhibit C

shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits, Losses, other items, or distributions pursuant to any provision of this Agreement.

C-6. Section 754 Election. The Company will make the election permitted under Section 754 of the Code at the written request of any Member that is a transferor or transferee of any interest in the Company or any Principal of any Member that is a transferor or transferee of any interest in a Member of the Company. To the extent an adjustment to the adjusted tax basis of any Company asset, pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(2) or 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a distribution to a Member in complete liquidation of such Member's interest in the Company, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in accordance with their interests in the Company in the event Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Member to whom such distribution was made in the event Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

C-7. Assignees Treated as Members. For all purposes of this Exhibit C and Sections 8 and 12 of the Agreement, but for no other purpose, an Assignee shall be treated as a Member and each reference in this Exhibit C and Sections 8 and 12 of the Agreement to a Member shall be deemed to include such Assignees.

C-8. Capital Account Deficit. No Member with a deficit in its Capital Account shall be obligated to restore such deficit balance or make a capital contribution to the Company solely by reason of such deficit.

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EXHIBIT D

Approved Fee Schedule

Development	5% of total construction costs.
Construction Management	Pre-Contract Services: 0.5% of total construction costs. Owner's Representation: 2% of total construction costs. Tenant Site Supervision: 1% of total construction costs.
Leasing (new development only)	Office Tenants: 1% of base rent payable during first ten (10) years (exclusive of any amounts paid by the Company to outside brokers). Retail Tenants: \$6.00 per square foot. Ground Leases: 1% of base rent payable during first ten (10) years.
Tenant Coordination (new development only)	\$5,500.00 per retail tenant. 4% of tenant improvement costs per office tenant.
Property Management (new development only)	Retail: 5% of all gross income* of any new retail development (whether part of an office development or standalone). Office: 3% of all gross income* of any new office development (whether part of a retail development or standalone). *The term " gross income " shall mean all income, including, without limitation, fixed rents, percentage rents, license fees and concession fees, but excluding reimbursement amounts paid by tenants for real estate taxes and assessments, utilities, common area maintenance and like charges.
Finance	0.5% of the loan amount for new project construction and permanent financing relating to any portion or all of the Property.
Legal Fees to Forest City Enterprises, Inc. For In-House Counsel	\$2,600.00 for each office lease less than 5,000 square feet. \$3,700.00 for each retail lease less than 5,000 square feet. \$300.00 per hour for attorneys and \$180.00 per hour for paralegals for all other direct legal services performed on behalf of the Company.

Exhibit D

EXHIBIT E

Baseball Arbitration Procedure

If the Receiving Member timely delivers a Price Dispute Notice pursuant to Section 11(b), the parties shall submit the determination of the Property Price to binding arbitration. The parties shall endeavor to agree, in writing, on the appointment of an independent arbitrator having the qualifications described below to determine the Property Price in accordance with the procedure set forth in this Exhibit E (the “**Independent Arbitrator**”). If the parties fail to agree on such appointment, for any reason, within twenty (20) days after delivery of the Price Dispute Notice, then either party, on behalf of both, may apply to the American Arbitration Association or any organization which is the successor thereof for appointment of the Independent Arbitrator in accordance with the requirements set forth herein. The date on which the Independent Arbitrator is appointed by the agreement of the parties or by appointment by American Arbitration Association is referred to herein as the “**Appointment Date**.”

The determination shall be accomplished as follows:

(i) The Independent Arbitrator shall not be affiliated with the Initiating or Responding Parties and shall be an MAI appraiser with at least twenty (20) years' experience in the determination of fair market value of development sites of a similar nature to the Property.

(ii) Within thirty (30) days after the Appointment Date, the Initiating Member and the Receiving Member shall deliver to the Independent Arbitrator a copy of their respective written determinations of the Property Price (each, a “**Determination**”), together with such affidavits, appraisals, reports and other written evidence relating thereto as the submitting party deems appropriate. After the submission of the Determination, the submitting party may not make any additions to or deletions from, or otherwise change, the Determination or the affidavits, appraisals, reports and other written evidence delivered therewith. If either party fails to so deliver its Determination within such time period, time being of the essence with respect thereto, such party shall be deemed to have irrevocably waived its right to deliver a Determination and the Independent Arbitrator shall accept the Determination of the submitting party. At the end of the thirty (30) day period described above, the Independent Arbitrator shall notify both parties whether it has received Determinations from both parties, but shall not deliver a copy of or disclose each party's Determination (or any information contained therein) to the other party.

(iv) THE INDEPENDENT ARBITRATOR SHALL BE INSTRUCTED, AND SHALL BE EMPOWERED ONLY, TO SELECT AS THE RESOLUTION TO THE DISPUTE THAT ONE OF THE DETERMINATIONS WHICH THE INDEPENDENT ARBITRATOR BELIEVES IS THE MORE ACCURATE DETERMINATION OF SUCH AMOUNT. Without limiting the generality of the foregoing, in rendering his or her decision, the Independent Arbitrator shall not add to, subtract from or otherwise modify the provisions of this Agreement or either of the Determinations.

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(v) The Independent Arbitrator shall render his or her determination as to the selection of a Determination in a signed and acknowledged written instrument (the "**Decision**") within thirty (30) days after the earlier of (A) the expiration of the thirty (30) day period provided for in subparagraph (iii) above, or (B) the Independent Arbitrator's receipt of both of the Determinations from the parties. The Independent Arbitrator's written statement shall set forth the rationale for the conclusion reached with respect to such determination, original counterparts of which shall be sent simultaneously to the Initiating Member and the Receiving Member Party, within ten (10) days after his or her Decision.

(vi) Each party shall pay its own fees and expenses relating to the arbitration. Each party shall pay one-half (½) of the fees and expenses of the Independent Arbitrator.

Exhibit E

EXHIBIT F

Form of Management Agreement

Attached

Exhibit F

MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT (the "Agreement") is made as of _____, 2010 (the "Effective Date") by and between FC/LW Vegas, LLC, a Delaware limited liability company ("Owner"), and Forest City Commercial Management, Inc., an Ohio corporation ("Manager").

RECITALS

A. Owner holds title to, or owns an interest in, directly or indirectly (through one or more wholly owned subsidiaries), those certain parcels of land described in Exhibit A attached hereto (collectively, the "Land"), the buildings and other improvements located on the Land (collectively, the "Buildings"), all appurtenances pertaining to the Land and the Buildings and certain other tangible and intangible property in, on, attached to, appurtenant to or used in the operation or maintenance of, the Land or the Buildings (collectively, the "Property"). The Property is encumbered by a mortgage loan in the maximum principal amount of One Hundred Fourteen Million Eight Hundred Thousand and 00/100 Dollars (\$114,800,000.00) (the "Loan") from KeyBank National Association as agent for the lending institutions named therein (collectively, the "Lender"). The documents evidencing the Loan are referred to as the "Loan Documents."

B. Owner, as successor-in-interest, is a party to the Management Agreements with Realty Management, Inc. (the "Property Manager") for District One, District Two, District Three and District Four (the "Block Parcels"), each dated September 20, 2005 (collectively, the "Property Management Agreement"), pursuant to which the Property Manager agreed to manage and operate the Block Parcels which constitute a portion of the Property.

C. Owner desires to avail itself of the services of Manager with respect to the Property and to have Manager exercise the rights and undertake, on behalf of Owner, the duties and responsibilities set forth herein, and the Manager is willing to render such services in accordance with the terms hereof.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows.

ARTICLE 1 DEFINITIONS

As used in this Agreement, the following terms have the following meanings:

"Agreement" means this Management Agreement.

Exhibit F

“Fiscal Year” means the twelve-month period (or shorter period, as may be applicable during Owner’s existence, including the period from the Effective Date through December 31, 2010) ending on December 31 of each year.

“Management Fee” means the management fee as provided in Section 5(a) of this Agreement paid to Manager for its services.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, governmental authority or other entity.

“Property Funds” means all income, revenue and other cash flow derived from the operation of the Property.

ARTICLE 2 APPOINTMENT AND DUTIES OF MANAGER

2.1 Owner hereby appoints Manager (i) to act for and on behalf of Owner with respect to Owner’s rights and duties under the Property Management Agreement, to monitor the conduct of the Property Manager and for the performance of all of the activities attributable to the Owner under the Property Management Agreement, and (ii) to perform all of the duties, obligations and activities described hereinbelow, in each case subject to the consent of Owner in certain cases as specified herein, and subject to the further terms and conditions set forth in this Agreement. Manager shall use its commercially reasonable efforts to perform each of the duties set forth herein.

2.2 Subject to the limitations of Article 4 below, Manager shall be responsible for performing the following services and activities relating to the Property:

2.2.1 Collecting on behalf of Owner all Property Funds, and paying therefrom Owner’s share of any expenses that are not already payable by Property Manager under the terms of the Property Management Agreement, or where additional funds may be needed from Owner to pay Property-related costs to collect such funds from Owner and provide such funds to the Property Manager. Any remaining Property Funds, net of such expenses, shall be remitted to Owner within thirty (30) days from the date of receipt of those Property Funds;

2.2.2 Maintaining a common bank account for the collection and deposit of Property Funds and the payment of expenses described herein; provided, however, that Manager may not pledge, grant a security interest in or lien on such account and must cease depositing any Property Funds into such account if any lien or other encumbrance is imposed on such account, and the Manager shall indemnify and hold Owner harmless from any claims, losses, damages, costs or expenses (including but not limited to, reasonable attorneys’ fees) incurred by Owner in connection with any violation of this covenant by Manager;

2.2.3 Establishing, maintaining and administering any required reserves (but only to the extent not part of the Property Manager’s duties);

2.2.4 Obtaining or modifying any insurance for the Property not obtained by Property Manager and as permitted in the Property Management Agreement;

Exhibit F

2.2.5 Managing any and all renewals or modifications of the Property Management Agreement, subject to the consent of Owner;

2.2.6 Monitoring the performance of Property Manager and Property Manager's compliance with the terms of the Property Management Agreement;

2.2.7 Negotiating, modifying or entering into on behalf of Owner leases (or re-leases) covering up to 5% of the total leaseable space, in the aggregate, of the Property so long as each such lease (or re-lease) meets certain approved, in writing, lease guidelines provided by Owner annually, which such guidelines will include parameters relating to credit worthiness, type of tenants, rental ranges and length of rental term;

2.2.8 Negotiating the modification of the terms of any indebtedness encumbering the Property, including the Loan, subject to the approval of Owner;

2.2.9 Preparing and remitting any necessary state sales tax or similar requests or returns (but which will not include any income tax return) on behalf of Owner, if applicable;

2.2.10 Interacting with, and responding to queries from, the Property Manager and handling all communication between Property Manager and Owner, including the power to declare a default under the Property Management Agreement if the Property Manager is in default of rent payments or commits any other default under the Property Management Agreement;

2.2.11 Interacting with, and responding to queries from, Owner relating to the Property Management Agreement;

2.2.12 Interacting with, and responding to queries from, the Lender relating to the Loan or Property Management Agreement;

2.2.13 The right, but not the obligation, of the marketing and sale of the Property in the event Owner elects to attempt to sell the Property; provided, however, that in the event that this Agreement is not renewed at the end of any one-year term as provided in Article 9 or is otherwise terminated, the right of Manager to market and sell the Property shall lapse, provided, that such non-renewal or termination and lapse of Manager's rights shall not affect any amounts earned by Manager for its services hereunder prior to such non-renewal or termination, which such amounts shall be due and payable to Manager pursuant to the terms hereof. If Manager does market and sell the Property to a third party, Manager shall receive a disposition fee on any such sale to a third party in an amount equal to the then-current market rate for such services, less any third party real estate broker commissions (which third party real estate broker commissions, if any, shall be paid by Manager);

2.2.14 Engaging accountants required for the preparation or review of financial reports required by the Lender or necessary for Owner to prepare and file its income tax returns with respect to the Property (although Owner acknowledges that the actual preparation and filing of its tax returns is the responsibility of Owner);

Exhibit F

2.2.15 Engaging other professionals to render Property-related services that are necessary or desirable and that are not within the purview of the Property Manager;

2.2.16 Furnishing, or causing to be furnished, to Owner copies of financial statements and other instruments, reports or information required by the Loan Documents or other agreements relating to the Property to which Owner is subject, and deliver copies thereof to Owner promptly following the delivery thereof to the Lender or other contract party; and

2.2.17 Performing such other services as may be required from time to time for management and such other activities relating to the Property Management Agreement and the Property as Owner shall reasonably request or Manager shall reasonably deem appropriate under the particular circumstances and to achieve the strategic goals of the Property, to the extent such additional services can be provided by Manager without Manager incurring material additional costs or expenses.

ARTICLE 3 **RECORDS; CONFIDENTIALITY**

Manager shall maintain appropriate books of accounts and records relating to services performed with respect to Owner's interests in the Property hereunder, and such books of accounts and records shall be accessible for inspection by Owner at any time during normal business hours upon ten (10) business days' advance written notice. Notwithstanding the foregoing, Manager shall not maintain books of account and records relating to services that are performed by the Property Manager. Manager agrees that it will keep all information regarding Owner's interests in the Property and its operation strictly confidential; provided however, that Manager may discuss such items with, but only with, parties reasonably necessary for the operation and management of Owner's interests in the Property, including, but not limited to, attorneys, accountants, vendors and contractors. Notwithstanding the foregoing, Manager shall have the absolute right to disclose any information regarding Owner's interests in the Property to the extent required by law, ordered by a court of competent jurisdiction or as determined to be necessary or appropriate by Manager's attorneys to satisfy disclosure and reporting obligations of Manager. The provisions of this Article 3, except for the provisions in the first sentence of this Article 3, shall survive the expiration or earlier termination of this Agreement.

ARTICLE 4 **OBLIGATIONS OF MANAGER; RESTRICTIONS**

Manager shall not conduct any services on behalf of Owner that are not customary in connection with the maintenance and repair of rental real property. Furthermore, Manager shall have no role in determining or controlling Owner's right to transfer or encumber its ownership interest in the Property. Manager shall refrain from any action that would violate the Property Management Agreement or the Loan Documents.

ARTICLE 5 **MANAGEMENT FEE**

In consideration for the services provided by Manager hereunder and in addition to Manager's right to receive reimbursements in accordance with the terms hereof, Manager shall

Exhibit F

be entitled to receive a monthly management fee (the "Management Fee") in the amount equal to 0.25% of the Property Funds received by Manager in such month; provided, however, that for purposes of calculating the Management Fee, the Property Funds will not include any portion of proceeds from the sale, refinancing, condemnation or casualty affecting the Property. Owner acknowledges that the Management Fee shall be paid by the Property Manager to Manager, and that Manager shall be entitled to retain the Management Fee without remitting any part thereof to Owner. Any accrued but unpaid Management Fee for any year or portion thereof shall, in all events, be paid upon the earliest to occur of the following events: (a) the expiration or earlier termination of this Agreement, or (b) the sale or other disposition of the Property. The Manager shall be paid the Management Fee up until the expiration or the earlier termination of this Agreement in accordance with its terms.

ARTICLE 6

EXPENSES INCURRED ON BEHALF OF OWNER BY MANAGER

Owner shall pay all actual, documented out-of-pocket expenses incurred by Manager on behalf of Owner; provided, however, that Owner shall be responsible for, and shall bear all expenses related to, maintaining its legal existence and paying franchise taxes, statutory representation fees and independent manager/springing member fees. Manager shall have the right to offset said expenses against Owner's share of rents from the Property.

ARTICLE 7

INDEMNIFICATION AND EXCULPATION

Each party shall indemnify, defend, protect and hold the other party (and its agents, principals, members, managers, officers and employees) harmless from and against all liabilities, losses, claims, damages, cost and expenses (including without limitation, reasonable attorneys' fees and expenses) that may be incurred by or asserted against any such party and that arise from or in connection with (a) its breach of this Agreement, (b) conduct that is fraudulent, or (c) willful misconduct. The Manager (which for purposes hereof shall include its partners, officers, directors, shareholders, members, managers, employees, agents and affiliates) shall not be liable to Owner for honest mistakes of judgment, or for action or inaction, taken reasonably and in good faith for a purpose that was reasonably believed to be in the best interests of Owner, or for losses due to such mistakes, action or inaction, or for Manager's mere negligence, or for the negligence, dishonesty or bad faith of any employee, broker or other agent of Manager, provided that such employee, broker or agent was selected, engaged or retained and supervised with reasonable care. Manager may consult with counsel and accountants and be fully protected and justified in any action or inaction that is taken in accordance with the advice or opinion of such counsel or accountants, provided that they shall have been selected with reasonable care.

ARTICLE 8

NO PARTNERSHIP

Manager has been independently engaged by Owner as an independent contractor. The parties hereto expressly disclaim any intention to create a joint venture, partnership or similar relationship. Nothing in this Agreement shall cause Manager and Owner to be joint venturers or

Exhibit F

partners of each other, and neither shall have the power to bind or obligate the other party by virtue of this Agreement, except as expressly provided in this Agreement.

ARTICLE 9 TERM

9.1 The initial term of Manager's appointment hereunder shall be for a period of twelve (12) months. The term of Manager's appointment may be extended for an additional one-year period at the end of the initial term and each one-year term thereafter provided that (i) Manager provides written notice of such extension to Owner not less than thirty (30) days prior to the end of the then current term and (ii) Owner does not give Manager written notice of its objection to such extension not more than ten (10) days after receipt of notice from Manager. If Manager fails to provide written notice of any one-year extension to Owners at least thirty (30) days prior to the end of the then current term, then the term of Manager's appointment will be automatically extended on a month-to-month basis until (x) Manager subsequently provides notice of a one-year extension in accordance with the preceding sentence or (y) Owner gives Manager written notice of its intention to terminate the term of Manager's appointment not less than thirty (30) days prior to the end of the then current monthly term.

9.2 Owner may terminate Manager's appointment hereunder if (i) a receiver or trustee in bankruptcy or liquidator is appointed for Manager or (ii) Manager has materially breached this Agreement and not cured such breach to the reasonable satisfaction of Owner within thirty (30) days after Manager's receipt of written notice describing such breach in reasonable detail or, if such breach cannot be reasonably cured within thirty (30) days, has not commenced to cure such breach within such period and does not continue with diligence to cure such breach until cured to Owner's reasonable satisfaction.

9.3 If the term of Manager's appointment is not renewed pursuant to Section 9(a) or is terminated pursuant to Section 9(b), a successor Manager shall be selected by Owner, subject to the further consent of the Lender. For as long as any part of the Loan remains unpaid, Owner hereby agrees that (i) Owner will comply with the requirements of the Loan Documents insofar as they may require Owner to consent to renew Manager's appointment hereunder for a successive 12-month term, and (ii) Owner's failure to respond to Manager's or the Lender's request for consent to renew within ten (10) days of such request shall be deemed to signify Owner's consent.

9.4 This Agreement shall terminate upon the sale or conveyance of all, or substantially all, of the Property.

9.5 If this Agreement is not renewed or is terminated pursuant to this Article 9, such non-renewal or termination shall be without any further liability or obligation of either party to the other, except as provided in Articles 3 (except for the provisions contained in the first sentence of Article 3) 5, 6, 7 and 10.

Exhibit F

ARTICLE 15
HEADINGS

The headings and captions used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. All references in this Agreement to sections, paragraphs, exhibits and schedules shall, unless otherwise provided, refer to sections and paragraphs hereof and exhibits and schedules attached hereto, all of which exhibits and schedules are incorporated herein by this reference.

ARTICLE 16
COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories.

ARTICLE 17
SEVERABILITY

If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision(s) shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision(s) were so excluded and shall be enforceable in accordance with its terms.

ARTICLE 18
GENDER AND NUMBER

Words used herein regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

ARTICLE 19
MODIFICATIONS

No modification, alteration or amendment of this Agreement shall be binding unless in writing and executed by the parties hereto, their heirs, successors or assigns.

ARTICLE 20
ASSIGNMENT

Manager shall not assign its interests under this Agreement, in whole or in part, without the Owner's prior written consent.

[signature page follows]

Exhibit F

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date set first above written.

MANAGER:

FOREST CITY COMMERCIAL
MANAGEMENT INC., an Ohio corporation

By: _____
Name: _____
Title: _____

Address:

c/o Forest City Enterprises, Inc.
Terminal Tower, Suite 1360
50 Public Square
Cleveland, Ohio 44113
Attn: General Counsel
Facsimile: (216) 263-6206

OWNER:

FC/LW VEGAS, LLC, a Delaware limited
liability company

By: FC Vegas 20, LLC, a Nevada limited
liability company, its Managing Member

By: Rolling Acres Properties Co. Limited
Partnership, its managing member

By: Artus, Inc., an Ohio corporation,
its general partner

By: _____
Name: _____
Title: _____

Address:

c/o Forest City Enterprises, Inc.
Terminal Tower, Suite 1360
50 Public Square
Cleveland, Ohio 44113
Attn: General Counsel
Facsimile: (216) 263-6206

Exhibit F

EXHIBIT "A"

DESCRIPTION OF LAND

ATTACHED

Exhibit F

48-0064

Case No.: A

RA 000814

Item	Description
	<p>Indemnity Shares and the R&W Shares issued pursuant to the foregoing adjustment mechanisms will be fixed at the per share of Common Stock equivalent price of the securities sold in the PPO (as defined below).</p> <p>Contemporaneous with the Merger, Pubco will transfer all of its pre-merger operating assets and liabilities to a newly formed wholly owned subsidiary ("Split-Off Subsidiary"). Thereafter, Pubco shall transfer all of the outstanding shares of capital stock of Split-Off Subsidiary to Pubco's pre-Merger insiders, in exchange for the surrender and cancellation of shares of Pubco Common Stock held by such persons (the "Split-Off").</p> <p>Closing of the Merger and of at least the Minimum PPO (as defined below) will each be a condition precedent to the other and will occur simultaneously.</p>
4. Private Placement Offering	<p>Pubco will conduct a private placement offering pursuant to Regulation D and/or Regulation S under the Securities Act and any and all applicable state securities laws (the "PPO") for a minimum of \$3,000,000 (the "Minimum PPO") through the sale of 12,000,000 Units (as defined below) of Pubco's securities and a maximum of \$5,000,000 (the "Maximum PPO") through the sale of 20,000,000 Units, at an offering price of \$0.25 per Unit (the "Offering Price"), each Unit comprised of one (1) share of Pubco's Common Stock and a callable warrant to purchase one (1) share of Common Stock at an exercise price of \$1.00 per share for five (5) years (the "PPO Warrants"). Each share of Common Stock is entitled to one vote per share. Pubco may, with the consent of KhromaNewco, sell up to an additional 3,000,000 Units for \$750,000 (the "Over-Allotment Option") in the event the PPO is oversubscribed.</p> <p>The investors in the Units will have anti-dilution protection such that if within twenty-four (24) months after the Closing Date Pubco shall issue additional shares of Common Stock or Common Stock equivalents (subject to customary exceptions, including but not limited to issuances of awards under the EIP) for a consideration per share less than the Offering Price (the "Lower Price"), each such investor will be entitled to receive from Pubco additional Units in an amount such that, when added to the number of Units initially purchased by such investor, will equal the number of Units that such investor's PPO subscription amount would have purchased at the Lower Price. The PPO Warrants shall have "weighted average" anti-dilution protection, subject to customary exceptions, including but not</p>

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Item	Description
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limited to issuances of awards under the EIP.

The closing of the Merger will occur upon (a) the closing of at least the Minimum PPO, (b) the completion and delivery by ~~Khroma~~Newco to Pubco of the Financial Statements and (c) definitive documentation of the Merger and related transactions satisfactory to the parties. After the closing of the Minimum PPO, Pubco may continue the PPO on the terms above up to the Maximum PPO, or at the discretion of the Board, terminate the PPO and raise additional capital on new pricing.

5. Broker/Dealer:

A U.S.-registered broker-dealer, shall be engaged on an exclusive basis as placement agent (the "Placement Agent"), on a best efforts basis, for the Bridge Notes and for the PPO, pursuant to a placement agent agreement to be executed by the parties, in a form satisfactory to Pubco and ~~Khroma~~Newco (the "Placement Agent Agreement").

The Placement Agent will be paid a total cash commission of four percent (4%) of funds raised from investors introduced to the Bridge Notes by it (the "Brokers' Bridge Fee"); provided that, upon the conversion of the Bridge Notes on the closing of the merger and Minimum PPO, the Placement Agent will be paid an additional Brokers' Bridge Fee of four percent (4%) of funds raised from investors introduced to the Bridge Notes by it and will receive warrants to purchase such number of shares of Pubco Common Stock equal to eight percent (8%) of the number of shares of Pubco Common Stock into which the Bridge Notes sold to investors introduced by it are converted, with a term of five (5) years and an exercise price equal to ~~equal to []% of the PPO Purchase Price of \$0.25~~ per share ("Brokers' Bridge Warrants")

The Placement Agent will be paid a total cash commission of eight percent (8%) of funds raised from investors introduced to the PPO by it ("Brokers' PPO Fee") plus warrants to purchase such number of shares of Pubco Common Stock equal to eight percent (8%) of the number of shares of Pubco Common Stock contained in the Units sold in the PPO to investors introduced to the PPO by it, with a term of five (5) years and an exercise price of \$0.25 per share ("Brokers' PPO Warrants").

Any sub-agent of the Placement Agent that introduces investors to the Bridge Notes or the PPO shall be entitled to share in the cash fees and warrants attributable to those particular investors.

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Item	Description
6. Consideration; Capitalization	<p>Upon the closing of the Merger and the Minimum PPO, Pubco shall have an authorized capitalization of 300,000,000 shares of Common Stock and 10,000,000 million shares of “blank check” preferred stock.</p> <p>In consideration for the Merger, the stockholders of <u>KhromaNewco</u> shall receive, in exchange for all of their outstanding shares of capital stock, on a fully-diluted basis, of <u>KhromaNewco</u>, 20,000,000 restricted shares of Pubco Common Stock, pro rata (subject to escrow of the Indemnity Shares as described above).</p> <p>10,000,000 restricted shares of Pubco Common Stock will be reserved for issuance to [the Kardashians] for consideration to be provided by them.</p> <p><u>If Pubco signs a licensing agreement with Mario Lopez for a celebrity endorsement by June 30, 2012, on terms and conditions reasonably satisfactory to a majority of the disinterested members of the incoming Pubco Board of Directors, then Pubco shall issue an additional 5,000,000 restricted shares of Pubco Common Stock to the stockholders of record of Newco immediately prior to the Merger, on a pro rata basis (the “Performance Bonus”).</u></p> <p>Pubco shareholders will retain, after giving effect to the Split-Off, 62,000,000 shares of Pubco Common Stock.</p> <p>The investors in the PPO will own 12,000,000 restricted shares of Pubco Common Stock if the Minimum PPO is sold and 20,000,000 restricted shares of Pubco Common Stock if the Maximum PPO is sold (without giving effect any sale of the Overallotment Option or exercise of PPO Warrants) (subject to registration rights as provided below).</p> <p>Upon the Closing Date, the Board of Directors of Pubco shall have adopted a 20,000,000-share Equity Incentive Plan (the “EIP”) for the future issuance, at the discretion of the Board, of incentive awards to officers, key employees, consultants and directors. Pubco may not grant awards under the EIP for more than 4,000,000 shares of Pubco Common Stock per year during the first year following the Closing.</p> <p>The actual and fully diluted capitalizations (reflecting the Bridge Financing and both the Minimum PPO and the Maximum PPO) are set forth in the capitalization tables attached hereto as <u>Exhibit A</u>.</p>

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Item	Description
7. Financial Statements of KhromaNewco; Signing Date	On or prior to the Closing Date, KhromaNewco shall provide the Financial Statements. It is contemplated that the definitive agreements (e.g., the Merger Agreement) will be signed on or before the last day of the Exclusivity Period (as hereinafter defined).
8. Board of Directors; Officers	Immediately following the Closing Date, the Board of Directors of Pubco shall consist of five (5) members, at least three (3) of whom shall be independent, and who shall include Ronald S. Altbach, as Chairman, and Nicole Ostoya. Pubco's current shareholders shall have the right to appoint one (1) member of the Board of Directors, provided that such appointee is reasonably acceptable to the KhromaNewco -appointed directors; KhromaNewco shall be entitled to appoint the rest of the directors. On the Closing Date, all of the current officers and directors of Pubco shall resign and, simultaneously therewith, the new Board of Directors shall be appointed, and such officers as shall be determined by the Board (including Nicole Ostoya, as CEO) shall be appointed.
9. Registration	Promptly, but no later than ninety (90) calendar days from the final Closing Date of the PPO, Pubco shall file a registration statement (on Form S-1, or similar form) with the SEC covering (a) the shares of Common Stock into which Bridge Notes are converted, (b) the shares of Common Stock issuable upon exercise of the Bridge Warrants, (c) the shares of Common Stock issued in the PPO, and (d) the shares of Common Stock issuable upon exercise of the PPO Warrants (but not including the shares of Common Stock underlying the Brokers' Bridge Warrants or the Brokers' PPO Warrants) (the "Registration Statement"). Pubco shall use its commercially reasonable efforts to ensure that such Registration Statement is declared effective within one hundred fifty (150) calendar days of filing with the SEC. If Pubco is late in filing the Registration Statement or if the Registration Statement is not declared effective within one hundred fifty (150) days of filing with the SEC, monetary penalties payable by Pubco to the holders of registrable Common Stock that has not been so registered will commence to accrue and cumulate at a rate equal to one percent (1.00%) of the Offering Price per share for each full month that (i) Pubco is late in filing the Registration Statement or (ii) the Registration Statement is late in being declared effective by the SEC; provided, however, that in no event shall the aggregate of any such penalties exceed ten percent (10%) of the Offering Price per share. Notwithstanding the foregoing, no penalties shall accrue with respect to any shares of Common Stock removed from the Registration Statement in response to a comment from the staff of the SEC limiting the number of shares of Common Stock which may be

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Item	Description
	<p>included in the Registration Statement (a “Cutback Comment”).</p> <p>Pubco shall keep the Registration Statement “evergreen” for two (2) years from the date it is declared effective by the SEC or until Rule 144 of the Securities Act is available to the holders of registrable shares with respect to all of their shares, whichever is earlier.</p> <p>In any follow on “best efforts” private placement offering of Pubco’s securities that provides for registration rights, the PPO investors will be entitled to “piggy back” registration rights.</p> <p>The holders of the Brokers’ Bridge Warrants and Brokers’ PPO Warrants, as well as the holders of any shares of Common Stock removed from the Registration Statement as a result of a Cutback Comment (but not holders of the shares issued to the stockholders of KhromaNewco in consideration for the Merger), shall have “piggyback” registration rights for the shares of Common Stock underlying such Warrants with respect to any registration statement filed by Pubco following the effectiveness of the aforementioned Registration Statement which would permit the inclusion of such underlying shares.</p> <p>In addition, for a period of twenty-four (24) months following the closing of the Transactions, Pubco shall not register, nor shall it take any action to facilitate registration, under the Securities Act, the shares of the Common Stock of Pubco issued pursuant to the Merger to the “Restricted Holders,” as defined below. The above restriction shall not prohibit Pubco from registering on Form S-8 Common Stock issued under the Plan, as and to the extent permitted under the Securities Act, to persons other than Restricted Holders.</p>
10. Restriction on Sale; No Shorting; Organic Change	<p>All securities issued pursuant to the Merger and in the PPO will be “restricted” securities and shall be subject to all applicable resale restrictions specified by federal and state securities laws. At Closing, all officers; directors; stockholders holding ten percent (10%) or more of the Common Stock of Pubco after giving effect to the Merger, the Split-Off and the PPO of Pubco; and key employees agreed by Pubco and KhromaNewco (each a “Restricted Holder”; collectively the “Restricted Holders”), shall enter into Lock-Up Agreements with Pubco for a term of twenty-four (24) months, whereby they will agree to certain restrictions on the sale or disposition (including pledge) of all of the Common Stock of Pubco held by them.</p> <p>In addition, each Restricted Holder shall agree that it will not, for a</p>

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Item	Description
	<p>period of twenty-four (24) months following the Closing Date, directly or indirectly, effect or agree to effect any short sale (as defined in Rule 200 under Regulation SHO of the Exchange Act), whether or not against the box, establish any “put equivalent position” (as defined in Rule 16a-1(h) under the Exchange Act) with respect to the Common Stock, borrow or pre-borrow any shares of Common Stock, or grant any other right (including, without limitation, any put or call option) with respect to the Common Stock or with respect to any security that includes, relates to or derives any significant part of its value from the Common Stock or otherwise seek to hedge its position in the Common Stock.</p>
11. Conditions to Closing; Name Change	<p>The Merger shall include certain customary and other closing conditions including the following:</p> <ul style="list-style-type: none"> (i) consummation of all required definitive instruments and agreements, including, but not limited to, the Merger Agreement in forms acceptable to Pubco and KhromaNewco; (ii) obtaining all necessary board, shareholder and third party consents, including but not limited to the EIP; (iii) satisfactory completion by Pubco and KhromaNewco of all necessary technical and legal due diligence; (iv) the completion of the offer and sale of the Minimum PPO; (v) <u>the execution by Pubco and GG of an agreement for GG to provide creative services to Pubco, including non-compete and non-circumvention provisions and a right of first refusal in favor of Pubco on all opportunities generated by GG for licensing products or services from celebrities or other public persons, all on terms and conditions reasonably satisfactory to a majority of the disinterested members of the incoming Pubco Board of Directors;</u> (vi) no material indebtedness or pending or threatened litigation against Pubco as of Closing Date other than as disclosed on the appropriate schedule; and (vii) receipt by Pubco of the Financial Statements. <p>Notwithstanding the foregoing, the parties shall continue to be bound by the provisions of Section 18 in the event of any termination of this</p>

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	Term Sheet.
	In connection with the Transactions, Pubco will change its name to Khroma, Inc. , or such other name as is specified by <u>KhromaNewco</u> . Pubco may, with the permission of <u>KhromaNewco</u> , change its name prior to the Closing Date.
12. Pre-Closing Covenants	Pubco and Khroma <u>Pubco, on the one hand, and GG and Newco (together, the "GG Parties"), on the other hand,</u> shall each cooperate with each other and use their reasonable best efforts to execute and deliver the Merger Agreement and all other documents necessary or desirable to effect the Transactions as soon as possible and to thereafter satisfy each of the conditions to closing specified thereunder.
13. Employment Agreements	Nicole Ostoya, as CEO, and such other employees as <u>KhromaNewco</u> shall designate, shall, upon the Merger, each have employment agreements with Pubco mutually satisfactory to <u>KhromaNewco</u> , Pubco and such respective employees.
14. Closing Costs; G&P Retainer	<p>All fees and expenses relating to the Transactions, including but not limited to Brokers' Bridge Fees and Brokers' PPO fees, legal and accounting fees, will be payable at each closing of the Bridge Financing or PPO from the proceeds thereof.</p> <p>The Parties understand that Gottbetter & Partners, LLP ("G&P") has been or will be engaged by Pubco as its corporate and securities counsel in respect of the Transactions and that G&P will continue to be retained by Pubco after the Merger to serve as its corporate and securities counsel, including the Registration Statement and any other filings to be made with the SEC under the Securities Act and all reports and schedules to be filed with the SEC under the Exchange Act (e.g., 10-K, 10-Q, 8-K, 14C, etc.) ("G&P Retainer"); and that the fees and expenses of G&P incurred by Pubco relating to the Transactions will be payable at Closing from the proceeds of the PPO. The terms and conditions of the G&P Retainer are subject to a written agreement with Pubco.</p>
15. Exclusivity	From and after the date of the execution of this Term Sheet through and including June 15, 2012 ("Exclusivity Period"), Khroma <u>the GG Parties</u> and Pubco each hereby covenant and agree that it will not enter into any public offering, merger, combination, divestiture, financing, joint venture, sale and/or acquisition agreement in whatever form, except for agreements in the ordinary course of

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Mitchell

Item	Description
	business or enter into any other transaction that would preclude the consummation of the PPO and the Merger Agreement consistent with the terms set forth in this Term Sheet. During the Exclusivity Period, Khroma <u>the GG Parties</u> and Pubco will each incur legal and other costs and expenses in connection with the negotiation of the Transaction and certain due diligence activities relating thereto. Either Mitchell or Khroma <u>the GG Parties</u> shall have the right, upon prior written notice to the other parties hereto, to terminate its obligations hereunder at any time if the results of its due diligence inquiry are unsatisfactory to Mitchell or Khroma <u>the GG Parties</u> .
16. Governing Law	This Term Sheet shall be governed and construed in accordance with the laws of the State of New York, without giving effect to principles of conflicts or choice of laws thereof.
17. Use of Proceeds	Pubco shall receive the gross proceeds from the PPO, less brokerage commissions, investment banking, legal and accounting fees directly relating to the Transactions, as set forth herein, subject to the terms of the Placement Agent Agreement. The net proceeds will be utilized by Pubco for general working capital purposes.
18. Termination and Effects of Termination	The obligations of the parties to each other under this Term Sheet shall terminate upon the first to occur of (i) the expiration of the Exclusivity Period, (ii) termination by Mitchell or Khroma <u>the GG Parties</u> pursuant to Section 15 of this Term Sheet or (iii) the execution and delivery of a Merger Agreement among Khroma <u>Newco</u> , Pubco and the acquisition subsidiary, provided that the provisions and obligations of the parties created by Sections 14, 18 and 19 shall survive the termination of this Term Sheet. In the event Khroma terminates <u>the GG Parties terminate</u> and/or breaches <u>breach</u> this Term Sheet and/or does not effectuate the Transactions described herein, then Khroma agrees <u>the GG Parties agree</u> to immediately pay Mitchell the lesser of Mitchell's accountable expenses or \$100,000 as a break-up fee for its role in the Transactions provided Mitchell has secured, or caused to secure, financing on terms substantially similar to the PPO.
19. Confidentiality	Each of the parties to this Term Sheet agrees to maintain the confidentiality of the terms of this Term Sheet and the Transactions, and not to use any information it may learn about the other party for any purpose other than to consummate the Transactions. Further, no disclosure of any information concerning this Term Sheet, the Transactions or any confidential information delivered by either party to the other pursuant to this Term Sheet or the Transactions shall be

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Item	Description
	<p>disclosed to any other person unless and until such other person shall have first executed and delivered a written confidentiality agreement (or is otherwise legally bound by reasonably comparable confidentiality obligations existing under contract or pursuant to the terms of his (or her) work with any party to this Agreement) by which such person agrees to hold in confidence such confidential information, which obligation shall continue indefinitely, except as required by federal and/or state securities laws.</p> <p>The parties may publish a press release upon execution of this Term Sheet, the contents of which will be subject to the prior approval of all parties, not to be unreasonably withheld.</p>
20. Notices	<p>Any notices desired, required or permitted to be given hereunder shall be delivered personally or mailed, certified or registered mail, return receipt requested, or delivered by overnight courier service, to the following addresses: (i) if to Mitchell, to the address first written above, Attention: David Mitchell, facsimile 212-588-0286; with a copy to Gottbetter & Partners, LLP, 488 Madison Ave., 12th Fl., New York, NY 10022, Attention: Adam S. Gottbetter, Esq., facsimile 212-400-6901; and (ii) if to Khromathe GG Parties, at the address provided above, facsimile <u> </u>; 310-581-4652, with a copy to <i>[counsel's address]</i>.</p>
21. Certain Conflicts of Interest	<p>Adam S. Gottbetter is the owner of Gottbetter Capital Group, Inc., G&P and Gottbetter Capital Markets, LLC. Gottbetter Capital Group, Adam S. Gottbetter and/or other affiliates of Mr. Gottbetter may own securities of Pubco. G&P has been or will be engaged by Pubco as its corporate and securities counsel in respect of the Transactions, and G&P will continue to be retained by Pubco after the Merger to serve as its corporate and securities counsel. Such engagement of G&P by Pubco is subject to an executed agreement between Pubco and G&P. Gottbetter Capital Markets, LLC, may act as Placement Agent or sub-agent for the Bridge Financing and/or the PPO, for which it may receive the Brokers' Bridge Fee and Brokers' Bridge Warrants and/or Brokers' PPO Fee and Brokers' PPO Warrants in accordance with an executed Placement Agent Agreement.</p>
22. Disclaimers	<p>Mitchell is not a broker dealer and this document is for information purposes only and is not a solicitation of any order to buy or sell securities or other instruments. The information provided herein may be displayed and printed for your use only. The information is not intended to provide tax, legal or investment advice. The securities described herein may not be eligible for sale in all jurisdictions or to</p>

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all categories of investors. Mitchell, its affiliates, and any officer, director or stockholder, client or any member of their families may from time to time purchase or sell or have a position in any securities discussed herein. There may be instances when fundamental, technical and quantitative opinions contained herein, if expressed, may not be in concert. Mitchell, or one of its affiliates, may from time to time perform investment banking or other services for the company mentioned herein. Mitchell, and/or its directors, officers, and employees or clients may serve as a director of the company mentioned herein. Mitchell accepts no liability for any loss or damage of any kind whatsoever arising out of the use of the information contained herein. You may not reproduce, retransmit, distribute, sell, publish, broadcast or circulate the information to anyone, without the express written consent of Mitchell. This communication is not an offer to sell or the solicitation of any offer to buy nor shall there be any sale of the securities in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state.

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

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Mitchell

This Term Sheet sets forth the contemplated principal terms of the Transactions and constitutes a binding contract on the part of the parties hereto. All of the binding obligations of the parties with respect to the Transactions shall be further memorialized by the execution and delivery of the definitive Merger Agreement and the related documentation.

We look forward to working with you to complete the Transactions successfully and expeditiously. If the foregoing correctly sets forth your understanding, please evidence your agreement to this Term Sheet by executing a copy of this Term Sheet in the space set forth below.

MITCHELL HOLDINGS, LLC

By: _____
Name: David Mitchell
Title: CEO

AGREED TO AND ACCEPTED:

This ____ day of _____, 2012

KHROMA, INC.

GOLDEN GRENADE []

By: _____
Name: Nicole Ostoya
Title: CEO

AGREED TO AND ACCEPTED:

This ____ day of _____, 2012

NEWCO: Name of Newco _____

By: _____
Name: _____
Title: _____

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EXHIBIT A
Capitalization*

Minimum PPO				
	Actual		Fully Diluted	
	<u>Shares</u>	<u>% Ownership</u>	<u>Shares</u>	<u>% Ownership</u>
Newco	20,000,000	20.0%	20,000,000	13.8%
Performance Bonus			5,000,000	3.5%
Bridge Notes	6,000,000	6.0%	6,000,000	4.2%
Bridge Warrants			6,000,000	4.2%
PPO Shares	12,000,000	12.0%	12,000,000	8.3%
PPO Warrants			12,000,000	8.3%
Brokers' Bridge Warrants			480,000	0.3%
Brokers' PPO Warrants			960,000	0.7%
Pubco	62,000,000	62.0%	62,000,000	42.9%
EIP (future issuances)			20,000,000	13.8%
Total	<u>100,000,000</u>	<u>100.0%</u>	<u>144,440,000</u>	<u>100.0%</u>

Maximum PPO				
	Actual		Fully Diluted	
	<u>Shares</u>	<u>% Ownership</u>	<u>Shares</u>	<u>% Ownership</u>
Newco	20,000,000	18.5%	20,000,000	12.4%
Performance Bonus			5,000,000	3.1%
Bridge Notes	6,000,000	5.6%	6,000,000	3.7%
Bridge Warrants			6,000,000	3.7%
PPO Shares	20,000,000	18.5%	20,000,000	12.4%
PPO Warrants			20,000,000	12.4%
Brokers' Bridge Warrants			480,000	0.3%
Brokers' PPO Warrants			1,600,000	1.0%
Pubco	62,000,000	57.4%	62,000,000	38.5%
EIP (future issuances)			20,000,000	12.4%
Total	<u>108,000,000</u>	<u>100.0%</u>	<u>161,080,000</u>	<u>100.0%</u>

*Assumes no sales pursuant to the Over-Allotment Option.

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this Mortgage, the Note, the Guaranty and the documents executed and/or delivered in connection therewith will not defraud, hinder or delay any of the creditors of the Mortgagor or the Guarantor and neither the Mortgagor nor the Guarantor is or will be rendered insolvent by reason of the execution of this Mortgage, the Note, the Guaranty or the documents executed in connection therewith. The Mortgagor and the Guarantor are, to the best of their knowledge, not in default, nor have either of them received any notice of any uncured default, under the terms of any instrument evidencing or securing any indebtedness of the Mortgagor or the Guarantor, respectively, and there has, to the best of their knowledge, occurred no event, which, if uncured or uncorrected would constitute a default under any such instrument upon notice or lapse of time or both. All reports, statements and other data furnished by the Mortgagor and the Guarantor to the Mortgagee in connection with the loan evidenced by the Note are true, correct and complete in all material respects and do not omit to state any fact or circumstance necessary to make the statements contained therein not misleading. This Mortgage, the Note, the Guaranty and other instruments securing the Note or otherwise executed in connection therewith are valid and binding obligations enforceable in accordance with their respective terms.

6.02 Compliance with Other Instruments, etc. The execution, delivery, recordation and performance of this Mortgage and the consummation of the transactions contemplated hereby (including the issue and sale of the Note) will not result in any violation of any term or condition of any contract, agreement, lease, instrument, judgment, decree, order, statute, rule, regulation, ordinance, franchise, certificate, permit or the like applicable to Mortgagor or the Guarantor or by which Mortgagor or the Guarantor or its or their properties or assets are bound or affected.

6.03 Governmental Consent. No consent, approval or authorization of, or registration, declaration or filing with, any governmental or public authority, body or agency is required in connection with the valid execution, delivery and performance by Mortgagor of this Mortgage and the issue and sale of the Note except the recordation of this Mortgage in the appropriate recording office or offices and the filing of all necessary financing statements with respect thereto.

6.04 Litigation, etc. There is no action, suit, proceeding or investigation pending or threatened, or, to the best of Mortgagor's knowledge, any basis therefor known to Mortgagor, which questions the validity of this Mortgage or the Note, or any action taken or threatened to be taken pursuant thereto. No notice has been given by any governmental authority of any proceeding to condemn, purchase or otherwise acquire the Mortgaged Property or any part thereof or interest therein and, to the best of Mortgagor's knowledge, no such proceeding is contemplated.

6.05 No Violations, etc. Mortgagor is in compliance in all respects with all governmental laws, rules and regulations and other requirements which are applicable to the Mortgaged Property or any part thereof, or any use or condition of the Mortgaged Property or any part thereof. Except as may be set forth in any municipal violations search with respect to the Property heretofore delivered to Mortgagee, Mortgagor has no knowledge of any violation, nor is there any notice or other record of violation, of any zoning, health, safety, building, fire,

labor, environment, or other statute, ordinance, rule, regulation or restriction applicable to the Mortgaged Property or any part or use thereof.

6.06 Use of Proceeds. Mortgagor has applied and will apply the proceeds of the Note for such purpose as does not and will not constitute a use of any part thereof, directly or indirectly, for the purpose of purchasing or carrying any "margin security" within the meaning of Regulation G, 12 C.F.R. 207, as amended, and no part of the proceeds of the Note was used or will be used for the purpose (whether immediate, incidental or ultimate) of "purchasing" or "carrying" any "margin security" within the meaning of such Regulation G or for the purpose of reducing or retiring any indebtedness which was originally incurred for any such purpose. Mortgagor does not own or have any present intention of acquiring any such margin security and will not otherwise knowingly take or permit any action which would involve a violation of such Regulation G or any other Regulation of the Board of Governors of the Federal Reserve System.

6.07 Easements and Utility Services. Mortgagor has all easements, including those for use, maintenance, repair and replacement of and access to structures, facilities or space for support, mechanical systems, utilities (including water and sewage disposal) and any other private or municipal improvements, services and facilities, necessary for the proper operation, repair, maintenance, occupancy and use of the Mortgaged Property for its current and any proposed uses. Electric, gas, sewer and water facilities and all other necessary utilities are available in sufficient capacity to satisfactorily service the Mortgaged Property.

6.08 Disclosure. Neither this Mortgage nor any other document or certificate furnished to Mortgagee or to counsel for Mortgagee in connection with the transactions contemplated hereby contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading.

6.09 Offering of the Note. Neither Mortgagor nor anyone acting on its behalf has directly or indirectly offered the Note or any part thereof or any similar instrument for sale to, or solicited any offer to buy any of the same from, anyone other than Mortgagee. Neither the Mortgagor nor anyone acting on its behalf has taken or will take any action which would subject the issuance of the Note to the provisions of Section 5 of the Securities Act of 1933, as amended, or similar state or local laws.

ARTICLE 7

Definitions

7.01 Definitions. For all purposes of this Mortgage, the following terms have the following respective meanings unless the context otherwise requires:

Compliance Certificate: a certificate of the Mortgagor, executed and delivered by a principal of the Mortgagor, or if the Mortgagor is an individual or individuals, by such individual or individuals, setting forth in reasonable detail the investigation upon which the

matters set forth in such certificate are based and the section of this Mortgage pursuant to which the certificate is being delivered.

Default: any condition or event which constitutes an Event of Default or which, after notice or lapse of time or both, would constitute an Event of Default.

Default Rate: the meaning specified in the Note but if not so specified than an interest rate equal to twenty four and one-half (24-1/2%) percent per annum, or the highest interest rate permitted by law, whichever is lower.

Due and Payable: when used with reference to the principal of, or premium or interest on, or when referring to any and all other sums secured by this Mortgage shall mean due and payable, whether at the monthly or other date of payment or at the date of maturity specified in the Note or this Mortgage; or, in the case of Impositions, the last day upon which any charge may be paid without penalty and/or interest and/or without becoming a lien upon the Mortgaged Property.

Event of Default: the meaning specified in Section 5.01.

Furniture, Furnishings and Equipment: the meaning specified in the Granting Clause.

Guarantor: the individuals who have executed the Guaranty, jointly and severally.

Guaranty: the meaning specified in Section 1.04.

Herein, Hereof, Hereto and Hereunder: shall refer to this Mortgage and all amendments, modifications, extensions and renewals hereof.

Impositions: the meaning specified in Section 2.04.

Improvements: the meaning specified in the Granting Clause.

Including: shall mean "including but not limited to".

Insurance Requirements: the meaning specified in Section 2.05.

Land: the meaning specified in the recitals.

Leases: the meaning specified in the Granting Clause.

Legal Requirements: the meaning specified in Section 2.05.

Loan Documents: shall mean the Note, this Mortgage and each and every other document executed and delivered in connection therewith.

Mortgage: this Mortgage (and Assignment of Leases and Rents and Security Agreement), dated the date hereof between Mortgagor and Mortgagee.

Mortgage Commitment Letter: the meaning specified in Section 1.05.

Mortgaged Property: the meaning specified in the Granting Clause.

Note: the meaning specified in the Granting Clause.

Permitted Encumbrances: the meaning specified in Section 2.01.

Person: a corporation, an association, a partnership, a limited liability company or partnership, an entity, an organization, a business, an individual, a trust, a government or political subdivision thereof or a governmental or quasi-governmental agency.

Property: the same as the Mortgaged Property.

Taking: the meaning specified in Section 3.02.

Total Destruction: the meaning specified in Section 3.04.

Total Taking: the meaning specified in Section 3.04.

ARTICLE 8

Miscellaneous

8.01 Further Assurances. Mortgagor at its expense will execute, acknowledge and deliver all such instruments and take all such actions as Mortgagee from time to time may reasonably request (a) to better subject to the lien and security interest of this Mortgage all or any portion of the Mortgaged Property, (b) to perfect, publish notice or protect the validity of the lien and security interest of this Mortgage, (c) to preserve and defend the title to the Mortgaged Property and the rights of Mortgagee therein against the claims of all persons and parties so long as this Mortgage shall remain undischarged, (d) to better subject to the lien and security interest of this Mortgage with respect to any replacement or substitution for any Improvements or any other after-acquired property, or (e) in order to further effectuate the purpose of this Mortgage and to carry out the terms hereof and to better assure and confirm to the Mortgagee its rights, powers and remedies hereunder. Mortgagor grants to Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Mortgagee at law and in equity, including without limitation such rights and remedies available to Mortgagee pursuant to this Section 8.01.

8.02 Certificates. At Mortgagee's request, Mortgagor shall without charge, at any time and from time to time, deliver promptly to Mortgagee or its designee a certificate duly executed by Mortgagor and each Guarantor certifying the principal amount then outstanding hereon, or on the Note, the date to which interest has been paid, and that no condition exists and no event has occurred under this Mortgage or the Note which constitutes a default hereunder, or which, with the passage of time or giving of notice or both, would constitute a default hereunder or, if any such condition exists or event has occurred, specifying the nature and period of existence thereof or the date of occurrence.

8.03 Additional Security. Without notice to or consent of Mortgagor, and without impairment of the lien and rights created by this Mortgage, Mortgagee may accept from Mortgagor or from any other Person additional security for the Note; neither the giving of this Mortgage nor the acceptance of any such additional security shall prevent Mortgagee from resorting, first, to such additional security, or, first, to the security created by this Mortgage, or concurrently to both, in any case without affecting Mortgagee's lien and rights under this Mortgage.

8.04 Notices, etc. All notices, demands, requests, consents, approval and other instruments under this Mortgage or the Note shall be in writing and shall be deemed to have been actually or properly given if and when mailed by first-class registered or certified mail, return receipt requested, postage prepaid, addressed (a) if to Mortgagor, to it at its address set forth above with a courtesy only copy to Randolph Amengual, Esq., Katsky Korins LLP, 605 Third Avenue, New York, New York 10158 and to Lawrence P. Lenzner, Esq., Patterson Belkap Webb & Tyler LLP, 1133 Avenue of the Americas, New York, New York 10036, (b) if to Mortgagee originally named herein to it at Suite 303, 60 Cutter Mill Road, Great Neck, New York 11021, Attention: Jeffrey A. Gould, President, with a copy to Mark H. Lundy, Vice President, Suite 303, 60 Cutter Mill Road, Great Neck, New York 11021, or at such other address as Mortgagee may have designated by notice to Mortgagor, or (c) if to any other holder of any Note, at such address as such holder shall have designated by notice in writing to Mortgagor, or, until an address is so designated, to and at the address of the last holder so designating an address. The foregoing insertion of Mortgagor's mailing address shall be deemed to be a request by Mortgagor that a copy of any notice of default and of any notice of sale hereunder be mailed to Mortgagor at such address as provided by law. Mortgagor hereby irrevocably appoints Randolph Amengual, Esq. as Mortgagor's agent for the service of process ("Agent") in any action on the Note, this Mortgage or any other document executed in connection therewith, and Agent hereby accepts such appointment. Mortgagor hereby agrees that service of process on Mortgagor may be made solely by serving Agent in any manner provided by law and that personal service upon Mortgagor is hereby waived. Agent may resign as Agent hereunder provided that (i) Agent shall give ten (10) days' prior written notice thereof to Mortgagee, (ii) Agent shall appoint a successor agent for the service of process on Mortgagor, which agent must acknowledge in writing its acceptance of such appointment and must be an attorney or law firm located within New York City, New York, and (iii) Agent shall include in its notice referred to in (i) above the name and address of the successor agent and an original of the acceptance of the appointment referred to in (ii) above. From and after the effective date of the notice referred to in the preceding sentence, the successor agent shall be referred to as the "Agent" hereunder. The rights given to Mortgagee

in this Paragraph to just serve Agent shall be in addition to Mortgagee's permitted methods of service under applicable law and nothing in this Paragraph shall limit or restrict Mortgagee to just serving Agent and Mortgagee shall be permitted to otherwise serve Mortgagor in any manner provided by law (with or without also serving Agent). Mortgagor shall not be entitled to any notices of any nature whatsoever from Mortgagee except with respect to matters for which this Mortgage specifically and expressly provides for the giving of notice by Mortgagee to Mortgagor and except with respect to matters for which Mortgagee is required by applicable law to give notice, and Mortgagor hereby expressly waives the right to receive any notice from Mortgagee with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of notice by Mortgagee to Mortgagor.

8.05 Amendments and Waivers. This Mortgage, the Note, and any term hereof or thereof may be amended, discharged or terminated and the observance of any term of this Mortgage or the Note may be waived (either generally or in a particular instance and either retroactively or prospectively) only by an instrument in writing signed by the party to be charged.

8.06 Expenses. Mortgagor will pay or cause to be paid (a) the cost of filing and recording of this Mortgage, the Uniform Commercial Code financing statements and any other documents to be filed or recorded in connection with the execution and delivery hereof or thereof; (b) all taxes (including interest and penalties) at any time payable in connection with the execution and delivery of this Mortgage and any other instruments or agreements relating hereto or thereto, any amendment or waiver relating hereto or thereto, the issue and acquisition of the Note and, where applicable, such filing and recording (Mortgagor agreeing to indemnify Mortgagee in respect of such taxes, interest and penalties); (c) the cost of Mortgagor's performance of and compliance with the terms and conditions of this Mortgage and of the other instruments mentioned herein; (d) the cost of title insurance, reinsurance, security interest searches and surveys required hereby or delivered in connection herewith; (e) the fees, expenses and disbursements of Mortgagee's counsel in connection with the subject matter of this Mortgage and any amendments, releases or other actions or waivers hereunder or in respect hereof; and (f) all reasonable out-of-pocket expenses incurred by Mortgagee in connection herewith. Mortgagor shall indemnify and hold Mortgagee harmless from and against all claims in respect of all fees of brokers and finders payable in connection with this Mortgage.

8.07 Section 13 Lien Law Covenant. If the Mortgaged Property is located in the State of New York, Mortgagor shall, in compliance with Section 13 of the Lien Law, receive the advances secured hereby and will hold the right to receive such advances as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

8.08 Limitation on Interest. Under no circumstances shall Mortgagor be charged under the Note or this Mortgage, more than the highest rate of interest which lawfully may be charged by the holder of the Note and paid by the Mortgagor on the indebtedness secured hereby. It is, therefore, agreed that if at any time interest on the indebtedness secured hereby

would otherwise exceed the highest lawful rate, only such highest lawful rate shall be charged to or paid by Mortgagor. Should any amount be paid to Mortgagee in excess of such legal rate, such excess shall be deemed to have been paid in reduction of the principal balance of the Note.

8.09 Miscellaneous. All the terms of this Mortgage shall apply to and be binding upon the respective successors, assigns, heirs, legal representatives and beneficiaries of Mortgagor, and all Persons claiming under or through Mortgagor or any such successor or assign, and shall inure to the benefit of and be enforceable by Mortgagee and its successors, participants and assigns. The headings and table of contents, if any, in this Mortgage are for convenience of reference only and shall not limit or otherwise affect any of the terms hereof. This Mortgage may be executed in several counterparts, each of which shall constitute one and the same instrument. This Mortgage and the Note shall be construed and enforced in accordance with and governed by the laws of the State of New York without taking into effect its conflicts of law provisions. Mortgagor hereby irrevocably submits himself to the jurisdiction of the Courts of the State of New York, situated in New York, New York (and in the county in which the Mortgaged Property is located) for any litigation relating to the Note, this Mortgage or the Mortgaged Property.

8.10 Set-Offs. (i) From time to time in connection with the payment of interest due and payable under the Note, and (ii) in all other instances, after the occurrence and during the continuance of an Event of Default, the Mortgagor hereby irrevocably authorizes and directs Mortgagee from time to time to charge the Mortgagor's accounts and deposits with Mortgagee, (general or special, time or demand, provisional or final), and to pay over to the Mortgagee an amount equal to any amounts from time to time due and payable to the Mortgagee hereunder or under any other Loan Document. The Mortgagor hereby grants to the Mortgagee, subject to the terms and conditions of this Mortgage, a security interest in and to all such accounts and deposits maintained by the Mortgagor with Mortgagee.

8.11 Securitization/Participation. Mortgagee reserves the right at any time during the term of the Indebtedness and in its sole and absolute discretion to effect a so-called securitization of (or to sell a participation interest in) the Indebtedness in such manner and on such terms and conditions as Mortgagee shall deem to be appropriate in its sole and absolute discretion and with such domestic or foreign banks, insurance companies, pension funds, trusts or other institutional lenders or other persons, parties or investors (including, but not limited to, grantor trusts, owner trusts, special purpose corporations, real estate mortgage investment conduits, real estate investment trusts or other similar or comparable investment vehicles) as may be selected by Mortgagee in its sole and absolute discretion, and Mortgagor shall fully cooperate with Mortgagor in connection with all of same provided the same does not materially increase Mortgagor's obligations under the Note of this Mortgage.

8.12 Sole Discretion of Mortgagee. Wherever pursuant to this Mortgage, Mortgagee exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Mortgagee, the decision of Mortgagee to approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory shall be in the sole discretion of

Mortgagee and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

8.13 No Oral Modification. This Mortgage, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Mortgagor or Mortgagee, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

8.14 Duplicate Originals. This Mortgage may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.

8.15 Patriot Act. Mortgagor represents, warrants and covenants as follows:

(a) Neither Mortgagor, nor Mortgagor's principals, constituents, investors or affiliates is in violation of any legal requirements relating to terrorism or money laundering, including Executive Order No. 13224 on Terrorist Financing effective September 24, 2001 (the "Executive Order") and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56, the "Patriot Act").

(b) Neither Mortgagor, nor Mortgagor's principals, constituents, investors or affiliates is a "Prohibited Person" which is defined as follows:

(i) a person or entity that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(ii) a person or entity owned or controlled by, or acting for or on behalf of, any person or entity that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(iii) a person or entity with whom Mortgagor is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering legal requirements, including the Executive Order and the Patriot Act;

(iv) a person or entity who commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order;

(v) a person or entity that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control; and

(vi) a person or entity who is affiliated with a person or entity listed above.

(c) Neither Mortgagor, nor Mortgagor's principals, constituents, investors or affiliates will (i) conduct any business or engage in any transaction or dealing with any Prohibited Person, including the making or receiving of any contribution of funds, goods or services to or for the benefit of any Prohibited Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order; or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purposes of evading or avoiding, or attempts to violate, any of the prohibitions set forth in the Executive Order or the Patriot Act.

ARTICLE 9

Particular Provisions

9.01 Joint and Several. If more than one party constitute Mortgagor hereunder, each such party shall be jointly and severally liable hereunder.

9.02 Owner Occupied. In the event that the Mortgaged Property shall be occupied by Mortgagor or any affiliate of Mortgagor, whether by lease or otherwise, upon an Event of Default hereunder Mortgagor and such affiliate shall be jointly and severally liable to pay to Mortgagee rent based on the higher of the rent called for in their lease, if any, or the then fair market rental value of the Mortgaged Property. Upon the default in the payment of such rent, Mortgagee, by itself or by its agent or receiver, shall be entitled to evict Mortgagor and all affiliates from the Mortgaged Property. The payment of such rent shall only serve to make Mortgagor and its affiliate a month to month tenant and shall in no manner affect a cure of the Event of Default hereunder.

9.03 Environmental Regulations. (a) Mortgagor has furnished to Mortgagee, at Mortgagor's expense, a Phase I Environmental Site Assessment of the Property, dated August 30, 2010 prepared by IVI Assessment Services, Inc. (the "**Environmental Report**"), stating that except as may be set forth in the Environmental Report, the Mortgaged Property and any buildings and other improvements and additions thereon are (i) free of toxic waste, asbestos, PCBs, petroleum products or by-products, other "Hazardous Materials" (as defined below in this Section), or other deleterious materials which impair, in the opinion of Mortgagee, the value of the Mortgaged Property or otherwise may pose a health risk to persons, animals or vegetation, and (ii) in compliance with all applicable laws, rules, regulations or orders pertaining to health, the environment or Hazardous Materials. Such report shall be delivered to Mortgagee on the date hereof. If such engineer's report recommends that any work be done to the Mortgaged Property, or if Mortgagee requires that any work be done to the Mortgaged Property, to satisfy the conditions set forth in clauses (i) and (ii) of this paragraph, such work shall be done by Mortgagor within 30 days of the date of this Mortgage, and, at Mortgagee's option, Mortgagor shall place in escrow with Mortgagee an amount which is sufficient, in the opinion of Mortgagee, to pay for the cost of such work. Mortgagor shall provide Mortgagee with documentation of the completion of such work.

(b) Mortgagor covenants, represents and warrants, to the best of its knowledge and belief, except as set forth in the Environmental Report, (i) that the Mortgaged Property does not contain and will not contain (A) asbestos in any form; (B) urea formaldehyde foam insulation; (C) transformers or other equipment which contain dielectric fluid containing polychlorinated biphenyls (PCBs); (D) fuel oil, gasoline, other petroleum products or by-products, or (E) any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous, controlled or toxic substances, or any pollutant or contaminant, or related materials defined in or controlled pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 9601, et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental law, ordinance, rule, or regulation; or which, even if not so regulated, may or could pose a hazard to the health or safety of the occupants of the Mortgaged Property or the owners of the Mortgaged Property (the substances described in (A), (B), (C), (D) or (E) above are referred to collectively herein as "Hazardous Materials"); (ii) that the Mortgaged Property and any buildings and other improvements and additions previously, now or hereafter located thereon, are not now being used nor have ever been used and will never be used for any activities involving, directly or indirectly, the use, generation, treatment, transportation, storage or disposal of any Hazardous Materials whether by Mortgagor, any prior owner of the Mortgaged Property or any tenant or prior tenant of the Mortgaged Property; (iii) that there has never been any Hazardous Materials Release (as defined below in this section) on, from or affecting the Mortgaged Property; (iv) that none of the Mortgaged Property, any previous owner of the Mortgaged Property, nor Mortgagor are subject to any past, existing, pending, or threatened notice, summons, citation, directive, investigation, litigation, proceeding, inquiry, lien, encumbrance or restriction, settlement, remedial, response, cleanup or closure arrangement or any other remedial obligations by or with any governmental authority (collectively "**Regulatory Actions**") under, or are in violation of, any applicable laws, rules, regulations or orders pertaining to health, the environment or Hazardous Materials; and (v) that none of the Mortgaged Property and any buildings and other improvements and additions previously or now located thereon have ever been used as an industrial or manufacturing facility or as a petroleum storage, refining or distribution facility or terminal, or a gasoline station, whether by Mortgagor, any prior owner or any tenant or prior tenant of the Mortgaged Property. Mortgagor does not know and has no reason to know of any violation of the foregoing representations, warranties and covenants.

(c) Mortgagor represents, warrants and covenants that with respect to the Mortgaged Property and any buildings and other improvements and additions thereon, the Mortgagor (i) shall comply with and ensure compliance by all tenants and other occupants with all applicable laws, rules and regulations or orders pertaining to health, the environment or Hazardous Materials, (ii) shall not store, utilize, generate, treat, transport or dispose (or permit or acquiesce in the storage, utilization, generation, transportation, treatment or disposal of) any Hazardous Materials on or from the Mortgaged Property, (iii) shall ensure that all tenant leases of the Mortgaged Property contain agreements requiring tenant's compliance with the requirements of the foregoing clauses (i) and (ii); and (iv) shall cause any tenant or other person

or entity using and/or occupying any part of the Mortgaged Property to comply with the representations, warranties and covenants contained in this Section.

(d) In the event of any storage, presence, utilization, generation, transportation, treatment or disposal of Hazardous Materials on the Mortgaged Property or in the event of any Hazardous Materials Release, Mortgagor shall as soon as is possible, at the direction of Mortgagee or any federal, state, or local authority or other governmental authority, remove any such Hazardous Materials and rectify any such Hazardous Materials Release, and otherwise comply with the laws, rules, regulations or orders of such authority, all at the expense of Mortgagor, including without limitation, the undertaking and completion of all investigations, studies, sampling and testing and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials, on, from or affecting the Mortgaged Property. If Mortgagor shall fail to proceed with such removal or otherwise comply with such laws, rules, regulations or orders within any reasonable cure period set by Mortgagee, or within the cure period permitted under the applicable regulation or order, whichever period expires first, the same shall constitute an Event of Default under Article 5 hereof, and Mortgagee shall have the right, at its sole option, to accelerate the maturity of the Mortgage indebtedness and declare the indebtedness secured hereby due and payable, and either in addition to or in lieu of the foregoing, at Mortgagee's sole option, Mortgagee may, but shall not be obligated to, do whatever is necessary to eliminate such Hazardous Materials from the Mortgaged Property or otherwise comply with the applicable law, rule, regulation or order, acting either in its own name or in the name of Mortgagor pursuant to this Section, and the cost thereof shall be part of the indebtedness secured hereby and shall become immediately due and payable without notice. In addition to and without limiting Mortgagee's rights pursuant to this Mortgage, Mortgagor shall give to the Mortgagee and its agents and employees access to the Mortgaged Property and all buildings and other improvements and additions thereon for such purposes and hereby specifically grants to Mortgagee a license to remove the Hazardous Materials and otherwise comply with applicable laws, rules, regulations or orders, acting either in its own name or in the name of the Mortgagor pursuant to this Section.

(e) Mortgagor shall indemnify and save Mortgagee and each of its shareholders, subsidiaries, affiliates, officers, directors, partners, and trustees and any receiver, trustee or other fiduciary appointed for the Mortgaged Property (collectively, "**Indemnitees**") harmless from, against, for and in respect of, any and all damages, losses, settlement payments, obligations, liabilities, claims, actions or causes of actions, encumbrances, fines, penalties, and costs and expenses suffered, sustained, incurred or required to be paid by any such indemnified party (including, without limitation, fees and disbursements of attorneys, engineers, laboratories, contractors and consultants) because of, or arising out of or relating to any "Environmental Liabilities" (as defined below) in connection with the Mortgaged Property or any buildings previously, now or hereafter located thereon. For purposes of this indemnification clause, "Environmental Liabilities" shall include all costs and liabilities with respect to the past, present or future presence, removal, utilization, generation, storage, transportation, disposal or treatment of any Hazardous Materials or any release, spill, leak, pumping, pouring, emitting, emptying, discharge, injection, escaping, leaching, dumping or disposing into the environment (air, land or water) of any Hazardous Materials (each a "**Hazardous Materials Release**"),

including without limitation, (i) cleanups, remedial and response actions, remedial investigations and feasibility studies, permits and licenses required by, or undertaken in order to comply with the requirements of, any federal, state or local law, regulation, or agency or court, any damages for injury to person, property or natural resources, claims of governmental agencies or third parties for cleanup costs and costs of removal, discharge, and satisfaction of all liens, encumbrances and restrictions on the Mortgaged Property relating to the foregoing and (ii) injury to person or property in any manner related to a Hazardous Materials Release on, near or from the Mortgaged Property or otherwise related to environmental matters on or near the Mortgaged Property. Hazardous Materials Release shall also include by means of any contamination, leaking, corrosion or rupture of or from underground or above ground storage tanks, pipes or pipelines. The foregoing indemnities provided in this Section 9.03(e) shall specifically exclude any claim that arises from the gross negligence or willful misconduct of an Indemnitee, or from any claim, loss, damage, liability, penalty, cost, expense, demand or fine relating to or arising out of any of the matters described above that result (1) from any Indemnitee's acts subsequent to Mortgagee acquiring title to the Property, whether by foreclosure, exercise of power of sale or otherwise, or (2) any discharge or contamination of any Hazardous Materials in, on, above or under the Property which occurs subsequent to Mortgagee's or any transferee's acquisition of title to the Property, so long as such Hazardous Materials were not present on or a threat to the Property prior to the date that Indemnitee or its nominee or other transferee acquired title to the Property, whether by foreclosure, exercise of power of sale or otherwise.

(f) Mortgagor shall promptly notify Mortgagee in writing of the occurrence of any Hazardous Materials Release or any pending or threatened Regulatory Actions, or any claims made by any governmental authority or third party, relating to any Hazardous Materials or Hazardous Materials Release on or from, the Mortgaged Property, or any buildings or other improvements or additions previously, now or hereafter located thereon and shall promptly furnish Mortgagee with copies of any correspondence or legal pleadings or documents in connection therewith. Mortgagee shall have the right, but shall not be obligated, to notify any governmental authority of any state of facts which may come to its attention with respect to any Hazardous Materials or Hazardous Materials Release on or from the Mortgaged Property.

(g) The liability of Mortgagor to Mortgagee pursuant to, by reason of or arising from the representations, warranties, covenants and indemnities provided for this Section is not limited by any exculpatory provision contained herein or in the Note or in the other documents further securing the indebtedness secured hereby and, subject to the limitations set forth in the last sentence of Section 9.03(e), shall survive the payment in full of the Note and the satisfaction or assignment of this Mortgage following such payment, any foreclosure of this Mortgage, any transfer of the Premises by deed in lieu of foreclosure, any transfer of the Premises or interests therein or any change in ownership thereof.

(h) In the event this Mortgage is foreclosed, or Mortgagor tenders a deed in lieu of foreclosure, Mortgagor shall deliver the Mortgaged Property to Mortgagee free of any and all Hazardous Materials and any liens, encumbrances and restrictions relating to Environmental Liabilities, so that the conditions of the Mortgaged Property shall conform with all applicable

federal, state and local laws, rules, regulations and orders pertaining to health, the environment or Hazardous Materials.

(i) Mortgagor covenants, represents and warrants that to the best of its knowledge and belief, except as set forth in the Environmental Report, the Mortgaged Property, and any buildings and other improvements and additions previously, now or hereafter located thereon, do not now and never have, contained any underground or aboveground storage tanks, pipes or pipelines for the storage or transportation of Hazardous Materials, including without limitation, heating oil, fuel oil, gasoline and/or other petroleum products, whether such tanks are in operation, not operational, closed, removed or abandoned, except for such underground storage tanks heretofore disclosed to Mortgagee in writing and which are utilized solely for heating oil consumed on the Mortgaged Premises, and which are of a capacity of less than 2,000 gallons, all of which are in compliance with all federal, state and local legal requirements and do not have any leaks or corrosion. Without limiting the generality of the foregoing, Mortgagor is in full compliance with all registration and other requirements of 42 USC § 6991, "Regulation of Underground Storage Tanks" and all federal, state and local laws and regulations implementing the provisions of such act.

ARTICLE 10

Bankruptcy

10.01 Relief From Bankruptcy Stay. Mortgagor agrees that, in the event that Mortgagor, any Guarantor or any of the persons or parties constituting Mortgagor or a Guarantor shall (i) file with any bankruptcy court of competent jurisdiction or be the subject of any petition under Title 11 of the U.S. Code, as amended ("Bankruptcy Code"), (ii) be the subject of any order for relief issued under the Bankruptcy Code, (iii) file or be the subject of any petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or other relief for debtors, (iv) have sought or consented to or acquiesced in the appointment of any trustee, receiver, conservator, or liquidator, or (v) be the subject of any order, judgment, or decree entered by any court of competent jurisdiction approving a petition filed against such party for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or relief for debtors, Mortgagee shall thereupon be entitled and Mortgagor irrevocably consents to immediate and unconditional relief from any automatic stay imposed by Section 362 of the Bankruptcy Code, or otherwise, on or against the exercise of the rights and remedies otherwise available to Mortgagee as provided for herein, in the Note, other loan documents delivered in connection herewith and as otherwise provided by law; and Mortgagor (a) hereby irrevocably waives any right to object to such relief and acknowledges that no reorganization in bankruptcy is feasible; (b) waives its exclusive right pursuant to Section 1121(b) of the Bankruptcy Code to file a plan of reorganization and irrevocably consents to Mortgagee filing a plan immediately upon the entry of an order for relief if an involuntary petition is filed against Mortgagor or upon the filing of a voluntary petition by such Mortgagor; and (c) in the event that Mortgagee shall move pursuant

to Section 1121(d) of the Bankruptcy Code for an order reducing the 120-day exclusive period, Mortgagor shall not object to any such motion.

ARTICLE 11

Foreclosure Judgment

11.01 (a) Mortgagor agrees that the obligations and liabilities of Mortgagor under this Mortgage shall survive and continue in full force and effect and shall not be terminated, discharged or released, in whole or in part, irrespective of any entry of any foreclosure judgment in respect of this Mortgage.

(b) All obligations of the Mortgagor under this Mortgage, (collectively, the "**Payment Obligations**") including but not limited to, payment of Impositions, insurance premiums, expenses of Mortgagee (including without limitation expenses to be reimbursed pursuant to Section 8.06, and all other expenses incurred by Mortgagee in connection with its ownership of this Mortgage and the Note, the enforcement of its right under this Mortgage and this Note, or the enforcement of any judgment of foreclosure or any deficiency judgment), in any proceeding whatsoever, including a bankruptcy proceeding, shall not merge into any foreclosure judgment and shall continue in full force and effect upon any entry of any foreclosure judgment.

(c) Upon the entry of a foreclosure judgment in respect of the Mortgage, Mortgagor shall continue to perform its obligations under the Mortgage, including, but not limited to, payment of all Payment Obligations.

(d) In the event, upon entry of a foreclosure judgment in respect of the Mortgage, Mortgagor fails to perform any of its obligations under the Mortgage, including but not limited to, the Payment Obligations: (i) Mortgagee may, but shall not be obligated to, perform said obligations, (ii) Mortgagor shall remain liable to Mortgagee for Mortgagee's performance of Mortgagor's obligations under the Mortgage, and (iii) Mortgagee shall be entitled to any remedies available under the Mortgage for Mortgagor's failure to perform its obligations.

(e) The obligations and liabilities under this paragraph 11.01 shall survive any entry of any foreclosure judgment in respect of the Mortgage.

ARTICLE 12

Assignment

12.01 Upon repayment in full of the all obligations due and payable under the Loan Documents, Mortgagee shall, upon request of Mortgagor and upon compliance by Mortgagor with the provisions of Section 275 of the RPL, promptly cooperate with Mortgagor in

the event Mortgagor requests the assignment of this Mortgage to a new lender, including, delivering a fully executed and acknowledged assignment of this Mortgage and the other Loan Documents to Mortgagor's new lender. Mortgagor shall pay all actual out-of-pocket costs and expenses (including reasonable attorneys' fees) incurred by Mortgagee in connection with any such assignment.

[Remainder of this page intentionally left blank]


IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be duly executed on the day and year first above written.

ATTEST/WITNESS:

MORTGAGOR:

MADISONPARK REAL ESTATE COMPANY LLC

By: _____
Name: _____

By: 
Name: David J. Mitchell
Title: President

State of New York }

ss.:

County of New York }

On the 10 day of February in the year 2011 before me, the undersigned, a Notary Public in and for said State, personally appeared David J. Mitchell, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Notary Public

ARIEL WEINSTOCK
Notary Public, State of New York
No. 02WE6182890
Qualified in Queens County
Commission Expires March 10, 2012

The undersigned executes this Mortgage solely for the purpose of acknowledging and agreeing to the provisions of Paragraph 8.04 hereinabove and the undersigned hereby accepts his appointment as the "Agent" herein listed.



RANDOLPH AMENGUAL, ESQ.

EXHIBIT A

Legal Description

ALL that certain plot, piece or parcel of land situate, lying and being in the Borough of Manhattan, County, City and State of New York being, more particularly bounded and described as follows:

BEGINNING at a point on the northerly side of East 26th Street distant 90 feet westerly from the corner formed by the intersection of the northerly side of East 26th Street and the westerly side of Madison Avenue;

RUNNING THENCE westerly along the northerly side of East 26th Street 30 feet;

RUNNING THENCE northerly parallel and part of the distance through party walls 197 feet 6 inches to the southerly side of East 27th Street;

RUNNING THENCE along the southerly side of East 27th Street 30 feet;

RUNNING THENCE southerly parallel with Madison Avenue 197 feet 6 inches to the northerly side of East 26th Street and the point or place of BEGINNING.

ASSIGNMENT OF LEASES AND RENTS

made by

MADISONPARK REAL ESTATE COMPANY LLC

to

BRT REALTY TRUST

Date: February 11, 2011

Section: 3

Block: 856

Lot: 14

Town: New York

County: New York

Record and Return to:

Bryan Cave LLP
1290 Avenue of the Americas
New York, New York 10104-3300
Attention: David Kostman, Esq.

NY02DOCS\1611925.4

Mitch0000416

10006-0019

Case No.: A-16

RA 000845

ASSIGNMENT OF LEASES AND RENTS

ASSIGNMENT made this 11th day of February, 2011.

THE ASSIGNOR, **MADISONPARK REAL ESTATE COMPANY LLC**, a New York limited liability company having an address c/o Mitchell Holdings LLC, 815 Fifth Avenue, New York, New York 10065 (the "Assignor"), in consideration of good and valuable consideration, the receipt whereof is hereby acknowledged, does hereby assign and transfer to **BRT REALTY TRUST**, having an office at 60 Cutter Mill Road, Suite 303, Great Neck, New York 11021 (the "Assignee"), all of the right, title and interest of Assignor in and to the leases affecting all or a portion of the real property more particularly described in Schedule A annexed hereto (the "Premises"), together with all future leases affecting all or a portion of the Premises and all rents, income and profits arising from said leases and future leases, and all modifications, renewals and extensions thereof and all guarantees, if any, of the lessees' obligations under said leases and future leases (said leases and future leases and guarantees, modifications, renewals and extensions relating thereto being hereinafter collectively and severally referred to as the "Leases"), and, further, together with all rents, income and profits arising from the use and occupation of the Premises.

THIS ASSIGNMENT is a present and irrevocable assignment and is made for the purpose of securing:

A. The payment of all sums and indebtedness now or hereafter due under that certain Mortgage Note of even date herewith, and any amendments, extensions or renewals thereof (the Mortgage Note, together with all amendments, extensions or renewals thereof, being hereinafter referred to as the "Note") in the original principal sum of NINE MILLION FIVE HUNDRED TEN THOUSAND AND 00/100 DOLLARS (\$9,510,000.00), made by Assignor to Assignee, which Note is also secured by a Mortgage, Security Agreement and Assignment of Leases and Rents of even date herewith on the Premises (said Mortgage, together with all modifications or extensions thereof, being hereinafter referred to as the "Mortgage");

B. The payment of all sums with interest thereon becoming due and payable to the Assignee under this Assignment or the Mortgage; and

C. The performance and discharge of each and every obligation, covenant and agreement of Assignor under this Assignment, the Mortgage and each and every loan document executed and/or delivered by Assignor in connection therewith.

THE ASSIGNOR hereby covenants and warrants to said Assignee that Assignor has not executed any prior assignment of the Leases or rents, income or profits arising therefrom to which this Assignment would be subordinate, nor has Assignor performed any act or executed any other instrument which might prevent Assignee from operating under any of the terms and conditions of this Assignment or which would limit Assignee in such operation; and Assignor

further covenants and warrants to Assignee that Assignor has not executed or granted any modification whatsoever of any of the existing Leases, except as herein indicated, and that the existing Leases are in full force and effect, and that there are no material defaults, except as previously disclosed to Assignee in writing, now existing under such Leases.

THE ASSIGNOR further covenants to the Assignee to observe and perform all the obligations imposed upon the lessor under the Leases and not to do or permit to be done anything to impair the security thereof; not to collect any of the rent, income and profits arising or accruing under the Leases or from the Premises more than thirty (30) days in advance of the time when the same shall become due; not to execute any other assignment of the lessor's interest in the Leases or assignment of rents, income or profits arising or accruing from the Leases or from the Premises except to Assignee; not enter into any new Leases nor alter, modify or change the terms of any existing Leases, or give any consent (other than as expressly required by the terms of any Lease) or exercise any option required or permitted by such terms which would adversely impair Assignor's ability to pay the Note in accordance with its terms, without prior written consent of Assignee, which consent shall not be unreasonably withheld, conditioned or delayed or cancel or terminate any of the Leases or accept a surrender thereof (other than upon the expiration of any Lease pursuant to its terms); and at the Assignee's request to execute and deliver such further assurances and assignments of any or all subsequent Leases upon all or any part of the Premises.

THIS ASSIGNMENT is made on the following terms, covenants and conditions:

1. So long as there shall exist no default (beyond applicable notice and/or cure periods, if any) in the payment of the principal sum or interest due under the Note, or any other indebtedness secured hereby, under the Mortgage or under any other instrument securing the Note, or in the performance of any obligation, covenant or agreement to be performed by Assignor under this Assignment, the Note, the Mortgage and all other instruments securing or executed and/or delivered in connection with the Note, the Assignor shall have the right to collect at the time of, but not more than thirty (30) days prior to, the date provided for the payment thereof, all rents, income and profits arising under the Leases or from the Premises.

Assignor, without the prior written consent of Assignee, will not cause or permit the leasehold estate under the Leases to merge with Assignor's reversionary interest.

2. Upon or at any time after default (beyond applicable notice and/or cure periods, if any) in the payment of the principal sum or interest due under the Note, or any other indebtedness secured hereby, under the Mortgage or under any other instrument securing the Note, or in the performance of any obligation, covenant or agreement to be performed by Assignor under this Assignment, the Note, the Mortgage or any other instrument securing the Note or executed and/or delivered in connection therewith, Assignee, without in any way waiving such default, at its option, without notice and without regard to the adequacy of the security for the said principal sum, interest and indebtedness secured hereby and by the Mortgage, either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, may take possession of the Premises and have, hold, manage, lease and operate the same on such terms and

for such period of time as Assignee may deem proper. Additionally, Assignee, either with or without taking possession of the Premises in its own name, may demand, sue for or otherwise collect and receive all rents, income and profits of the Premises, including those past due and unpaid, with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to the Assignee and to apply such rents, income and profits to the payment of: (a) all expenses of managing the Premises, including, without being limited thereto, the salaries, fees and wages of a managing agent and such other employees as the Assignee may deem necessary or desirable and all expenses of operating and maintaining the Premises, including without being limited thereto, all taxes, charges, claims, assessments, water rents, sewer rents, and any other liens, and premiums for all insurance which the Assignee may deem reasonably necessary or desirable, and the cost of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Premises; and (b) the principal sum or interest due under the Note and any other indebtedness secured hereby or by the Mortgage or any other instrument securing the Note, together with all costs and attorney's fees, in such order of priority as to any of the items mentioned in this paragraph numbered "2" as Assignee in its sole discretion may determine, any statute, law custom or use to the contrary notwithstanding. The exercise by the Assignee of the option granted it in this paragraph numbered "2" or the collection of the rents, income and profits and the application thereof as herein provided shall not be considered a waiver of any default by the Assignor under the Note or Mortgage or under any of the Leases or this Assignment. Assignor agrees that the exercise by Assignee of one or more of its rights and remedies hereunder shall in no way be deemed or construed to make Assignee a mortgagee in possession. From and after any such default all rents, income and profits of the Premises received by Assignor shall be held by Assignor in trust for the benefit of Assignee. All such amounts shall be turned over to Assignee with or without demand immediately upon receipt.

3. The Assignee shall not be liable for any loss sustained by the Assignor resulting from the Assignee's failure to let the Premises after default or from any other act or omission of the Assignee either in collecting the rents, issues and profits hereunder or, if Assignee shall have taken possession of the Premises described in the Mortgage, in managing the Premises after default. Further, the Assignee shall not be obligated to perform or discharge nor shall acceptance of this Assignment obligate the Assignee to perform or discharge any obligation, duty or liability under the Leases or under or by reason of this Assignment, and the Assignor shall, and does hereby agree, to indemnify the Assignee for, and to hold the Assignee harmless from, any and all liability, loss or damage which may or might be incurred under said Leases or under or by reason of this Assignment and from any and all claims and demands whatsoever which may be asserted against the Assignee by reason of any alleged obligations or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in said Leases. Should the Assignee incur any such liability described in the immediately preceding sentence under said Leases or under or by reason of this Assignment or in defense of any such claims or demands, the amount thereof, including costs, expenses and attorney's fees shall be secured hereby and the Assignor shall reimburse the Assignee therefor immediately upon demand and upon the failure of the Assignor to reimburse Assignee within ten (10) business days following Assignor's notice to Assignee that the same shall be due, the Assignee may, at its option, declare all sums secured hereby and by the

Mortgage immediately due and payable. And it is further understood that this Assignment shall not operate to place responsibility for the control, care, management or repair of said Premises upon the Assignee, or for the carrying out of any of the terms and conditions of said Leases; nor shall it operate to make the Assignee responsible or liable to Assignor for any waste committed on the property by the tenants or any other parties, or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of said Premises resulting in loss or injury or death to any tenant, licensee, employee or stranger.

4. The affidavit, certificate, letter or statement of any officer, agent or attorney of the Assignee shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment and any person may, and is hereby authorized to, rely thereon. The Assignor hereby authorizes and directs all of the lessees named in said Leases or any other or future lessees or occupants of any portion of the Premises upon receipt from the Assignee of written notice to the effect that the Assignee is then the holder of the Note and the Mortgage and that a default exists thereunder, under any other instrument securing or executed and/or delivered in connection with the Note or under this Assignment, to pay over to the Assignee all rents, income and profits arising or accruing under the Leases or from the Premises and to continue to do so until otherwise notified by the Assignee.

5. The Assignee may take or release other security for the payment of said principal sum, interest and indebtedness, may release any party primarily or secondarily liable therefor and may apply any other security held by it to the satisfaction of such principal sum, interest or indebtedness without prejudice to any of its rights under this Assignment.

6. The Assignor agrees that they will, from time to time upon reasonable demand by Assignee, deliver to Assignee an executed counterpart of each and every Lease then affecting all or any part of the Premises covered by the Mortgage. Further, the Assignor agrees that they will execute and record such additional assignments as the Assignee may request covering any and all of the Leases. Such assignments shall be on forms approved by the Assignee and Assignor agrees to pay all costs incurred in connection with the preparation, execution and recording of such assignments.

7. Wherever used herein, the singular shall include both the singular and the plural and the use of any gender shall apply to all genders. The obligations and liabilities of each party comprising the Assignor hereunder shall be joint and several.

8. Nothing contained in this Assignment and no act done or omitted by the Assignee pursuant to the powers and rights granted hereunder shall be deemed to be a waiver by the Assignee of any of its rights and remedies under the Note, the Mortgage or any other instrument securing or executed and/or delivered in connection with the Note. This Assignment is made and accepted without prejudice to any of such rights and remedies possessed by Assignee to collect the principal sum, interest and all other indebtedness secured hereby or by the Mortgage and to enforce any other security therefor held by it, and said rights and remedies may be exercised by the Assignee either prior to, simultaneously with, or subsequent to any action taken by it hereunder.

Item**Description**

Provided the Merger and the Minimum PPO have closed, investors in the Bridge Notes will receive a warrant to purchase a number of shares of Pubco Common Stock equal to the number of shares of Pubco Common Stock into which the Bridge Notes purchased by them are initially convertible (as provided below), with a term of five (5) years, with 50% of such warrants at an exercise price of \$0.25 per share and 50% of such warrants at an exercise price of \$0.50 per share (the "Bridge Warrants"). The Bridge Warrants shall have "weighted average" anti-dilution protection, subject to customary exceptions, including but not limited to issuances of awards under the EIP (as defined below).

Upon the Closing of the Merger and the Minimum PPO, the outstanding principal amount of the Bridge Notes will be converted into Units (as defined below) of Pubco securities at a conversion price per Unit equal to the PPO Purchase Price (as defined below). The aggregate principal amount so converted shall be included in the gross proceeds of the PPO for purposes of meeting the Minimum PPO (as defined below). Upon the occurrence of an event of default under the Bridge Notes, the interest rate shall increase to a default rate to be agreed upon.

Pubco shall use the proceeds derived from its issuance of the Bridge Notes to provide the Bridge Financing to Newco to enable it to (a) timely meet its obligation under the K3 Agreement to pay \$1,000,000 advance to the Kardashians and (b) the balance to meet specific working capital requirements to be defined and agreed upon by Newco and Pubco prior to execution of the Bridge Notes. It shall be a condition to the first closing of the Bridge Financing that Newco simultaneously execute and fund the K3 Agreement.

The Bridge Financing will be evidenced by a loan agreement and note of Newco (the "Newco Note") in favor of Pubco and related documents (which for the avoidance of doubt shall not include personal guarantees from the Newco shareholders). The Newco Note will be for a term equal to the term of the Bridge Notes, and will bear interest at the same rate as the Bridge Notes; provided that upon the Closing of the Merger and the Minimum PPO, all amounts outstanding under the Newco Note shall be forgiven, and the Newco Note shall be deemed repaid in full. No interest shall be payable on the Newco Note prior to maturity.

The Newco Note will be secured by a perfected first priority security

NO/RCH

Mitchell

Item	Description
	<p>interest on all of the assets of Newco and all of its subsidiaries (if obtainable under applicable law and subject to any contractual restrictions on such assets). The security interest will be released upon the earlier of repayment in full of the Newco Note or the Closing of the Merger and the PPO.</p> <p>Upon the occurrence of an event of default under the Newco Note, including but not limited to any failure to consummate the Merger prior to the due date, the interest rate on the Newco Note shall increase to a default rate to be agreed.</p>
3. Merger and Split-Off	<p>The definitive merger agreement among Pubco and Newco and the acquisition subsidiary (“Merger Agreement”) will contain customary representations and warranties for a transaction of this type, as mutually agreed between the parties, including the following representations, warranties and covenants to be made by Pubco (and the acquisition subsidiary, as applicable) on the date of the Merger Agreement and on the Closing Date:</p> <ul style="list-style-type: none"> (a) is a US corporation in good standing whose shares are presently eligible for quotation on the OTC Bulletin Board (or another over-the-counter market to be agreed on) and not subject to any notice of suspension or delisting; (b) has complied with all applicable federal and state securities laws and regulations, including being current in all of its reporting obligations under federal securities laws and regulations; and all prior issuances of securities have been either registered under the Securities Act, or exempt from registration; and Pubco is not in violation or breach of, conflict with, in default under (with or without the passage of time or the giving of notice or both) any provisions of (a) Pubco incorporation documents or (b) any mortgage, indenture, lease, license or any other agreement or instrument; (c) no order suspending the effectiveness of any registration statement of Pubco under the Securities Act or the Exchange Act has been issued by the SEC and, to Pubco’s knowledge, no proceedings for that purpose have been initiated or threatened by the SEC; (d) is not and has not, and the past and present officers, directors and affiliates of Pubco are not and have not, been the subject of, nor does any officer or director of Pubco

NO/RCH

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Item	Description
	have any reason to believe that Pubco or any of its officers, directors or affiliates will be the subject of, any civil or criminal proceeding or investigation by any federal or state agency alleging a violation of securities laws;
(e)	is not and has not been the subject of any voluntary or involuntary bankruptcy proceeding, nor is it or has it been a party to any material litigation or, within the past two years, the subject of any threat of material litigation. Litigation shall be deemed "material" if the amount at issue exceeds the lesser of \$10,000 per matter or \$25,000 in the aggregate;
(f)	has not, and the past and present officers, directors and affiliates of Pubco have not, been the subject of, nor does any officer or director of Pubco have any reason to believe that Pubco or any of its officers, directors or affiliates will be the subject of, any civil, criminal or administrative investigation or proceeding brought by any federal or state agency;
(g)	does not, on the closing date, have any liabilities, contingent or otherwise, including but not limited to notes payable and accounts payable, except as set forth in the Merger Agreement; and
(h)	the issued and outstanding share capital of Pubco, immediately prior to the closing date, has been duly authorized and is validly issued, are fully paid, non-assessable, and have been issued in accordance with all applicable laws, including, but not limited to, the Securities Act.

The Merger Agreement will contain customary indemnification provisions to secure breaches of representations and warranties reasonably satisfactory to the parties and such other terms and provisions as shall be mutually agreed upon between Newco and Pubco consistent with the provisions in this Term Sheet.

Such provisions shall provide, among other things, that each of the stockholders of Newco as of the date of the Merger shall initially receive in the Merger ninety-five percent (95%) of the shares to which each such stockholder is entitled, with the remaining five percent (5%) of such shares being held in escrow for two (2) years to satisfy post-Closing claims for indemnification by Pubco ("Indemnity

NO/RCH

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Item	Description
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Shares”). Any of the Indemnity Shares remaining in escrow at the end of such two-year period shall be distributed to the pre-Merger stockholders of Newco on a pro rata basis. The Merger Agreement will also contain a provision providing for a post-Closing share adjustment as a means for which claims for indemnity may be made by Newco. Pursuant to the indemnification provision up to 1,000,000 shares (“R&W Shares”) of Common Stock may be issued to the pre-Merger stockholders of Newco, pro rata, during the two (2) year period following the Closing Date for breaches of representations and warranties. The value of the Indemnity Shares and the R&W Shares issued pursuant to the foregoing adjustment mechanisms will be fixed at the per share of Common Stock equivalent price of the securities sold in the PPO (as defined below).

Contemporaneous with the Merger, Pubco will transfer all of its pre-merger operating assets and liabilities to a newly formed wholly owned subsidiary (“Split-Off Subsidiary”). Thereafter, Pubco shall transfer all of the outstanding shares of capital stock of Split-Off Subsidiary to Pubco’s pre-Merger insiders, in exchange for the surrender and cancellation of shares of Pubco Common Stock held by such persons (the “Split-Off”).

Closing of the Merger and of at least the Minimum PPO (as defined below) will each be a condition precedent to the other and will occur simultaneously.

4. Private Placement Offering	
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Pubco will conduct a private placement offering pursuant to Regulation D and/or Regulation S under the Securities Act and any and all applicable state securities laws (the “PPO”) for a minimum of \$3,000,000 (the “Minimum PPO”) through the sale of 12,000,000 Units (as defined below) of Pubco’s securities and a maximum of \$5,000,000 (the “Maximum PPO”) through the sale of 20,000,000 Units, at an offering price of \$0.25 per Unit (the “Offering Price”), each Unit comprised of one (1) share of Pubco’s Common Stock and a callable warrant to purchase one (1) share of Common Stock at an exercise price of \$1.00 per share for five (5) years (the “PPO Warrants”). Each share of Common Stock is entitled to one vote per share. Pubco may, with the consent of Newco, sell up to an additional 3,000,000 Units for \$750,000 (the “Over-Allotment Option”) in the event the PPO is oversubscribed.

The investors in the Units will have “weighted average” anti-dilution protection such that if within twenty-four (24) months after the Closing Date Pubco shall issue additional shares of Common Stock or

NO/RCH

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Item	Description
	<p>Common Stock equivalents (subject to customary exceptions, including but not limited to issuances of awards under the EIP) for a consideration per share less than the Offering Price. The PPO Warrants shall have “weighted average” anti-dilution protection, subject to customary exceptions, including but not limited to issuances of awards under the EIP.</p>

The closing of the Merger will occur upon (a) the closing of at least the Minimum PPO, (b) the completion and delivery by Newco to Pubco of the Financial Statements and (c) definitive documentation of the Merger and related transactions satisfactory to the parties. After the closing of the Minimum PPO, Pubco may continue the PPO on the terms above up to the Maximum PPO (including the Over-Allotment Option), or at the discretion of the Board, terminate the PPO and raise additional capital on new higher pricing.

5. Broker/Dealer;	<p>A U.S.-registered broker-dealer, shall be engaged on an exclusive basis as placement agent (the “Placement Agent”), on a best efforts basis, for the Bridge Notes and for the PPO, pursuant to a placement agent agreement to be executed by the parties, in a form satisfactory to Pubco and Newco (the “Placement Agent Agreement”).</p>
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The Placement Agent will be paid a total cash commission of four percent (4%) of funds raised from investors introduced to the Bridge Notes by it (the “Brokers’ Bridge Fee”); provided that, upon the conversion of the Bridge Notes on the closing of the merger and Minimum PPO, the Placement Agent will be paid an additional Brokers’ Bridge Fee of four percent (4%) of funds raised from investors introduced to the Bridge Notes by it and will receive warrants to purchase such number of shares of Pubco Common Stock equal to eight percent (8%) of the number of shares of Pubco Common Stock into which the Bridge Notes sold to investors introduced by it are converted, with a term of five (5) years and an exercise price of \$0.25 per share (“Brokers’ Bridge Warrants”)

The Placement Agent will be paid a total cash commission of eight percent (8%) of funds raised from investors introduced to the PPO by it (“Brokers’ PPO Fee”) plus warrants to purchase such number of shares of Pubco Common Stock equal to eight percent (8%) of the number of shares of Pubco Common Stock contained in the Units sold in the PPO to investors introduced to the PPO by it, with a term of five (5) years and an exercise price of \$0.25 per share (“Brokers’ PPO Warrants”). For the avoidance of doubt, there shall not be any duplication of fees or warrants with respect to Bridge Notes which

Item	Description
	<p>convert into Common Stock upon the closing of the PPO.</p> <p>Any sub-agent of the Placement Agent that introduces investors to the Bridge Notes or the PPO shall be entitled to share in the cash fees and warrants attributable to those particular investors.</p>
6. Consideration; Capitalization	<p>Upon the closing of the Merger and the Minimum PPO, Pubco shall have an authorized capitalization of 300,000,000 shares of Common Stock and 10,000,000 million shares of “blank check” preferred stock.</p> <p>In consideration for the Merger, the stockholders of Newco shall receive, in exchange for all of their outstanding shares of capital stock, on a fully-diluted basis, of Newco, 25,000,000 restricted shares of Pubco Common Stock, pro rata (subject to escrow of the Indemnity Shares as described above); provided, that 5,000,000 of said shares shall be held in escrow pending the closing of the first celebrity license agreement entered into by Newco after the execution by Newco of the K3 Agreement (the “First Celeb License”); provided further, that at the stockholders’ written request, such equity shall be in the form of options to purchase Pubco Common Stock issued at \$0.25 per share instead of shares of Pubco Common Stock. Newco will be granted options to purchase an additional 2,500,000 shares of Pubco Common Stock, exercisable upon Newco’s closing of a celebrity licensing agreement after the First Celeb License. Each subsequent licensing agreement is subject to approval by non-interested members of the Board of Directors of Pubco at the time of such agreement. Any options issuable to Newco pursuant to this paragraph shall be fully vested and have a 10-year term.</p> <p>10,000,000 restricted shares of Pubco Common Stock, or at the Kardashian’s option, warrants to purchase 10,000,000 shares of Pubco Common Stock [at fair market value at the time of issuance] will be reserved for issuance to the Kardashians and/or their loan-out corporations, for consideration to be provided by them (the “Kardashian Securities”). In the event that the Kardashian Securities are issued prior to the Closing Date, the shares to be owned by the Pubco Shareholders shall be reduced from 62,000,000 shares of Common Stock to 52,000,000 shares of Common Stock, after giving effect to the Split-Off.</p> <p>For the 5,000,000 shares (or other equity) escrowed pending the closing of the First Celeb License to be released to Newco (or its stockholders post-Merger), the First Celeb License must be entered</p>

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Item	Description
	<p>into by June 30, 2012, on terms and conditions reasonably satisfactory to a majority of the disinterested members of the incoming Pubco Board of Directors.</p> <p>The investors in the PPO will own 12,000,000 restricted shares of Pubco Common Stock if the Minimum PPO is sold and 20,000,000 restricted shares of Pubco Common Stock if the Maximum PPO is sold (without giving effect any sale of the Overallotment Option or exercise of PPO Warrants) (subject to registration rights as provided below).</p> <p>Upon the Closing Date, the Board of Directors of Pubco shall have adopted a 20,000,000-share Equity Incentive Plan (the "EIP") for the future issuance, at the discretion of the Board, of incentive awards to officers, key employees, consultants and directors including but not limited to NO, RCH. Pubco may not grant awards under the EIP for more than 4,000,000 shares of Pubco Common Stock per year during the first year following the Closing. Options or other incentive awards under the EIP to be granted initially to NO, RCH or GG shall be set forth in NO's employment agreement and GG's consulting agreement with Pubco, as the case may be.</p> <p>The actual and fully diluted capitalizations (reflecting the Bridge Financing and both the Minimum PPO and the Maximum PPO) are set forth in the capitalization tables attached hereto as <u>Exhibit A</u>.</p>
7. Financial Statements of Newco; Signing Date	On or prior to the Closing Date, Newco shall provide the Financial Statements. It is contemplated that the definitive agreements (e.g., the Merger Agreement) will be signed on or before the last day of the Exclusivity Period (as hereinafter defined).
8. Board of Directors; Officers	Immediately following the Closing Date, the Board of Directors of Pubco shall consist of five (5) members, at least three (3) of whom shall be independent, and who shall include Ronald S. Altbach, as Chairman, and Nicole Ostoya. Pubco's current shareholders shall have the right to appoint one (1) member of the Board of Directors, provided that such appointee is reasonably acceptable to the Newco-appointed directors; Newco shall be entitled to appoint the rest of the directors. On the Closing Date, all of the current officers and directors of Pubco shall resign and, simultaneously therewith, the new Board of Directors shall be appointed, and such officers as shall be determined by the Board (including Nicole Ostoya, as CEO) shall be appointed.

NO/RCH

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Item	Description
9. Registration	<p data-bbox="532 250 1388 1252">Promptly, but no later than ninety (90) calendar days from the final Closing Date of the PPO, Pubco shall file a registration statement (on Form S-1, or similar form) with the SEC covering (a) the shares of Common Stock into which Bridge Notes are converted, (b) the shares of Common Stock issuable upon exercise of the Bridge Warrants, (c) the shares of Common Stock issued in the PPO, and (d) the shares of Common Stock issuable upon exercise of the PPO Warrants (but not including the shares of Common Stock underlying the Brokers' Bridge Warrants or the Brokers' PPO Warrants) (the "Registration Statement"). Pubco shall use its commercially reasonable efforts to ensure that such Registration Statement is declared effective within one hundred eighty (180) calendar days of filing with the SEC. If Pubco is late in filing the Registration Statement or if the Registration Statement is not declared effective within one hundred eighty (180) days of filing with the SEC, monetary penalties payable by Pubco to the holders of registrable Common Stock that has not been so registered will commence to accrue and cumulate at a rate equal to one percent (1.00%) of the Offering Price per share for each full month that (i) Pubco is late in filing the Registration Statement or (ii) the Registration Statement is late in being declared effective by the SEC; provided, however, that in no event shall the aggregate of any such penalties exceed ten percent (10%) of the Offering Price per share. Notwithstanding the foregoing, no penalties shall accrue with respect to any shares of Common Stock removed from the Registration Statement in response to a comment from the staff of the SEC limiting the number of shares of Common Stock which may be included in the Registration Statement (a "Cutback Comment") or after the shares may be resold under Rule 144 or another exemption from registration under the Securities Act of 1933.</p> <p data-bbox="532 1289 1388 1425">Pubco shall keep the Registration Statement "evergreen" for two (2) years from the date it is declared effective by the SEC or until Rule 144 of the Securities Act is available to the holders of registrable shares with respect to all of their shares, whichever is earlier.</p> <p data-bbox="532 1461 1388 1565">In any follow on "best efforts" private placement offering of Pubco's securities that provides for registration rights, the PPO investors will be entitled to "piggy back" registration rights.</p> <p data-bbox="532 1601 1388 1767">The holders of the Brokers' Bridge Warrants and Brokers' PPO Warrants, as well as the holders of any shares of Common Stock removed from the Registration Statement as a result of a Cutback Comment (but not holders of the shares issued to the stockholders of Newco in consideration for the Merger), shall have "piggyback"</p>

NO/RCH

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Item	Description
	<p>registration rights for the shares of Common Stock underlying such Warrants with respect to any registration statement filed by Pubco following the effectiveness of the aforementioned Registration Statement which would permit the inclusion of such underlying shares.</p> <p>In addition, for a period of twenty-four (24) months following the closing of the Transactions, Pubco shall not register, nor shall it take any action to facilitate registration, under the Securities Act, the shares of the Common Stock of Pubco issued pursuant to the Merger to the “Restricted Holders,” as defined below. The above restriction shall not prohibit Pubco from registering on Form S-8 Common Stock issued under the Plan, as and to the extent permitted under the Securities Act, to persons other than Restricted Holders.</p>
10. Restriction on Sale; No Shorting; Organic Change	<p>All securities issued pursuant to the Merger and in the PPO will be “restricted” securities and shall be subject to all applicable resale restrictions specified by federal and state securities laws. At Closing, all officers; directors; stockholders holding ten percent (10%) or more of the Common Stock of Pubco after giving effect to the Merger, the Split-Off and the PPO of Pubco; and key employees agreed by Pubco and Newco (each a “Restricted Holder”; collectively the “Restricted Holders”), shall enter into Lock-Up Agreements with Pubco for a term of twenty-four (24) months, whereby they will agree to certain restrictions on the sale or disposition (including pledge) of all of the Common Stock of Pubco held by them.</p> <p>In addition, each Restricted Holder shall agree that it will not, for a period of twenty-four (24) months following the Closing Date, directly or indirectly, effect or agree to effect any short sale (as defined in Rule 200 under Regulation SHO of the Exchange Act), whether or not against the box, establish any “put equivalent position” (as defined in Rule 16a-1(h) under the Exchange Act) with respect to the Common Stock, borrow or pre-borrow any shares of Common Stock, or grant any other right (including, without limitation, any put or call option) with respect to the Common Stock or with respect to any security that includes, relates to or derives any significant part of its value from the Common Stock or otherwise seek to hedge its position in the Common Stock.</p>
11. Conditions to Closing; Name Change	<p>The Merger shall include certain customary and other closing conditions including the following:</p> <p>(i) consummation of all required definitive instruments and</p>

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Item	Description
	<p>agreements, including, but not limited to, the Merger Agreement in forms acceptable to Pubco and Newco;</p> <p>(ii) obtaining all necessary board, shareholder and third party consents, including but not limited to the EIP;</p> <p>(iii) satisfactory completion by Pubco and Newco of all necessary technical and legal due diligence;</p> <p>(iv) the completion of the offer and sale of the Minimum PPO;</p> <p>(v) the execution by Pubco and GG of an agreement for GG to provide creative services to Pubco, including non-compete and non-circumvention provisions and a right of first refusal in favor of Pubco on all opportunities generated by GG for licensing products or services from celebrities or other public persons, all on terms and conditions reasonably satisfactory to GG and Mitchell and subsequently a majority of the disinterested members of the incoming Pubco Board of Directors also approve such terms and conditions;</p> <p>(vi) no material indebtedness or pending or threatened litigation against Pubco as of Closing Date other than as disclosed on the appropriate schedule; and</p> <p>(vii) receipt by Pubco of the Financial Statements.</p> <p>Notwithstanding the foregoing, the parties shall continue to be bound by the provisions of Section 18 in the event of any termination of this Term Sheet.</p> <p>In connection with the Transactions, Pubco will change its name to such name as is specified by Newco. Pubco may, with the permission of Newco, change its name prior to the Closing Date.</p>
12. Pre-Closing Covenants	<p>Pubco, on the one hand, and Newco, on the other hand, shall each cooperate with each other and use their reasonable best efforts to execute and deliver the Merger Agreement and all other documents necessary or desirable to effect the Transactions as soon as possible and to thereafter satisfy each of the conditions to closing specified thereunder.</p>
13. Employment Agreements	<p>Nicole Ostoya, as CEO, and such other employees as Newco shall designate, shall, upon the Merger, each have employment agreements</p>

NO/RCH

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EXHIBIT E

(Direct Construction Cost Breakdown and Request for Partial Payment)

The term "Direct Construction Cost Breakdown and Request for Partial Payment" as used in this Agreement shall mean the Application and Certificate for Payment (AIA Document G 702 and AIA Document G 703), or their equivalent, with such changes therein as Lender or the Construction Consultant may reasonably request, or such other form of Direct Construction Cost Breakdown and Request for Partial Payment as may be reasonably acceptable to Lender and the Construction Consultant.

**AFFIDAVIT PURSUANT TO SECTION 22 OF THE
LIEN LAW OF THE STATE OF NEW YORK**

1. David Mitchell ("**Deponent**") being duly sworn, deposes and says:

2. The total amount of the Loan is \$4,407,538.00.

Engineering, Architectural, Consultants and other fees associated with construction of construction of the improvements	\$389,594.00
Real Estate Taxes during construction	\$71,944.00
Water, Sewer and Electricity during construction	\$65,000.00
Lender's Construction Consultant	\$6,000.00
TOTAL COSTS	\$532,538.00

6. If Borrower is a corporation, partnership or limited liability company, this statement is verified by Deponent, who is an officer, partner or member, as the case may be, of Borrower.

7. The facts stated above and any costs itemized in this affidavit are true to the best knowledge of Deponent.

David Mitchell

Sworn to before me this ____ day of February, 2011

Notary Public

**AFFIDAVIT PURSUANT TO SECTION 22 OF THE
LIEN LAW OF THE STATE OF NEW YORK**

STATE OF NEW YORK)

) ss:

COUNTY OF NEW YORK)

David Mitchell ("**Deponent**") being duly sworn, deposes and says:

1. Deponent resides at /o Mitchell Holdings LLC, 815 Fifth Avenue, New York, New York 10065, and is the president of MadisonPark Real Estate Company LLC, the Borrower mentioned in the Building Loan Agreement to which this affidavit is attached.

2. The total amount of the Loan is \$4,407,538.00.

3. The consideration paid, or to be paid, by Borrower to Bank for the Loan described in said Building Loan Agreement was \$280,000.00, which amount was not paid out of the proceeds of the Loan.

4. The other expenses heretofore incurred, or to be incurred, in connection with said Loan and advanced or to be advanced out of the Loan pursuant to said Building Loan Agreement are as follows:

Engineering, Architectural, Consultants and other fees associated with construction of construction of the improvements	\$389,594.00
Real Estate Taxes during construction	\$71,944.00
Utilities during construction	\$65,000.00
Lender's Construction Consultant	\$6,000.00
 TOTAL COSTS	 \$532,538.00

5. The net sum which will be available to Borrower from the Loan to pay contractors, subcontractors, laborers and materialmen for the construction of the Improvement is \$3,875,000.00.

6. If Borrower is a corporation, partnership or limited liability company, this statement is verified by Deponent, who is an officer, partner or member, as the case may be, of Borrower.

7. The facts stated above and any costs itemized in this affidavit are true to the best knowledge of Deponent.

Mitch0000529

10008-0004

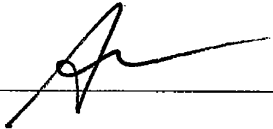
Case No.: A-16

RA 000863



David Mitchell

Sworn to before me this 10 day of February, 2011



Notary Public

ARIEL WEINSTOCK
Notary Public, State of New York
No. 02WE6182890
Qualified in Queens County
Commission Expires March 10, 20 12

Mitch0000530

10008-0005

Case No.: A-16

RA 000864

MORTGAGE NOTE
(Building Loan)

Date of Note: February 11th, 2011

Amount of the Note: \$4,407,538.00

THE NOTE IS MADE PURSUANT TO THAT CERTAIN BUILDING LOAN AGREEMENT OF EVEN DATE HERewith BETWEEN MAKER AND HOLDER (THE "LOAN AGREEMENT") AND SHALL BE SUBJECT TO THE TERMS, CONDITIONS AND PROVISIONS THEREOF. TO THE EXTENT THERE ARE ANY CONFLICTS BETWEEN THE TERMS, CONDITIONS OR PROVISIONS OF THIS NOTE AND THE LOAN AGREEMENT, THE LOAN AGREEMENT SHALL GOVERN AND CONTROL.

FOR VALUE RECEIVED, **MADISONPARK REAL ESTATE COMPANY LLC**, a New York limited liability company having an address c/o Mitchell Holdings LLC, 815 Fifth Avenue, New York, New York 10065 ("Maker"), hereby promises to pay to the order of **BRT REALTY TRUST**, its successors and/or assigns ("Holder"), at its offices at 60 Cutter Mill Road, Suite 303, Great Neck, New York 11021 or at such other place as Holder hereof may from time to time designate in writing, in lawful money of the United States of America, the principal sum of FOUR MILLION FOUR HUNDRED SEVEN THOUSAND FIVE HUNDRED THIRTY-EIGHT AND 00/100 DOLLARS (\$4,407,538.00), or so much thereof as shall from time to time have been advanced and outstanding, together with interest on the principal amount hereof from time to time outstanding from the date hereof at the Interest Rate (as hereinafter defined), as follows:

(a) Interest only on the outstanding principal balance of this Note shall be due and payable on April 1, 2011 and on the first (1st) day of each and every succeeding calendar month thereafter through and including the Maturity Date; and

(b) The entire outstanding principal balance of this Note, together with all accrued interest thereon, shall be due and payable on March 1, 2012 (the "Maturity Date"), subject to Maker's options to extend the Maturity Date as follows:

(1) First Option. Provided that (i) Maker is not in default beyond applicable notice and cure periods under this Note, the Mortgage or any of the other Loan Documents (as of the date that this first option is exercised up to and including the then-current Maturity Date) and (ii) Maker has not been late in making any of the monthly payments theretofore due and payable under this Note beyond the expiration of any applicable notice, grace or cure period (provided that Maker shall not be deemed to have been late in making any monthly payment following any failure by Holder to apply funds therefor from the Interest Reserve after Maker has complied with all conditions for the release of funds from the Interest Reserve to make such payments), (iii) Maker has obtained a "Certificate of Appropriateness" from the New York City Landmarks Preservation Commission for the proposed facade modifications and rooftop addition to the Premises, (iv) the lease pursuant to which Oppenheimer Realty Corporation leases a

portion of the Premises shall have terminated and the tenant thereunder vacated the Premises, and (v) Maker has received a "No Action" letter or an "acceptance" letter, as applicable, from the Attorney General of the State of New York, with respect to Maker's plan to convert the Premises to condominium ownership in accordance with the provisions of the Mortgage, then Maker shall have the option to extend the Maturity Date of this Note to September 1, 2012. To exercise this option, Maker shall give written notice to Holder of its exercise of this option on or before January 31, 2012, **time being of the essence**. Notwithstanding anything herein to the contrary, Maker shall have no right or option to extend the Maturity Date of this Note beyond the maturity date of that certain Mortgage Note (Acquisition Loan) of even date herewith, in the original principal amount of \$9,510,000, made by Maker in favor of Holder (the "Acquisition Loan").

(2) Second Option. Provided that (i) Maker has exercised (and satisfied all the conditions to exercise of) the First Option above, (ii) Maker is not in default beyond applicable notice and cure periods under this Note, the Mortgage or any of the other Loan Documents (as of the date that this second option is exercised up to and including the then current Maturity Date) and (iii) Maker has not been late in making any of the monthly payments theretofore due and payable under this Note beyond the expiration of any applicable notice, grace or cure period (provided that Maker shall not be deemed to have been late in making any monthly payment following any failure by Holder to apply funds therefor from the Interest Reserve after Maker has complied with all conditions for the release of funds from the Interest Reserve to make such payments), Maker shall have the option to further extend the Maturity Date of this Note to March 1, 2013. To exercise this option, Maker shall give written notice to Holder of its exercise of this option on or before July 31, 2012, **time being of the essence**. Notwithstanding anything herein to the contrary, Maker shall have no right or option to extend the Maturity Date of this Note beyond the maturity date of the Acquisition Loan.

The principal amount of this Note shall bear interest at a rate of thirteen percent (13%) per annum (the "Interest Rate"); provided, however, if the Maturity Date is extended beyond the original Maturity Date as provided in paragraphs (c)(1) and (c)(2) above, then from and after the original Maturity Date of this Note the outstanding principal amount of this Note shall bear interest at a rate equal to the greater of: (i) nine and three quarters percent (9.75%) per annum in excess of the prime commercial lending rate published in The Wall Street Journal (the "Prime Rate") adjusting as and when such Prime Rate adjusts, and (ii) the greater of (y) nine and three quarters percent (9.75%) per annum in excess of the Prime Rate as of the date of this Note and (z) thirteen percent (13%) per annum. Interest on the principal sum of this Note shall be compounded monthly and calculated on the basis of actual days elapsed over a three hundred sixty (360) day year. If the Prime Rate is no longer published in The Wall Street Journal, or becomes unascertainable, Holder shall designate a comparable reference rate and the Interest Rate shall then be calculated by applying such comparable reference rate in substitution of the Prime Rate. Changes in the Interest Rate shall be effective as of any change in the Prime Rate.

Maker agrees to deposit in escrow with Holder the sum of Five Hundred Seventy Two Nine Hundred Seventy-Nine Dollars and 94/100 (\$572,979.94) (the "Interest Reserve") upon execution of this Note. The Interest Reserve shall be maintained by Holder at a bank or other financial institution chosen by Holder, in its sole and absolute discretion. The Interest

Reserve shall not constitute a trust fund and may be commingled with other monies by Holder. Provided that Maker is not in default of any of its obligations under this Note or the Loan Documents beyond the expiration of any applicable notice, grace and cure periods, the Interest Reserve shall be applied towards the monthly payments of interest payable under this Note. Notwithstanding anything to the contrary, Maker shall remain responsible for the full and timely payment of all amounts due under this Note. Upon the payment in full of this Note, together with accrued interest and all other sums due under any and all of the other Loan Documents, any excess funds remaining in the Interest Reserve shall be remitted to Maker.

The Interest Reserve is hereby pledged as additional security for the indebtedness evidenced by this Note and secured by the Mortgage. If Maker defaults beyond applicable notice and cure periods in making any payment due under this Note, or under any term or provision of any other Loan Documents (as hereinafter defined), then Holder, in its sole and absolute discretion, may at its option (and in such order that Holder shall determine, in its sole and absolute discretion): (i) apply the Interest Reserve or any portion of such funds to the payment of the indebtedness evidenced by this Note or any unpaid fees, costs or expenses that Maker is required to pay under this Note or under any of the other Loan Documents, provided, however, that such application of funds shall not cure or be deemed to cure any default; (ii) apply the Interest Reserve to reimburse Holder for any losses or expenses (including, without limitation, legal fees and disbursements) suffered or incurred by Holder as a result of such default; and/or (iii) apply the Interest Reserve in connection with the exercise of any rights and remedies available to Holder at law or in equity or under this Note or under any of the other Loan Documents. Notwithstanding anything contained in this paragraph, in no event shall Maker be in default under this Note for failure to timely make any interest payments required hereunder as the result of any failure by Holder to apply funds therefor from the Interest Reserve after Maker has complied with all conditions for the release of funds from the Interest Reserve to make such payments.

If any installment of principal or interest is made more than five (5) days after the due date thereof, a late payment charge equal to the lesser of five percent (5%) of such late payment or the maximum amount permitted by applicable law shall become immediately due and payable to Holder to defray the expense incurred by Holder in handling and processing such delinquent payment. For the avoidance of doubt, the late charge described in the preceding sentence will be assessed only on the monthly payment and other amounts due and payable under this Note but not on the principal balance payable upon the maturity or acceleration of the Note.

This Note is secured by, among other things, a certain Building Loan Mortgage, Security Agreement and Assignment of Leases and Rents of even date herewith (the "Mortgage"), given by Maker to Holder, encumbering certain land and improvements located at 21 East 26th Street, New York, New York (the "Premises"), as more particularly described in the Mortgage (this Note, the Mortgage, the Loan Agreement and any other documents evidencing the indebtedness of this Note or securing the repayment of this Note are hereinafter collectively referred to as the "Loan Documents"). The terms, covenants, conditions, provisions, stipulations and agreements of the Loan Documents are hereby made part of this Note, to the same extent and with the same effect as if they were fully set forth herein, and Maker does hereby covenant to abide by and comply with each and every term, covenant, provision, stipulation, promise, agreement and condition set forth in the Loan Documents. This Note shall evidence and the Mortgage shall secure the indebtedness

described herein and any future loans or advances that may be made to or on behalf of Maker by Holder at any time or times hereafter under the Mortgage and any such loans or advances shall be added to and shall bear interest at the same rate per annum as the principal indebtedness hereunder unless a greater rate is expressly provided for in the Mortgage.

It is expressly agreed that upon the failure of Maker to make any payment due hereunder beyond the expiration of all notice, grace and cure periods, or upon the occurrence of any "Event of Default" under the Mortgage (or the happening of any default, beyond any applicable notice and/or cure periods, under any of the other Loan Documents), the principal sum hereof, or so much thereof as may be outstanding, together with accrued interest and all other expenses payable by Maker under the Loan Documents, including, but not limited to, attorneys' fees for legal services incurred by Holder hereof in collecting or enforcing payment hereof whether or not suit is brought, and if suit is brought, then through all appellate actions, shall immediately become due and payable at the option of Holder of this Note, notwithstanding the Maturity Date set forth above. Upon the stated or accelerated maturity of this Note, Maker agrees that this Note shall bear interest at a rate equal to twenty-four and one-half (24½%) percent per annum (the "Default Rate") until the principal, together with accrued interest and any other sums payable by Maker under the Loan Documents, are fully paid.

Notwithstanding anything to the contrary contained in this Note, the rate of interest payable on this Note shall never exceed the maximum rate of interest permitted under applicable law. If at any time the rate of interest otherwise prescribed herein shall exceed such maximum rate, the prescribed rate shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at such maximum rate and all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance of this Note.

This Note may be prepaid at any time, in whole or in part, without penalty or premium, upon no less than five (5) days' prior written notice to Holder.

Any waiver by Holder of any term or provision of the Loan Documents, or of any right, remedy or option under the Loan Documents shall not thereafter be controlling, nor shall it prevent or estop Holder from thereafter in another instance in the future enforcing such term, provision, right, remedy or option, and the failure or refusal of Holder to insist in any one or more instances upon the strict performance of any of the terms or provisions of the Loan Documents shall not be construed as a waiver or relinquishment for the future of any such term or provision, but the same shall continue in full force and effect, it being understood and agreed that Holder's rights, remedies and options under the Loan Documents are and shall be cumulative and are in addition to all of the rights, remedies and options of Holder in law or in equity or under the Loan Documents.

Neither the failure of Holder to exercise any of the rights, powers or privileges expressly or repeatedly created or existing hereunder, or otherwise, nor any assent, express or implied, to the nonperformance or nonpayment of any obligation or liability of Maker created or existing hereunder or otherwise, shall at any time or under any circumstances constitute or be construed to be a waiver of the same or other right, power or privilege to Holder nor as an assent by Holder to the nonperformance or nonpayment of the same or any other obligation or liability of Maker, nor shall any estoppel be affected thereby against Holder.

If this Note shall be executed by more than one Maker, the singular shall include the plural and all the obligations and liabilities of each such party or person shall be joint and several. This Note cannot be modified or discharged orally. No requirements hereof may be waived at any time, except by a writing signed by the party against whom the waiver shall be enforced, nor shall any waiver be operative upon other than a single occasion, unless to the contrary expressly stated therein. All references herein to "Maker" and/or to "Holder" shall be deemed to include their respective personal representatives, distributees, successors and assigns.

Should the indebtedness represented by this Note or any part thereof be collected at law or in equity, or in bankruptcy, receivership or any other court proceedings (whether at the trial or appellate level), or should this Note be placed in the hands of attorneys for collection upon default, Maker agrees to pay, in addition to the principal, premium and interest due and payable hereon, all costs of collection or attempting to collect this Note, including attorneys' fees and expenses.

Time is of the essence as to all dates set forth herein, provided, however, that whenever any payment to be made under this Note shall be stated to be due on a Saturday, Sunday or a public holiday or the equivalent for banks generally under the laws of the State of New York (any other day being a "Business Day"), such payment may be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest.

All parties to this Note, whether Maker, principal, surety, guarantor, or endorser, hereby waive presentment for payment, demand, protest, notice of protest and notice of dishonor, and specifically consent to, and waive, notice of any renewals or extension of this Note, whether made to or in favor of Maker or any other person or persons, and hereby waive any defense by reason of extension of time for payment or other indulgence granted by Holder.

Any notice, demand or request required or permitted to be given pursuant to or under this Note shall be given in the manner specified in the Mortgage, directed to the parties at their respective addresses as provided therein.

Maker expressly waives any right to trial by jury of any claim, demand, action or cause of action (a) arising under this Note 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 Holder and Maker hereto or any of them with respect to this Note 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 Maker hereby agrees and consents that any such claim, demand, action or cause of action shall be decided by court trial without a jury, and that Holder or Maker may file an original counterpart or a copy of this section with any court as written evidence of the consent to the waiver of the right to trial by jury.

This Note shall be governed by and construed, in accordance with the laws of the State of New York. Any provision hereof which may prove unenforceable under any law shall not affect the validity of any other provision hereof.

IN WITNESS WHEREOF, Maker has duly executed this Note the day and year first above written.

Maker:

MADISONPARK REAL ESTATE COMPANY
LLC, a New York limited liability company




By: _____
Name: Daniel J. Mitchell
Title: president

STATE OF NEW YORK)
) ss.:
COUNTY OF New York)

On the 10th day of February, 2011, before me, the undersigned, a Notary Public in and for said state, personally appeared Daniel J. Mitchell personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity(ies), and that by his/her signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

ARIEL WEINSTOCK
Notary Public, State of New York
No. 02WE6182890
Qualified in Queens County
Commission Expires March 10, 2012



Notary Public

MADISONPARK REAL ESTATE COMPANY LLC,

Mortgagor,

to

BRT REALTY TRUST,

Mortgagee.

**BUILDING LOAN MORTGAGE, SECURITY AGREEMENT
AND ASSIGNMENT OF LEASES AND RENTS**

Mortgage Amount: **\$4,407,538.00**

Date: **February 11, 2011**

Premises: **21 East 26th Street
New York, New York**

**Section: 3
Block: 856
Lot: 14
County: New York**

Record and Return to:

Bryan Cave LLP
1290 Avenue of the Americas
New York, NY 10104-3300
Attn: David Kostman

NY02DOCS\1613057.4

Mitch0000537

10008-0012

Case No.: A-16

RA 000871

**BUILDING LOAN MORTGAGE, SECURITY AGREEMENT AND
ASSIGNMENT OF LEASES AND RENTS**

This **BUILDING LOAN MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF LEASES AND RENTS** is made and entered into on the 11 day of February, 2011 by, **MADISONPARK REAL ESTATE COMPANY LLC**, a New York limited liability company having an address at c/o Mitchell Holdings LLC, 815 Fifth Avenue, New York, New York 10065 ("**Mortgagor**"), in favor of **BRT REALTY TRUST**, a Massachusetts business trust having an address at 60 Cutter Mill Road, Great Neck, New York 11021 ("**Mortgagee**").

W I T N E S S E T H:

WHEREAS, Mortgagor is the lawful owner of the fee estate in certain land located at 21 East 26th Street, New York, New York, as more particularly described on Exhibit A attached hereto (the "**Land**") and the Improvements (hereinafter defined) located thereon (collectively, the "**Premises**"); and

WHEREAS, Mortgagee and Mortgagor are parties to a certain Building Loan Agreement of even date herewith (the "**Loan Agreement**") pursuant to which Mortgagee has agreed to make a loan to Mortgagor the principal sum of FOUR MILLION FOUR HUNDRED SEVEN THOUSAND FIVE HUNDRED THIRTY-EIGHT AND 00/100 DOLLARS (\$4,407,538.00) and Mortgagee is making this Mortgage as security therefor as a lien in the amount of FOUR MILLION FOUR HUNDRED SEVEN THOUSAND FIVE HUNDRED THIRTY-EIGHT AND 00/100 DOLLARS (\$4,407,538.00).

THE GRANTING CLAUSE:

NOW, THEREFORE, in consideration of the premises and covenants herein contained, and in order to secure the payment of the principal, interest and other sums due under that certain Mortgage Note (Building Loan) executed the date hereof by Mortgagor to the order of Mortgagee in the original principal amount of FOUR MILLION FOUR HUNDRED SEVEN THOUSAND FIVE HUNDRED THIRTY-EIGHT AND 00/100 DOLLARS (\$4,407,538.00) (as same may be hereafter modified, amended, extended, renewed or substituted for, the "**Note**"), and in order to secure the payment of all other indebtedness which this Mortgage by its terms secures and the compliance with all of the terms hereof, of the Note, the Loan Agreement and any other document executed in connection herewith (provided, however, that the maximum principal sum secured by this Mortgage at execution or which under any contingency may be secured hereby at any time in the future shall not exceed the principal sum stated above);

Mortgagor does hereby grant, bargain, sell, mortgage, warrant, pledge, assign, transfer and convey to Mortgagee, and to its participants, successors and assigns, the following property (collectively hereinafter referred to as the "**Mortgaged Property**"):

- (a) the Land;

(b) all additional lands and estates hereafter acquired by Mortgagor for use in connection with the Land and all lands and estates that may, from time to time, by supplemental mortgage or additional agreement be made subject to the lien of this Mortgage;

(c) any improvements, structures and buildings and any alterations thereto or replacements thereof, now or hereafter erected upon the Land, all fixtures, fittings, appliances, apparatus, equipment, machinery, material and replacements thereof (other than those articles of personal property owned by tenants under the "Leases" (as defined in clause (d) below)) now or at any time hereafter affixed to, attached to, placed upon or used in any way in connection with the complete and comfortable use, enjoyment, occupancy or operation of the Land or such improvements, and any and all structures or buildings, including but not limited to furnaces, boilers, oil burners, radiators and piping, coal stokers, plumbing and bathroom fixtures, refrigeration, air conditioning and sprinkler systems, wash-tubs, sinks, gas and electric fixtures, stoves, ranges, ovens, disposals, dishwashers, hood and fan combinations, awnings, screens, window shades, elevators, motors, dynamos, refrigerators, kitchen cabinets, incinerators, kitchen equipment, laundry equipment, plants and shrubbery and all other equipment and machinery, appliances, fittings and fixtures of every nature whatsoever now or hereafter owned or acquired by Mortgagor and located in or on, or attached to, and used or intended to be used in connection with or with the operation of, the Land, buildings, structures or other improvements, or in connection with any construction being conducted or which may be conducted thereon, and owned by Mortgagor, and all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing, and all of the right, title and interest of Mortgagor in and to any such personal property or fixtures subject to any lien, security interest or claim, which, to the fullest extent permitted by law, shall be conclusively deemed fixtures and a part of the real property encumbered hereby (collectively, the "**Improvements**");

(d) all leases and all other occupancy agreements (written or oral), by concession, license or otherwise (including any guarantees or sureties of any of the foregoing), of the Mortgaged Property, or any part thereof, now existing or hereafter entered into between Mortgagor (or any predecessor in interest as owner of the Mortgaged Property or otherwise) and tenants of Mortgagor (or such predecessor in interest), and all right, title and interest of Mortgagor therein and thereunder, including cash, securities, letters of credit or other security deposited thereunder to secure performance by the tenants under the Leases of their obligations thereunder and any proof of claim in any bankruptcy proceeding instituted by or against any such tenant or guarantor and the right to enforce, whether by action at law or in equity or by other means, all provisions, covenants and agreements thereof (hereinafter collectively referred to as the "**Leases**");

(e) all furniture, furnishings, equipment and other articles of personal property, together with all replacements and renewals thereof, other than those articles of trade fixtures and other personal property owned by tenants under the Leases, now or at any time hereafter placed upon, located in or used in any way in connection with the complete and comfortable use, enjoyment, occupancy and operation of the Property (hereinafter collectively referred to as the "**Furniture, Furnishings and Equipment**");

(f) Mortgagor's interest in all agreements, contracts, payment and performance bonds with respect to construction, certificates, instruments and other documents, now or hereafter entered into, pertaining to the construction, operation or management of any structure or building now or hereafter erected on the Land or to the sale of any direct or indirect interest in the Property (including any agreement for the sale of condominium units in the event the Mortgaged Property is converted to condominium ownership), including any purchase money mortgage or security agreement securing the payment of any portion of the purchase price due to Mortgagor for such interest, and all right, title and interest of Mortgagor therein and thereunder, including the right upon the happening of any default hereunder, to receive and collect any sums payable to Mortgagor thereunder;

(g) Mortgagor's interest in the franchises, permits, licenses and rights therein and thereto respecting the demolition, construction, use, occupation, operation and disposition of the Mortgaged Property and any part thereof and respecting any business or activity conducted on the Mortgaged Property and any part thereof, including to the extent permitted by law the name or names, if any, now or hereafter used for the Improvements, and the good will associated therewith;

(h) Mortgagor's interest in all easements, rights-of-way, gores of land, streets, ways, alleys, passages, sewer rights, water courses, water rights and powers, and all appurtenances whatsoever, in any way belonging, relating or appertaining to any of the Mortgaged Property described in the preceding clauses (a) through (g), or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor;

(i) Mortgagor's interest in claims and causes of action relating directly or indirectly to the Mortgaged Property (including, without limitation, tax appeals and tax and other refunds), whether such claims or causes of action arise in Mortgagor's name or such claims or causes of action are acquired by Mortgagor, directly or indirectly, by subrogation or otherwise;

(j) Mortgagor's interest in all proceeds, products, replacements, additions, substitutions, renewals and accessions of and to the Mortgaged Property described in the preceding clauses (a) through (i) (including, without limitation, insurance proceeds and proceeds from governmental or charitable grants or loans including without limitation grants or loans from the Federal Emergency Management Agency or any other federal, state or local agency or instrumentality or any charitable organization);

(k) all rents, income and other benefits to which the Mortgagor may now or hereafter be entitled from the Mortgaged Property described in the preceding clauses (a) through (j), to be applied against the indebtedness and other sums secured hereby; provided, however, that permission is hereby given to the Mortgagor, so long as no Event of Default has occurred hereunder, to collect and use such rents, income and other benefits as they become due and payable, but not in advance thereof;

(l) all air rights and unused development rights (including, without limitation, rights (whether or not transferable to other parties) to restrict the use of the Mortgaged Property);

(m) the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Mortgaged Property, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Mortgaged Property;

(n) all awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Mortgaged Property, whether from the exercise of the right of eminent domain (including but not limited to any transfer made in lieu of or in anticipation of the exercise of said right), or for a change of grade, or for any other injury to or decrease in the value of the Mortgaged Property;

(o) all proceeds of and any unearned premiums on any insurance policies covering the Mortgaged Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Mortgaged Property;

(p) the right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of Mortgagee in the Mortgaged Property; and

(q) the proceeds of any loan secured by any interest in the Mortgaged Property described in the preceding sections (a) through (p).

AND, without limiting any of the other provisions of this Mortgage, Mortgagor expressly grants to Mortgagee, as secured party, a security interest in all of those portions of the Mortgaged Property which are or may be subject to the provisions of the Uniform Commercial Code of the state in which the Mortgaged Property is located and of the state in which Mortgagor was organized, applicable to secured transactions.

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto Mortgagee, its successors and assigns forever.

AND Mortgagor further covenants and agrees with Mortgagee as follows:

ARTICLE 1

The Note

1.01 Payment of the Note. Mortgagor will duly and punctually pay (a) the principal of and premium, if any, and interest and other charges on the Note at the time outstanding in accordance with the terms thereof and hereof, and (b) when and as due and payable from time to time as provided herein, all other sums payable hereunder or secured hereby, together with, to the extent permitted by applicable law, interest at the Default Rate on any sums as shall not be paid when due and payable from the date when due and payable (whether during a grace period, if any, or otherwise) until payment thereof.

1.02 Late Charge. In the event that any payment due hereunder or under the Note shall not be made by Mortgagor within five (5) days from the date when such payment is due and payable, a late charge of five cents (\$.05) for each dollar (\$1.00) so past due, may be charged by Mortgagee for the purpose of defraying the expense incident to handling such delinquent payment. For the avoidance of doubt, the late charge described in the preceding sentence will be assessed only on the monthly payment and other amounts due under the Note but not on the principal balance payable upon the maturity or acceleration of the Note.

1.03 Prepayment of the Note. The Note may only be prepaid as provided in the Note.

1.04 Guaranty. Mortgagor has delivered to Mortgagee, simultaneously with the execution and delivery of this Mortgage, a guaranty of payment of and performance under the Note, this Mortgage and any other document evidencing or securing the performance of the obligations secured hereby (the "Payment Guaranty"), and a guaranty of completion with respect to construction of the improvements described in the Loan Agreement (the "Completion Guaranty"), each duly executed by the Guarantor (the Payment Guaranty and the Completion Guaranty are collectively referred to herein as the "Guaranty").

1.05 Disbursement of Loan Proceeds. The proceeds of the loan secured hereby will be disbursed by Mortgagee in accordance with the terms and conditions of the Loan Agreement.

ARTICLE 2

OWNERSHIP, CONDITION, ETC., OF MORTGAGED PROPERTY

2.01 Representations, Covenants and Warranties as to Title to Mortgaged Property, etc. Mortgagor represents, covenants and warrants that as of the date hereof and at all times thereafter during the term hereof: (a) Mortgagor is and shall be seized of an indefeasible estate in fee simple in, and has and shall have good, marketable and absolute title to, the Mortgaged Property, and has good right, full power and lawful authority to mortgage and pledge the same as provided herein and Mortgagee may at all times peaceably and quietly enter upon, hold, occupy and enjoy the Mortgaged Property in accordance with the terms hereof; the Mortgaged Property is and shall be free and clear of all liens, security interests, charges and encumbrances whatsoever except for the liens securing any other loans made by Mortgagee to Mortgagor secured by the Mortgaged Property and those exceptions to title as are specified in the title insurance policy to be issued pursuant to the title insurance commitment endorsed and redated on the date hereof and accepted by the Mortgagee (all such liens, collectively, the "Permitted

Encumbrances"); (b) Mortgagor has good and lawful right, power and authority to execute this Mortgage and to mortgage the Mortgaged Property, to assign its right, title and interest as landlord under the Leases and to grant a security interest in the Mortgaged Property; (c) this Mortgage has been duly executed and delivered by the duly authorized representatives of Mortgagor and constitutes the legal, valid and binding obligation of Mortgagor, enforceable in accordance with its terms; (d) all costs arising from construction of any Improvements and the purchase of all equipment located on the Mortgaged Property have been paid; and (e) neither Mortgagor nor, to Mortgagor's knowledge, any prior owner or present or former tenant or other person has taken any action (or been responsible for any omission) that would cause the Mortgaged Property or any part thereof or any interest therein to be subject to forfeiture under applicable laws. Mortgagor at its expense will warrant and defend to Mortgagee such title to the Mortgaged Property and the lien and security interest of Mortgagee thereon and therein, against all claims and demands and will maintain and preserve such lien and security interest and will keep this Mortgage a lien upon and a first priority perfected security interest in the Mortgaged Property, subject only to the Permitted Encumbrances.

2.02 Title Insurance.

2.02.01 Title Insurance Policy. Prior to or concurrently with the execution and delivery of this Mortgage, Mortgagor, at its own cost and expense, will obtain and deliver to Mortgagee a mortgagee's title insurance policy in the amount of this Mortgage, issued by a title insurance company satisfactory to Mortgagee and in form and substance satisfactory to Mortgagee and its counsel, naming Mortgagee as the insured, insuring title to and priority of the lien of this Mortgage upon the Land and the Improvements, together with such reinsurance and co-insurance as Mortgagee may require.

2.02.02 Current Survey. Prior to the execution and delivery of this Mortgage, Mortgagor, at its own cost and expense, has obtained and delivered to Mortgagee a current survey of the Land and Improvements satisfactory to Mortgagee and to the title insurance company specified pursuant to Section 2.02.01.

2.02.03 Title Insurance Proceeds. All proceeds received by Mortgagee for any loss under the title insurance policy or policies delivered to Mortgagee under Section 2.02.01 or otherwise in connection with this Mortgage, or under any title insurance policy or policies delivered to Mortgagee in substitution therefor or in replacement thereof, shall be the property of Mortgagee and applied in the manner provided in Section 5.08.

2.03 Recordation. Mortgagor, at its expense, will at all times cause this Mortgage and any instruments amendatory hereof or supplemental hereto and any instruments of assignment hereof or thereof (and any appropriate financing statements or other instruments and continuations thereof with respect to any thereof) to be recorded, registered and filed and to be kept recorded, registered and filed, in such manner and in such places, and will pay all such recording, registration, filing fees and other charges, and will comply with all such statutes and regulations as may be required by law in order to establish, preserve, perfect and protect the lien of this Mortgage as a valid, direct mortgage lien and first priority perfected security interest in

the Mortgaged Property, subject only to the Permitted Encumbrances. Mortgagor will pay or cause to be paid, and will indemnify Mortgagee in respect of, all taxes (including interest and penalties) at any time payable in connection with the filing and recording of this Mortgage and any and all supplements and amendments thereto.

2.04 Payment of Impositions, etc. Subject to Section 2.07 (relating to permitted contests) and Section 2.08 (relating to escrow deposits), Mortgagor will pay or cause to be paid when due and payable all taxes, assessments (including, but not limited to, all assessments for public improvements or benefits), water and sewer rates, ground rents, maintenance charges, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Mortgaged Property, charges for public or private utilities, license permit fees, inspection fees and other governmental levies or payments, of every kind and nature whatsoever, general and special, ordinary and extraordinary, unforeseen as well as foreseen, which at any time may be assessed, levied, confirmed, imposed or which may become a lien upon the Mortgaged Property, or any portion thereof, or which are payable with respect thereto, or upon the rents, issues, income or profits thereof, or on the occupancy, operation, use, possession or activities thereof, whether any or all of the same be levied directly or indirectly or as excise taxes or as income taxes, and all taxes, assessments or charges which may be levied on the Note, or the interest thereon (collectively, the "**Impositions**"). Mortgagor will deliver to Mortgagee, upon request, copies of official receipts or other satisfactory proof evidencing such payments.

2.05 Insurance and Legal Requirements. Subject to Section 2.07 (relating to permitted contests), Mortgagor, at its expense, will comply, or cause compliance with:

(a) all provisions of any insurance policy covering or applicable to the Mortgaged Property or any part thereof, all requirements of the issuer of any such policy, and all orders, rules, regulations and other requirements of the New York Board of Fire Underwriters (or any other body exercising similar functions) applicable to or affecting the Mortgaged Property or any part thereof or any use or condition of the Mortgaged Property or any part thereof (collectively, the "**Insurance Requirements**"), and

(b) all laws, statutes, codes, acts, ordinances, orders, permits, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements (including, without limitation, those relating to the protection of the environment) of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Mortgaged Property or any part thereof, or any of the adjoining sidewalks, curbs, vaults and vault space, if any, streets or ways, or any use or condition of the Mortgaged Property or any part thereof (collectively, the "**Legal Requirements**");

whether or not compliance therewith shall require structural changes in or interference with the use and enjoyment of the Mortgaged Property or any part thereof and whether or not such compliance could be foreseen or is unforeseen.

2.06 Liens, etc. Mortgagor will not directly or indirectly create or permit or suffer to be created or to remain, and will promptly discharge or cause to be discharged or bonded, any mortgage, lien, encumbrance or charge on, pledge of, security interest in or conditional sale or other title retention agreement with respect to the Mortgaged Property or any part thereof or the interest of Mortgagor or Mortgagee therein or any rents or other sums arising therefrom, other than (a) the Permitted Encumbrances and (b) liens of mechanics, materialmen, suppliers or vendors or rights thereto which are at the time being contested as permitted by Section 2.07. Mortgagor is prohibited from placing any subordinate or other mortgages or liens on the Mortgaged Property (other than the Permitted Encumbrances), and to the fullest extent permitted by law any such purported mortgages or liens (which are not a Permitted Encumbrance) placed on all or any portion of the Mortgaged Property shall be deemed void ab initio. Mortgagor will not postpone the payment of any sums for which liens of mechanics, materialmen, suppliers or vendors or rights thereto have then incurred (unless such liens or rights thereto are at the time being contested as permitted by Section 2.07), or enter into any contract under which payment of such sums is postponable (unless such contract expressly provides for the legal, binding and effective waiver of any such liens or rights thereto), in either case, for more than 30 days after the completion of the action giving rise to such liens or rights thereto.

2.07 Permitted Contests. Mortgagor, at its expense, may upon notice to Mortgagee, contest, or cause to be contested, by appropriate legal proceedings conducted in good faith and with due diligence, the amount or validity of application, in whole or in part, of any Imposition, Legal Requirement or Insurance Requirement or of any lien, encumbrance or charge referred to in Section 2.06, provided that (a) in the case of an unpaid Imposition, lien, encumbrance or charge, such proceedings shall suspend the collection thereof from Mortgagor, Mortgagee, the Mortgaged Property and any rent or other income therefrom and shall not interfere with the payment of any such rent or income, (b) neither the Mortgaged Property nor any rent or other income therefrom nor any part thereof or interest therein would be in any danger of being sold, forfeited, lost or interfered with, (c) in the case of a Legal Requirement, neither Mortgagor nor Mortgagee would be in danger of any civil or criminal liability for failure to comply therewith, (d) Mortgagor shall have furnished such security, if any, as may be required in the proceedings or as may be reasonably requested by Mortgagee, (e) the nonpayment of the whole or any part of any tax, assessment or charge will not result in the delivery of a tax deed to the Mortgaged Property or any part thereof because of such nonpayment, (f) the payment of any sums required to be paid under the Note or under this Mortgage (other than any unpaid Imposition, lien, encumbrance or charge at the time being contested in accordance with this Section 2.07) shall not be interfered with or otherwise affected, and (g) in the case of any Insurance Requirement, the failure of Mortgagor to comply therewith shall not affect the validity of any insurance required to be maintained by Mortgagor under Section 3.01.

2.08 Deposits for Impositions, Insurance Premiums, etc. Mortgagor will pay or cause to be paid to Mortgagee, on the first day of each month following the date hereof, such amounts as Mortgagee from time to time estimates as reasonably necessary to create and maintain a reserve fund to be held by Mortgagee, without interest, from which to pay one month before the same become due, all Impositions (including all taxes, water and sewer charges, assessments, liens and charges on or against the Mortgaged Property and any part

thereof) and premiums for insurance required to be maintained by Mortgagor under Section 3.01. Payments from such reserve fund for such purposes may be made at Mortgagee's reasonable discretion even though subsequent owners of the Mortgaged Property or any part thereof may benefit thereby. During the continuance of any Event of Default, any part or all of such reserve fund may be applied to any part of the indebtedness secured hereby. In refunding any part of such reserve fund, Mortgagee may deal with whomever is represented to be the owner of the Mortgaged Property or such part thereof at the time. If one month prior to the due date of any of the aforementioned obligations the amount then on deposit therefor shall be insufficient for the payment of such obligation in full, Mortgagor, within ten (10) days after written notice from Mortgagee, shall deposit the amount of the deficiency with Mortgagee. Until expended or applied as above provided, any amounts in the reserve fund shall constitute additional security for the payment of the Indebtedness. The reserve fund shall not constitute a trust fund and may be commingled with other monies held by Mortgagee. No earnings or interest on the reserve fund shall be payable to Mortgagor. Upon the Mortgagor's repayment of in full of all amounts due and owing under the Note, this Mortgage and any other documents evidencing or securing the obligations of Mortgagor under the Note, any funds remaining in the reserve will be refunded to Mortgagor.

2.09 Leases.

2.09.01 Subordination of Leases; Attornment. Except as otherwise consented to in writing by Mortgagee, all of the Leases shall be made expressly subject and subordinate to this Mortgage and shall contain provisions obligating the tenants thereunder, at Mortgagee's option, to attorn to Mortgagee in the event Mortgagee succeeds to the interest of Mortgagor under such Lease.

2.09.02 Enforcement, etc. Mortgagor will faithfully keep and perform all of the obligations of the lessor under each of the Leases in accordance with their terms. Mortgagor will maintain the Leases in full force and effect, and will not, without the prior written consent of Mortgagee, (a) terminate or cancel any Lease or consent to or accept any termination, cancellation or surrender thereof (other than upon the expiration of any Lease pursuant to its terms), or permit any condition or event to exist or to occur that would, or would entitle the tenant thereunder to, terminate or cancel the same, (b) amend, modify or otherwise change the in any material respect terms of any Lease except to increase the rent or other charges or assessments payable by tenants thereunder upon any renewal or extension of any such lease, (c) waive any default under or breach of any Lease, (d) consent to or permit any prepayment or discount of rent or payment of advance rent under any Lease (other than the usual prepayment of rent as would result from the acceptance on the first day of each month of the rent for the ensuing month and a reasonable and customary security deposit of not more than two months' rent in accordance with the terms of any such lease), (e) enter into any Lease not in effect on the date hereof without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld, conditioned or delayed, (f) give any waiver, consent or approval under any Lease or take any other action in connection with any such Lease that would or might be reasonably expected to impair the value of Mortgagor's interest thereunder or of the Mortgaged Property subject thereto, or impair the interest of Mortgagee therein, (g) collect any rent more

than one (1) month in advance of the date due, (h) collect any sums from or settle any claim with any tenant in bankruptcy or guarantor of any Lease without the prior written consent of Mortgagee; any such sums shall be paid directly to Mortgagee and applied first against accrued but unpaid interest due under the Note and then in reduction of the principal balance due under the Note, or (l) consent to any assignment of or subletting or other matter requiring the lessor's consent under any Lease without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld, conditioned or delayed. Reference is hereby made for the purposes of this Section to Section 291-f of the Real Property Law of the State of New York.

2.09.03 Assignment of Leases, etc. Mortgagor hereby assigns to Mortgagee all its right, title and interest as landlord under Leases now existing or hereafter entered into, and all rents and other sums payable to Mortgagor under each such Lease, together with the right to collect and receive the same, provided that, if and so long as no Event of Default (as defined in Section 5.01) shall have occurred and be continuing, Mortgagor shall be permitted to exercise its rights and perform its obligations as landlord under the Leases and to collect and receive such rents and other sums for its own uses and purposes but nonetheless subject to Section 2.09.02 hereinabove. During the existence of an Event of Default, such permission shall terminate and shall not be reinstated upon a cure of such Event of Default without Mortgagee's express written consent. Such assignment shall be fully operative without any further action on the part of either party and Mortgagee shall be entitled, at its option, upon the occurrence of an Event of Default hereunder, to all rents, income and other benefits from the Mortgaged Property whether or not Mortgagee takes possession of the Mortgaged Property. Mortgagor hereby further grants to Mortgagee the right, at Mortgagee's option, to (i) enter upon and take possession of the Mortgaged Property for the purpose of collecting the said rents, income and other benefits, (ii) dispossess by the usual summary proceedings any tenant defaulting in the payment thereof to Mortgagee, (iii) let the Mortgaged Property or any part thereof, and (iv) apply such rents, income and other benefits, after payment of all necessary charges and expenses, on account of the indebtedness and other sums secured hereby. Such assignment and grant shall continue in effect until the indebtedness and other sums secured hereby are paid, the execution of this Mortgage constituting and evidencing the irrevocable consent of Mortgagor to the entry upon and taking possession of the Mortgaged Property by Mortgagee pursuant to such grant, whether or not foreclosure has been instituted. Neither the exercise of any rights under this paragraph by Mortgagee nor the application of any such rents, income or other benefits to the indebtedness and other sums secured hereby, shall cure or waive any default, Event of Default, or notice of default hereunder or invalidate any act done pursuant hereto or to any such notice, but shall be cumulative of all other rights and remedies. During the existence of an Event of Default, all such rents and other sums shall be collected and held by Mortgagee and shall be applied as provided in Section 5.08.

2.09.04 Further Assignments. Mortgagor shall assign to Mortgagee, upon request, as further security for the indebtedness secured hereby, Mortgagor's interests in all agreements, contracts, licenses and permits affecting the Mortgaged Property, such assignments to be made by instruments in form satisfactory to Mortgagee; but no such assignment shall be construed as a consent by Mortgagee to any agreement, contract, license or permit so assigned, or to impose upon Mortgagee any obligations with respect thereto.

2.09.05 Rent Roll. Mortgagor shall furnish to Mortgagee, annually on or before March 1 of each year, and, in addition, within ten (10) days after a request by Mortgagee to do so, a certified statement containing the names of all tenants of the Mortgaged Property or any part thereof, the term of their respective leases, the space occupied, the rents payable and the securities deposited thereunder, together with true copies of each Lease and any amendments and supplements thereto.

2.09.06 No Commingling. All securities deposited by tenants of the Mortgaged Property shall be treated as trust funds not to be commingled with any other funds of Mortgagor and Mortgagee shall, upon demand, furnish to Mortgagee satisfactory evidence of compliance with this provision, together with a verified statement of all securities deposited by the tenants.

2.09.07 Successor Not Bound. To the extent not so provided by applicable law, each Lease of the Mortgaged Property, or of any part thereof, entered into after the date hereof, shall provide that, in the event of the enforcement by Mortgagee of the remedies provided for by law or by this Mortgage, any person succeeding to the interest of Mortgagor as a result of such enforcement shall not be bound by any payment of rent or additional rent for more than one month in advance.

2.10 Use of Property, etc. Except to the extent otherwise approved by Mortgagee in writing, Mortgagor shall continue to operate the Mortgaged Property for the purposes for which used on the date hereof and for no other purpose, and shall not acquire any fixtures, equipment, furnishings or apparatus covered by this Mortgage subject to any security interest or other charge or lien taking precedence over the security interest and lien of this Mortgage. Mortgagor shall not make or suffer any improper or offensive use of the Mortgaged Property or any part thereof and will not use or permit to be used any part of the Mortgaged Property for any dangerous, noxious, offensive or unlawful trade or business or for any purpose which will reduce the value of the Mortgaged Property in any respect or will cause the Mortgaged Property or any part thereof or interest therein to be subject to forfeiture. In the case of any action or omission of any party which may cause the Mortgaged Property or any part thereof or any interest therein to be subject to forfeiture under applicable laws, then the Mortgagor shall, within 5 days thereafter, (1) give notice to the Mortgagee thereof, (2) take at its expense all action (including, without limitation, the commencement of all summary proceedings required to evict any party responsible for such act or omission) required to prevent such forfeiture and (3) bond the forfeiture proceeding so that it no longer constitutes a lien against any portion of the Mortgaged Property. Mortgagor will not do or permit any act or thing which is contrary to any Legal Requirement or Insurance Requirement or any document of record affecting the Property, or which might impair the value or usefulness of the Mortgaged Property or any part thereof, or commit or permit any waste of the Mortgaged Property or any part thereof, and will not cause or maintain any nuisance in, at or on the Mortgaged Property or any part thereof, or commit or permit any waste of the Mortgaged Property. Mortgagor at its expense will promptly comply with all rights of way or use, privileges, franchises, servitudes, licenses, easements, tenements, hereditaments and appurtenances forming a part of the Mortgaged Property and all instruments relating or evidencing the same, in each case, to the extent

compliance therewith is required of Mortgagor under the terms thereof. Mortgagor will not take any action which results in a forfeiture or termination of the rights afforded to Mortgagor under any such instruments and will not, without the prior written consent of Mortgagee, amend in any material respect any of such instruments. Mortgagor shall at all times comply with any instruments of record at the time in force affecting the Mortgaged Property or any part thereof and shall procure, maintain and comply with all permits, licenses and other authorizations required for any use of the Mortgaged Property or any part thereof then being made, and for the proper erection, installation, operation and maintenance of the Improvements or any part thereof.

2.11 Utility Services. Mortgagor will pay or cause to be paid all charges for all public and private utility services, all public or private communications services and all sprinkler systems and protective services at any time rendered to or in connection with the Mortgaged Property or any part thereof, will comply or cause compliance with all contracts relating to any such services, and will do all other things required for the maintenance and continuance of all such services.

2.12 Maintenance and Repair, etc. Subject to Section 2.13, Mortgagor will keep or cause to be kept all presently and subsequently erected or acquired Improvements and the sidewalks, curbs, vaults and vault space, if any, in good and substantial order and repair and in such a fashion that the value and utility of the Mortgaged Property will not be diminished, and, at its sole cost and expense, will promptly make or cause to be made all necessary and appropriate repairs, replacements and renewals thereof, whether interior or exterior, structural or nonstructural, ordinary or extraordinary, foreseen or unforeseen. All repairs, replacements and renewals shall be at least equal in quality and class to the original Improvements. Mortgagor's obligation to repair shall include the obligation to rebuild in the event of destruction however caused, provided that damage by fire or other cause for which Mortgagor is obligated to maintain insurance by any of the provisions of Section 3.01 shall be governed by the provisions of Sections 3.01 and 3.02, and damage by any taking shall be governed by the provisions of Section 3.02. Mortgagor at its expense will do or cause to be done all shoring of foundations and walls of any building or other Improvements and (to the extent permitted by law) of the ground adjacent thereto, and every other act necessary or appropriate for the preservation and safety of the Mortgaged Property by reason of or in connection with any excavation or other building operation upon the Mortgaged Property and upon any adjoining property, whether or not Mortgagor shall, by any Legal Requirement, be required to take such action or be liable for failure to do so.

2.13 Alterations, Additions, etc. Except as set forth in this Section 2.13, Mortgagor shall make no alterations of or additions to the Mortgaged Property (nor shall Mortgagor demolish all or any portion of the Mortgaged Property). So long as no Event of Default shall have occurred and be continuing, and with the prior written consent of Mortgagee, Mortgagor shall have the right at any time and from time to time to make or cause to be made reasonable alterations of and additions to the Property or any part thereof. Mortgagee agrees to not unreasonably withhold or delay its consent to any alteration or addition provided that such alteration or addition (a) shall not change the general character of the Property or reduce the fair market value thereof below its value immediately before such alteration or addition, or impair

Mitchell Holdings, LLC

April 18, 2012

Ms. Nicole Ostoya
 Ms. Robin Coe-Hutshing
 c/o Gold Grenade, LLC ("GG")
 1945 Euclid Street
 Santa Monica, CA 90404

Ladies:

We are pleased to submit this binding Term Sheet whereby Mitchell Holdings, LLC and/or its affiliates, agents and assigns ("Mitchell"), will assist you and a U.S. publicly traded company ("Pubco"), in connection with a merger and private placement offering and related transactions. You and we agree that this Term Sheet supersedes and replaces any and all prior oral and/or written agreements.

Item	Description
1. Structure	Nicole Osotya ("NO"), Robin Coe-Hutshing ("RCH"), and Maria Torres are currently in the final stages of negotiating a licensing agreement on behalf of a Nevada corporation to be formed and owned by them ("Newco") with the loan-out corporations of each of Kim, Khloe and Kourtney Kardashian ("K3 Agreement") for the right and license to use said Kardashians' personas in connection with the manufacture, marketing and sale of a line of color cosmetics. NO and RCH will deliver the execution copy of the K3 Agreement to Mitchell for its review and comment prior to its execution thereof by such loan-out corporations, so that Mitchell can raise any issues it has with any of the provisions contained in the K3 Agreement, and NO and RCH will agree to cooperate with Mitchell to ensure that any such issues (to the extent that Mitchell desires to raise such issues) are addressed with the Kardashians prior to execution thereof. Promptly after Newco is formed, Newco shall execute and become a party to this Term Sheet. It is the preference of the parties to include the issuance of equity in Newco to the Kardashians prior to the closing of the transactions described herein; provided, however, that such equity may take the form of options or restricted stock issued at some future time.

Pubco will be a publicly traded corporation currently

NO/RCH

Mitchell

815 Fifth Avenue, New York, New York 10065

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10014-0001

Case No.: A-16

RA 000884

Item**Description**

quoted on the OTC Markets and filing reports with the Securities and Exchange Commission ("SEC") under the Securities Exchange Act of 1934, as amended ("Exchange Act"), shares of whose common stock were registered on a registration statement under the Securities Act of 1933, as amended (the "Securities Act"); the common stock of Pubco may or may not be registered under Exchange Act.

Pubco will raise bridge financing for Newco through the issuance of secured convertible notes (the "Bridge Financing"), which upon the closing of the Merger and PPO (as defined below) will automatically convert into shares of Pubco common stock ("Common Stock").

Subsequently, Newco will enter into a reverse triangular merger with Pubco and a newly formed acquisition subsidiary of Pubco, which merger (the "Merger") shall qualify as a tax-free reorganization under the US Internal Revenue Code, and pursuant to which all of the outstanding shares of capital stock of Newco will be cancelled in exchange for Pubco Common Stock; and simultaneously Pubco will conduct a private placement offering (the "PPO") of its securities on the terms described below.

The anticipated closing date for the Bridge Financing will be on or before April 30, 2012, and the anticipated closing date for the Merger and the PPO (the "Closing Date") will be on or before June 15, 2012, subject to completion and delivery of audited and interim unaudited financial statements of Newco pro forma the Merger, compliant with applicable SEC regulations for inclusion under Item 2.01(f) and/or 5.01(a)(8) of Form 8-K (the "Financial Statements").

The transactions described in this Term Sheet will hereinafter be referred to as the "Transaction" or "Transactions." All references in this Term Sheet to "\$" or "dollars" are to United States dollars, unless the context specifically provides otherwise.

2. Bridge Financing

Pubco shall offer and sell up to \$1,500,000 principal amount of its senior secured convertible notes (the "Bridge Notes"), which will be sold to a limited number of sophisticated investors and/or non-US persons pursuant to Regulation D and/or Regulation S of the Securities Act

 NO/RCH

 Mitchell

Mitchell Holdings, LLC

April 18, 2012

Ms. Nicole Ostoya
 Ms. Robin Coe-Hutshing
 c/o Gold Grenade, LLC ("GG")
 1945 Euclid Street
 Santa Monica, CA 90404

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NO/RCH

Mitchell

815 Fifth Avenue, New York, New York 10065

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10014-0001

Case No.: A-16

RA 000886

Item

Description

quoted on the OTC Markets and filing reports with the Securities and Exchange Commission ("SEC") under the Securities Exchange Act of 1934, as amended ("Exchange Act"), shares of whose common stock were registered on a registration statement under the Securities Act of 1933, as amended (the "Securities Act"); the common stock of Pubco may or may not be registered under Exchange Act.

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The transactions described in this Term Sheet will hereinafter be referred to as the "Transaction" or "Transactions." All references in this Term Sheet to "\$" or "dollars" are to United States dollars, unless the context specifically provides otherwise.

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NO/RCH

Mitchell

Delaware

PAGE 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "ADVANCESTAR LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE THIRD DAY OF FEBRUARY, A.D. 2011.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "ADVANCESTAR LLC" WAS FORMED ON THE FIFTH DAY OF MARCH, A.D. 2009.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE BEEN PAID TO DATE.

4661974 8300

110113906

You may verify this certificate online
at corp.delaware.gov/authver.shtml




Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 8538538

DATE: 02-03-11

Mitch0000826

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Case No.: A-16

RA 000888

EXHIBIT C

Certificate of Good Standing and Authorization to Transact Business of AdvanceStar

359400-1-W

Mitch0000827

10015-0002
Case No.: A-16

RA 000889

EXHIBIT D

Resolutions of AdvanceStar

359400-1-W

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10015-0003

Case No.: A-16

RA 000890

**CONSENT OF THE SOLE MANAGER OF
ADVANCESTAR LLC**

The undersigned, being the sole manager (the “**Manager**”) of AdvanceStar LLC, a Delaware limited liability company (the “**Company**”); being the sole managing member of Lofts 21 LLC, a New York limited liability company (“**Lofts 21**”); being the sole member of MadisonPark Real Estate Company, a New York limited liability company (“**MadisonPark**”) hereby consents to the following actions to be taken by the Company and MadisonPark:

RESOLVED, that the Company be, and hereby is, authorized to cause Lofts 21 to cause MadisonPark to: (i) purchase (“**Purchase**”) the certain real property and improvements located at 21 East 26th Street, New York, New York (the “**Property**”); and (ii) in connection therewith, to borrow from BRT Realty Trust, having an office at 60 Cutter Mill Road, Suite 303, Great Neck, New York 11021 (the “**Lender**”), (A) an acquisition loan in the principal amount of up to \$9,500,000 (the “**Acquisition Loan**”); and (B) one or more building and/or project loans in the aggregate principal amount of \$4,500,000 (collectively, the “**Construction Loan**” and together with the Acquisition Loan, collectively, the “**Loans**”), which Loans may be secured by, among other things, one or more mortgages covering the Property, and by other assets of MadisonPark, Lofts 21 and the Company; and be it further

RESOLVED, that David J. Mitchell be, and hereby is, appointed as Vice President of the Company solely for the purposes of effectuating the resolutions contained herein including without limitation, executing any documentation necessary, and for no other purpose; and be it further

RESOLVED, that each of David J. Mitchell and any other officer or member, in each case acting alone, be, and hereby is, authorized to execute and deliver on behalf of the Company in connection with the foregoing Purchase and Loans transactions, any loan agreements, note or notes, security instruments, mortgages, agreements, assignments of leases and rents, pledge agreements, financing statements, and such other certificates, affidavits, instruments, indemnities and such other transfer tax forms, conveyance documents, certificates, affidavits, instruments, indemnities and other documents as are or may be necessary, appropriate or convenient in connection with said Purchase and Loans transactions; in each case, all in such form and containing such provisions as the officer or member executing the same may deem advisable, such determination to be conclusively evidenced by the execution and delivery thereof by any such officer or member, and to do such acts and things as may be necessary or, in the opinion of the officer or member executing the same, are desirable or proper to carry out the Loans transaction; such determination to be conclusively evidenced by such officer’s or such member’s signature; and be it further

RESOLVED, that all actions of any kind heretofore taken by Kerry Wellington, David J. Mitchell, or any other officer or member of the Company or by any representative thereof on behalf of the Company in connection with the matters contemplated by the foregoing resolutions are hereby confirmed, ratified and approved in all respects.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has signed this consent as of the 16 day of February, 2011.

MANAGER:



DAVID J. MITCHELL

359412-1-W

Mitch0000830

10015-0005

Case No.: A-16

RA 000892

EXHIBIT E

Articles of Organization of Lofts 21

359400-1-W

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10015-0006

Case No.: A-16

RA 000893

STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of
the Department of State, at the City of
Albany, on February 4, 2011.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro
First Deputy Secretary of State

Rev. 06/07

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Case No.: A-16

RA 000894

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ARTICLES OF ORGANIZATION

OF

LOFTS 21 LLC

Organized Under Section 203 of the
New York Limited Liability Company Law

THE UNDERSIGNED hereby certifies as follows:

FIRST: The name of the limited liability company is Lofts 21 LLC.

SECOND: The county within this state in which the office of the limited liability company is to be located is New York County.

THIRD: The Secretary of State is designated as agent of the limited liability company upon whom process against it may be served. The post office address within or without this state to which the Secretary of State shall mail a copy of any process against the limited liability company served upon him or her is c/o Classic Group Inc., 4 West 22nd Street, 4th Floor, New York, NY 10010.

FOURTH: The limited liability company shall be managed by one or more managers.

30th IN WITNESS WHEREOF, these Articles of Organization has been subscribed this the day of June, 2010, by the undersigned who affirms that the statements made herein are true under the penalties of perjury.



Name: Lawrence P. Lenzner
Title: Organizer

4065690v.1

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Case No.: A-16

RA 000895

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ARTICLES OF ORGANIZATION

OF

LOFTS 21 LLC

Section 203 of the Limited Liability Company Law

FILED

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Filed for:

Patterson, Belknap, Webb & Tyler, LLP
1133 Avenue Of The Americas
New York, NY 10036-6710

Cust. Ref#434980AJC

DRAWDOWN

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STATE OF NEW YORK
DEPARTMENT OF STATE

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Case No.: A-16

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EXHIBIT F

Operating Agreement of Lofts 21

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Case No.: A-16

RA 000897

SECOND AMENDED AND RESTATED
OPERATING AGREEMENT
OF
LOFTS 21 LLC
A New York Limited Liability Company

THIS SECOND AMENDED AND RESTATED OPERATING AGREEMENT (this "**Agreement**"), of LOFTS 21 LLC (the "**Company**"), dated effective as of February __, 2011, is entered into by and among AdvanceStar LLC, a New York limited liability company, as the Managing Member of the Company ("**Managing Member**"), Ryder Madison LLC ("**Ryder**"), David J. Mitchell ("**Mitchell**"), Kerry Wellington ("**Wellington**") and those other persons or entities executing this Agreement as of the date hereof as "Class A Members," and any other person or entity that is hereafter admitted as a member and becomes a party to this Agreement in accordance with the terms of this Agreement.

Whereas, the Company was caused to be formed by Wellington by the filing of Articles of Organization in the Office of the Secretary of State of the State of New York on July 1, 2010, and

Whereas, pursuant to that certain original operating agreement of the Company dated as of July 1, 2010, Wellington was the sole member of the Company; and

Whereas, the Company entered into that certain Purchase and Sale Agreement, dated as of July 30, 2010, by and between the Company, as Purchaser, and Plumbers No. 1 Real Estate Col., Inc., as Seller (the "**Purchase Contract**"), providing for the purchase and sale of that certain land and improvements thereon located at 21 East 26th Street, New York, New York (the "**Property**") for a purchase price of \$13,250,000; and

Whereas, Mitchell and Ryder were admitted as members of the Company and in connection therewith Wellington, Mitchell and Ryder amended and restated the original operating agreement of the Company as of September 2010; and

Whereas, the existing members of the Company desire to admit additional members to the Company who will contribute additional capital to the Company for the purpose of acquiring and making certain improvements to the Property and providing working capital, and in connection therewith the parties desire to amend and restate the operating agreement of the Company to specify the terms and conditions that will govern the operation of the Company and the relationship of the members;

Now, therefore, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Defined Terms.** As used in this Agreement, the following terms shall have the following respective meanings:

"**Act**" means the New York Limited Liability Company Act, as the same may be amended from time to time.

"**Additional Profit Participation**" means the sum of (i) all initial capital contributions made by the Class A Members as of the date hereof, plus (ii) \$400,000 attributable to the Class B

Member. For example, if the Class A Members contribute \$7,000,000 as of the date hereof, the Additional Profit Participation is \$7,400,000.

"Affiliate" as to a specific individual means any (i) Family Member of the individual, (ii) trust, partnership, company or other entity in which the individual and/or any one or more of the individual's Family Members own a majority of the beneficial interests, and (iii) entity controlled by the individual or such individual and one or more of the foregoing; and as to a specific entity means any (x) Principal of such entity, and (y) any Person that, directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with, the entity (the term "control" for this purpose, shall mean the ability, whether by the ownership of shares or other equity interests, by contract or otherwise, to elect a majority of the directors of a corporation, independently to select the managing partner of a partnership or the managers of a limited liability company, or otherwise to have the power independently to remove and then select a majority of those Persons exercising governing authority over an entity, and control shall be conclusively presumed in the case of the direct or indirect ownership of fifty (50%) percent or more of the equity interests).

"Assignee" means a Person to whom Economic Rights have been assigned or transferred as permitted by or otherwise in accordance with the terms of this Agreement.

"Available Cash Flow" with respect to any period means the excess, if any, of (A) the sum of (i) all amounts actually received by the Company during such period, including capital contributions and loan proceeds, plus (ii) any amounts withdrawn from reserves during such period, over (B) the sum of (x) all expenses paid and capital expenditures made by the Company during such period, including without limitation the amount of any payments required to be made during such period with respect to the Company's acquisition financing, or on account of any Guaranty Repayment Loans, and (y) any additions to reserves during such period for anticipated expenses or expenditures, as required by any loan agreements to which the Company is subject or otherwise as determined by the Managing Member.

"Class A Assignee" means an Assignee of Economic Rights that have been transferred directly or indirectly ultimately from a Class A Member.

"Class A Interest" means the percentage in which a Class A Member or Class A Assignee shares in distributions of the Company to or among Class A Members and Class A Assignees, as the same may be changed from time to time to reflect the permitted Transfer of Class A Economic Rights or Class A membership interests or otherwise in accordance with this Agreement. Initially, the Class A Interest of each Class A Member who executes this Agreement as of the date hereof shall be a percentage determined by dividing the Class A Member's initial capital contribution by the total initial capital contributions made by all such Class A Members.

"Class A Member" means any Person signing this Agreement as a "Class A Member," any additional Person admitted as a Class A Member in accordance with the terms of this Agreement and any Assignee of any such Person who has been admitted as a Class A Member in accordance with the terms of this Agreement

"Class B Assignee" means an Assignee of Economic Rights that have been transferred directly or indirectly ultimately from a Class B Member.

"Class B Interest" means the percentage in which a Class B Member or Class B Assignee shares in distributions of the Company to or among Class B Members and Class B Assignees, as the same may be changed from time to time to reflect the permitted Transfer of Class B Economic Rights

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Limited Liability Company Agreement as of the 15th day of June, 2015.

MEMBER:

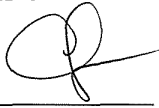
LILIHA PARTNERS L.P.

By: PMB SPE Honolulu, Inc., its General Partner

By: _____
Name:
Title:

MANAGER:

LIFE HOTEL PARTNERS LLC

By:  _____
David J. Mitchell, its Manager

INDEPENDENT MANAGER/SPECIAL MEMBER:

Lois Taylor

Signature Page to Liliha Herald TIC LLC Agreement

Mitch0001497
10018-0001
Case No.: A-16
RA 000900

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Limited Liability Company Agreement as of the ____ day of June, 2015.

MEMBER:

LILIHA PARTNERS L.P.

By: PMB SPE Honolulu, Inc., its General Partner

By: _____

Name: _____

Title: _____

**Mark Toothacre,
President**

MANAGER:

LIFE HOTEL PARTNERS LLC

By: _____

David J. Mitchell, its Manager

INDEPENDENT MANAGER/SPECIAL MEMBER:

Lois Taylor

Signature Page to Liliha Herald TIC LLC Agreement

Mitch0001498

10018-0002

Case No.: A-16

RA 000901

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Limited Liability Company Agreement as of the ____ day of June, 2015.

MEMBER:

LILIHA PARTNERS L.P.

By: PMB SPE Honolulu, Inc., its General Partner

By: _____
Name:
Title:

MANAGER:

LIFE HOTEL PARTNERS LLC

By: _____
David J. Mitchell, its Manager

INDEPENDENT MANAGER/SPECIAL MEMBER:


Lois Taylor

Signature Page to Liliha Herald TIC LLC Agreement

Mitch0001499

10018-0003

Case No.: A-16

RA 000902

SCHEDULE A

Definitions

A. Definitions

When used in this Agreement, the following terms not otherwise defined herein have the following meanings, and any capitalized term not defined in this Schedule A or elsewhere in this Agreement shall the meaning for such term set forth in the Loan Agreement:

"Act" has the meaning set forth in the preamble to this Agreement.

"Affiliate" means, with respect to any Person, any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with such Person or any Person who has a familial relationship, by blood, marriage or otherwise with the Company or any Affiliate of the Company.

"Agreement" means this Limited Liability Company Agreement of the Company, together with the schedules attached hereto, as amended, restated or supplemented or otherwise modified from time to time.

"Bankruptcy" means, with respect to any Person, if such Person (i) makes an assignment for the benefit of creditors, (ii) files a voluntary petition in bankruptcy, (iii) is adjudged a bankrupt or insolvent, or has entered against it an order for relief, in any bankruptcy or insolvency proceedings, (iv) files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of this nature, (vi) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the Person or of all or any substantial part of its properties, or (vii) if 120 days after the commencement of any proceeding against the Person seeking reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, if the proceeding has not been dismissed, or if within 90 days after the appointment without such Person's consent or acquiescence of a trustee, receiver or liquidator of such Person or of all or any substantial part of its properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated. The foregoing definition of "Bankruptcy" is intended to replace and shall supersede and replace the definition of "Bankruptcy" set forth in Sections 18-101(1) and 18-304 of the Act.

"Bankruptcy Action" shall mean with respect to any Person (i) such Person filing a voluntary petition under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (ii) the filing of an involuntary petition against such Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition against such Person; (iii) such Person filing an answer consenting to or otherwise acquiescing in or joining in any

involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition from any Person; (iv) such Person consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, or examiner or similar official for such Person or any portion of the Property; (v) such Person making an assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due; (vi) declaring or effectuating a moratorium on the payment of any obligation; or (vii) taking any action in furtherance of any such action set forth in (i) through (vi) immediately above.

"Basic Documents" means this Agreement, the Loan Documents, and all documents and certificates contemplated thereby or delivered in connection therewith.

"Borrower" means, collectively, the Company, Life Hotel TIC LLC, Flabla LLC and Life Hotel Operator LLC, as borrower under the Loan.

"Cause" means, with respect to an Independent Manager, (i) acts or omissions by such Independent Manager that constitute willful disregard of such Independent Manager's duties under this Agreement, (ii) that such Independent Manager has engaged in or has been charged with, or has been convicted of, fraud or other acts constituting a crime under any law applicable to such Independent Manager, (iii) such Independent Manager has breached its fiduciary duties of loyalty and care as and to the extent of such duties in accordance with the terms of the Company's organizational documents, (iv) there is a material increase in the fees charged by such Independent Manager or a material change to such Independent Manager's terms of service, (v) such Independent Manager is unable to perform his or her duties as Independent Manager due to death, disability or incapacity, or (vi) such Person no longer meets the criteria provided in the definition of Independent Manager.

"Certificate of Formation" means the Certificate of Formation of the Company filed with the Secretary of State of the State of Delaware on April 9, 2015, as amended or amended and restated from time to time.

"Company" means Liliha Herald TIC LLC, a Delaware limited liability company.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or general partnership or managing member interests, by contract or otherwise. "Controlling" and "Controlled" shall have correlative meanings. Without limiting the generality of the foregoing, a Person shall be deemed to Control any other Person in which it owns, directly or indirectly, twenty percent (20%) or more of the ownership interests.

"Covered Persons" has the meaning set forth in Section 20(a).

"Independent Manager" means a natural person selected by the Company

(i) who shall be a natural person who is (A) provided by a Nationally Recognized Professional Service Company or (B) approved in writing by the Lender (which consent shall not be unreasonably withheld, conditioned or delayed); and

(ii) who shall not have been at the time of such individual's appointment or at any time while serving as an Independent Manager, and may not have been at any time during the preceding five (5) years (A) a stockholder, director (other than as an independent director), officer, employee, partner, attorney or counsel of the Company or any Affiliate of either of them, (B) a customer, supplier or other Person who derives any of its purchases or revenues from its activities with the Company or any Affiliate of either of them, (C) a Person or other entity Controlling or under common Control with any such stockholder, partner, customer, supplier or other Person, (D) a member of the immediate family of any such stockholder, director, officer, employee, partner, customer, supplier or other Person, (E) or otherwise affiliated with the Company or any stockholder, director, officer, employee, partner, attorney or counsel of the Company or any guarantor.

"Lender" means Ladder Capital Finance LLC, a Delaware limited liability company, and its successors and or assigns.

"Loan" means that certain loan in the amount of \$34,700,000.00 made by Lender to the Borrower in accordance with the terms, conditions and provisions of the Loan Documents.

"Loan Agreement" means that certain Loan Agreement by and between the Borrower and the Lender.

"Loan Documents" has the meaning set forth in the Loan Agreement.

"Manager" means Life Hotel Partners LLC, a New York limited liability company, and its successors and or assigns.

"Member" means Liliha Partners L.P., a California limited partnership, as the initial member of the Company, and includes any Person admitted as an additional member of the Company or a substitute member of the Company pursuant to the provisions of this Agreement, each in its capacity as a member of the Company; provided, however, the term "Member" shall not include the Special Member.

"Nationally Recognized Service Company" means any of Independent Member Services, CT Corporation, Corporation Service Company, National Registered Agents, Inc., Independent Director Services, Inc. or such other nationally recognized company that provides independent director, independent manager or independent member services and that is reasonably satisfactory to Lender, in each case that is not an Affiliate of the Company and that provides professional independent directors and other corporate services in the ordinary course of its business.

"Obligation" means the indebtedness, liabilities and obligations of Borrower under or in connection with the Basic Documents or any related document in effect as of any date of determination.

"Officer" means an officer of the Company as described in Section 11.

"Person" means any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association, joint stock company, trust, unincorporated organization, or other organization, whether or not a legal entity, and any governmental authority.

"Property" has the meaning set forth in Section 7(i).

"Rating Agency" has the meaning assigned to that term in the Basic Documents.

"Rating Agency Condition" means (i) with respect to any action taken at any time before the Loan has been sold or assigned to a securitization trust, that the Lender has consented in writing to such action, and (ii) with respect to any action taken at any time after the Loan has been sold or assigned to a securitization trust, that each Rating Agency shall have been given ten days prior notice thereof and that each of the Rating Agencies shall have notified the Company in writing that such action will not result in a reduction, withdrawal, downgrade or qualification of the then current rating by such Rating Agency of the Loan any pool of loans which the Loan forms a part, or of any securities issued by such securitization trust.

"Special Member" means, upon such person's admission to the Company as a member of the Company pursuant to Section 5(c), a person acting as Independent Manager, in such person's capacity as a member of the Company. A Special Member shall only have the rights and duties expressly set forth in this Agreement.

"Special Purpose Provisions" has the meaning set forth in Section 9(d)(ii).

B. Rules of Construction

Definitions in this Agreement apply equally to both the singular and plural forms of the defined terms. The words "include" and "including" shall be deemed to be followed by the phrase "without limitation." The terms "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Section, paragraph or subdivision. The Section titles appear as a matter of convenience only and shall not affect the interpretation of this Agreement. All Section, paragraph, clause, Exhibit or Schedule references not attributed to a particular document shall be references to such parts of this Agreement.

SCHEDULE B

Member

<u>Name</u>	<u>Mailing Address</u>	<u>Agreed Value of Capital Contribution</u>	<u>Limited Liability Company Interest</u>
Liliha Partners L.P.	12348 High Bluff Drive #100, San Diego, California, 92130	\$3,600,000	100%

B-1

RLF1-3402272-1

Mitch0001504

10018-0008

Case No.: A-16

RA 000907

SCHEDULE C

Officers

David Mitchell

President, Vice President, Secretary and Treasurer

C-1

RLF1-3402272-1

Mitch0001505

10018-0009

Case No.: A-16

RA 000908

EXHIBIT H

Certificate of Good Standing of Liliha

[see attached]

452241-2-W

Mitch0001506

10018-0010

Case No.: A-16

RA 000909

Delaware

PAGE 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "LILIHA HERALD TIC LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE FIRST DAY OF JUNE, A.D. 2015.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "LILIHA HERALD TIC LLC" WAS FORMED ON THE NINTH DAY OF APRIL, A.D. 2015.

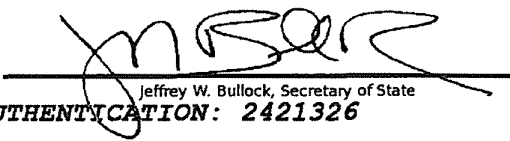
AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE NOT BEEN ASSESSED TO DATE.

5725999 8300

150842563

You may verify this certificate online
at corp.delaware.gov/authver.shtml




Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 2421326

DATE: 06-01-15

Mitch0001507

10018-0011

Case No.: A-16

RA 000910

EXHIBIT I

New York Qualification of Liliha

[see attached]

452241-2-W

Mitch0001508

10018-0012

Case No.: A-16

RA 000911

EXHIBIT J

Resolutions of Liliha

[see attached]

452241-2-W

Mitch0001509

10018-0013

Case No.: A-16

RA 000912

MANAGER CONSENT

The undersigned, being the manager (the “**Manager**”) of Life Hotel Partners LLC, a New York limited liability company (the “**Company**”), the manager of each of Liliha Herald TIC LLC, a Delaware limited liability company, Life Hotel TIC LLC, a Delaware limited liability company, Flabla LLC, a Delaware limited liability company (collectively, “**Owner**”), and Life Hotel Operator LLC, a Delaware limited liability company (“**Life Hotel Operator**” and, collectively with Owner, “**Borrower**”), hereby consents to the following actions to be taken by the Manager and the Company on behalf of the Company and Borrower:

WHEREAS, Owner will acquire that certain real property, building and other improvements located at 19 West 31st Street, New York, New York, currently known as the Herald Square Hotel (the “**Property**”), pursuant to that certain Contract of Sale, effective as of January 6, 2015, as amended by that certain Amendment to Contract of Sale, effective as of January 20, 2015, that certain Second Amendment to Contract of Sale, effective as of January 27, 2015, that certain Third Amendment to Contract of Sale, effective as of February 2, 2015, that certain Fourth Amendment to Contract of Sale, effective as of February 20, 2015, that certain Fifth Amendment to Contract of Sale, effective as of April 13, 2015, that certain Sixth Amendment to Contract of Sale, effective as of June 15, 2015, by and between Cityview Commercial LLC, a New York limited liability company (“**Cityview**”), as purchaser, and Herald Square Hotel Partners, LP, a Delaware limited partnership, as seller (“**Seller**”), as assigned to Owner pursuant to that certain Assignment and Assumption of Contract of Sale, effective as of June 16, 2015, by and between Cityview, as assignor, and Owner, as assignee (the “**Assignment and Assumption Agreement**”), and subsequently amended by that certain Seventh Amendment to Contract of Sale, effective as of June 18, 2015, by and between Seller and Owner (as amended, the “**Sale Contract**” and, collectively with the Assignment and Assumption Agreement and such other documents, agreements and instruments necessary or appropriate in connection therewith, the “**Acquisition Documents**”).

WHEREAS, in connection with the acquisition of the Property, Owner will enter into that certain Herald Hotel Tenancy-In-Common Agreement, effective as of June 26, 2015 (the “**TIC Agreement**”), and that certain Hotel TIC Management Agreement, effective as of June 26, 2015 (the “**TIC Management Agreement**”), by and between Owner and Life Hotel TIC Manager LLC, a Delaware limited liability company.

WHEREAS, upon the acquisition of the Property, Owner will lease the Property to Life Hotel Operator pursuant to that certain Lease, effective as of June 26, 2015 (the “**Lease**”), by and between Owner, as landlord, and Life Hotel Operator, as tenant.

WHEREAS, in connection with the Lease, Life Hotel Operator will enter into that certain Hotel Management Agreement, effective as of June 26, 2015 (the “**HMA**”), by and between Life Hotel Operator and GAM Hospitality LLC, a Delaware limited liability company (“**GAM**”), and that certain Assignment of Management Agreement, effective June 26, 2015 (collectively with the Lease, the HMA and such other documents, agreements and instruments necessary or appropriate in connection therewith, the “**Hotel Documents**”), by and among Life Hotel Operator, GAM and Ladder Capital Finance LLC, a Delaware limited liability company (“**Lender**”).

WHEREAS, in connection with the foregoing transactions, Borrower will obtain a loan in the principal amount of up to \$34,700,000.00 (the “**Loan**”) from Lender, pursuant to that certain

Loan Agreement, effective as of June 26, 2015, by and between Borrower and Lender, and the other Loan Documents (as defined in the Loan Agreement), which Loan will be secured by, among other things, a first mortgage lien on the Property.

WHEREAS, the Manager believes that (i) the execution and delivery of the Acquisition Documents, the Hotel Documents and the Loan Documents (collectively, the “**Transaction Documents**”) to which Borrower is a party, (ii) the consummation of the transactions contemplated by the Transaction Documents, (iii) the performance of the obligations under the Transaction Documents to which Borrower is or will be a party, (iv) the lease of the Property, and (v) obtaining the Loan, are each in the best interests of Borrower.

NOW, THEREFORE, BE IT RESOLVED, that the Manager, acting on behalf of the Company and Borrower is authorized to: (i) execute and deliver each of the Transaction Documents to which Borrower is a party, (ii) consummate the transactions contemplated by the Transaction Documents, and (iii) cause Borrower to perform its obligations under the Transaction Documents to which it is or will be a party;

FURTHER RESOLVED, that the Manager, acting on behalf of the Company, be, and hereby is, authorized and directed to negotiate, execute and deliver the Transaction Documents in the name and on behalf of Borrower, with such changes therein as the Manager may, in his sole discretion, approve, which approval shall be conclusively evidenced by his execution thereof;

FURTHER RESOLVED, that all actions heretofore taken by the Manager in the name and on behalf of the Company and Borrower in connection with the transactions contemplated by the Transaction Documents be, and the same hereby are, ratified, approved and confirmed in all respects; and

FURTHER RESOLVED, that in order to carry out the intent and effectuate the purposes of the foregoing resolutions, the Manager, acting on behalf of the Company be, and hereby is, authorized and directed to: (i) take any and all such further actions contemplated by the Transaction Documents, and (ii) negotiate, execute and deliver all such further agreements, instruments, certificates, documents and other amendments relating thereto or contemplated therein or deemed necessary or appropriate by the Manager in order to carry out the transactions contemplated by the foregoing resolutions.

[Signature Page Follows]

Issued by

CHICAGO TITLE INSURANCE COMPANY

ENDORSEMENT

TAX PARCEL ENDORSEMENT
Single tax lot
(Loan Policy Only)

Attached to and made a part of Policy Number: 3111-0043A

The Policy insures against loss or damage which the insured may sustain by reason that the land described in Schedule A is not assessed for real estate tax purposes as a separate tax lot which includes no other land.

This endorsement is made a part of the Policy and is subject to all of the terms and provisions thereof and of any other endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the Policy and any other endorsements, nor does it extend the effective date of the Policy and any other endorsements, nor does it increase the face amount thereof.

Dated: February 11, 2011

CHICAGO TITLE INSURANCE COMPANY




Authorized Signatory

Note: This endorsement shall not be valid or binding until countersigned by an authorized signatory.

By:


Raymond R. Quirk
President

By:


Michael L. Gravelle
Secretary

TIRSA TAX PARCEL ENDORSEMENT (SINGLE LOT) (12/27/00)

NOTP1 4/07 KMS LF1 02/11/11 12:55:46

Mitch0000744

10022-0001

Case No.: A-16

RA 000915

ENVIRONMENTAL PROTECTION LIEN ENDORSEMENT
(NEW YORK CITY ONLY)

Attached to and made a part of Policy Number: 3111-0043A

The Policy insures the Insured against loss or damage sustained by reason of lack of priority of the lien of the insured mortgage over:


- (a) any environmental protection lien which, at Date of Policy, is recorded in those records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge, or filed in the records of the clerk of the United States district court for the district in which the land is located, except as set forth in Schedule B, or
- (b) any environmental protection lien provided by any state statute, New York City Code and/or Ordinance in effect at Date of Policy, except environmental protection liens provided for by the following state statutes:

(1) Administrative Code, City of New York, Title 17 (Health) Section 17-151.

This endorsement is made a part of the Policy and is subject to all of the terms and provisions thereof and of any other endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the Policy and any other endorsements, nor does it extend the effective date of the Policy and any other endorsements, nor does it increase the amount of insurance.

Dated: February 11, 2011

CHICAGO TITLE INSURANCE COMPANY



Authorized Signatory

Note: This endorsement shall not be valid or binding until countersigned by an authorized signatory.

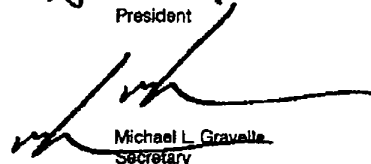


By:



President

By:

Michael L. Gravella
Secretary

TIRSA 8.1 EPL (NEW YORK CITY ONLY) (2/11/02)

N07EPLNY 4/07 KMS LF1 02/11/11 12:55:46

Mitch0000745

10022-0002

Case No.: A-16

RA 000916

WAIVER OF ARBITRATION ENDORSEMENT
(OWNER'S OR LOAN POLICY)

Attached to and made a part of Policy Number: 3111-0043A

The policy is amended by deleting therefrom:

- (A) If this endorsement is attached to an ALTA Loan Policy: Condition 13.
- (B) If this endorsement is attached to an ALTA Owner's Policy: Condition 14.
- (C) If this endorsement is attached to a TIRSA Owner's Extended Protection Policy: Condition 12.

This endorsement is made a part of the Policy and is subject to all of the terms and provisions thereof and of any other endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the Policy and any other endorsements, nor does it extend the effective date of the Policy and any other endorsements, nor does it increase the face amount thereof.

Dated: February 11, 2011

CHICAGO TITLE INSURANCE COMPANY



By:

Raymond R. Quirk
Raymond R. Quirk
President

By:

Michael L. Gravelle
Michael L. Gravelle
Secretary

Christopher J. Bauer
Authorized Signatory

Note: This endorsement shall not be valid or binding until
countersigned by an authorized signatory.

TIRSA WAIVER OF ARBITRATION ENDORSEMENT (11/1/08)

8N07WA 9/08 KMS LF1 02/11/11 12:55:46

Mitch0000746

10022-0003

Case No.: A-16

RA 000917

Policy No: 3111-0043A

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;
 or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters:
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

1. DEFINITION OF TERMS.

The following terms when used in this policy mean:

(a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b) or decreased by Section 10 of these Conditions.

(b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.

(c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.

(d) "Indebtedness": The obligation secured by the Insured Mortgage including one evidenced by electronic means authorized by law, and if that obligation is the payment of a debt, the Indebtedness is the sum of

(i) the amount of the principal disbursed as of Date of Policy;

(ii) the amount of the principal disbursed subsequent to Date of Policy;

(iii) the construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the Land or related to the Land that the Insured was and continued to be obligated to advance at Date of Policy and at the date of the advance;

(iv) interest on the loan;

(v) the prepayment premiums, exit fees, and other similar fees or penalties allowed by law;

(vi) the expenses of foreclosure and any other costs of enforcement;

(vii) the amounts advanced to assure compliance with laws or to protect the lien or the priority of the lien of the Insured Mortgage before

CONDITIONS

the acquisition of the estate or interest in the Title;

(viii) the amounts to pay taxes and insurance; and,

(ix) the reasonable amounts expended to prevent deterioration of improvements;

but the Indebtedness is reduced by the total of all payments and by any amount forgiven by an Insured.

(e) "Insured": The Insured named in Schedule A.

(i) The term "Insured" also includes

(A) the owner of the Indebtedness and each successor in ownership of the Indebtedness, whether the owner or successor owns the Indebtedness for its own account or as a trustee or other fiduciary, except a successor who is an obligor under the provisions of Section 12(c) of these Conditions;

(B) the person or Entity who has "control" of the "transferable record," if the Indebtedness is evidenced by a "transferable record," as these terms are defined by applicable electronic transactions law;

(C) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;

(D) successors to an Insured by its conversion to another kind of Entity;

(E) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title

(1) If the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,

(2) If the grantee wholly owns the named Insured, or

(3) If the grantee is

wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity;

(F) any government agency or instrumentality that is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the Indebtedness secured by the Insured Mortgage, or any part of it, whether named as an Insured or not;

(ii) With regard to (A), (B), (C), (D), and (E) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured, unless the successor acquired the Indebtedness as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance, or other matter insured against by this policy.

(f) "Insured Claimant": An Insured claiming loss or damage.

(g) "Insured Mortgage": The Mortgage described in paragraph 4 of Schedule A.

(h) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.

(i) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.

Policy No: 3111-0043A

(j) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.

(k) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.

(l) "Title": The estate or interest described in Schedule A.

(m) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title or a prospective purchaser of the Insured Mortgage to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE.

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured after acquisition of the Title by an Insured or after conveyance by an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT.

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of the Conditions, (ii) in case Knowledge shall come to an Insured of any claim of title or interest that is adverse to the Title or the lien of the Insured Mortgage, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title or the lien of the Insured Mortgage, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. PROOF OF LOSS.

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. DEFENSE AND PROSECUTION OF ACTIONS.

(a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.

(b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title or the lien of the Insured Mortgage, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

(c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

6. DUTY OF INSURED CLAIMANT TO COOPERATE.

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title, the lien of the Insured Mortgage, or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(b) The Company may reasonably require the Insured Claimant to submit to examination

under oath by any authorized representative of the Company and to produce for examination, inspection and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY.

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.

(i) To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay; or

(ii) To purchase the Indebtedness for the amount of the Indebtedness on the date of purchase, together with any costs, attorneys' fees and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of purchase and that the Company is obligated to pay.

When the Company purchases the Indebtedness, the Insured shall transfer, assign, and convey to the Company the Indebtedness and the Insured Mortgage, together with any collateral security.

Upon the exercise by the Company of either of the options provided for in subsections (a)(i) or (ii), all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in those subsections, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

Form 1065 Department of the Treasury Internal Revenue Service		U.S. Return of Partnership Income		OMB No. 1545-0099 2007	
For calendar year 2007, or tax year beginning _____, _____, and ending _____, _____					
A Principal business activity REAL ESTATE RENTAL		Name of partnership 305 SECOND AVENUE ASSOCIATES		D Employer identification number 8160	
B Principal product or service HISTORIC STRCTR APTS		Number, street, and room or suite no. If a P.O. box, see the instructions. C/O ORB MGMNT, 421 HUDSON STREET		E Date business started 09/23/1983	
C Business code number 531110		City or town, state, and ZIP code NEW YORK, NY 10014		F Total assets \$38,731,770.	
G Check applicable boxes: (1) Initial return (2) Final return (3) Name change (4) Address change (5) Amended return					
H Check accounting method: (1) Cash (2) X Accrual (3) Other (specify) _____					
I Number of Schedules K-1. Attach one for each person who was a partner at any time during the tax year 75					
J Check if Schedule M-3 attached _____ X					

Caution: Include only trade or business income and expenses on lines 1a through 22 below. See the instructions for more information.

1 a	1 a Gross receipts or sales	1a		1c	
	b Less returns and allowances	1b			
	2 Cost of goods sold (Schedule A, line 8)			2	
	3 Gross profit. Subtract line 2 from line 1c			3	
	4 Ordinary income (loss) from other partnerships, estates, and trusts (attach schedule)			4	
	5 Net farm profit (loss) (attach Schedule F (Form 1040))			5	
	6 Net gain (loss) from Form 4797, Part II, line 17 (attach Form 4797)			6	
	7 Other income (loss) (attach schedule)			7	
8 Total income (loss) Combine lines 3 through 7			8		
9-20	9 Salaries and wages (other than to partners) (less employment credits)			9	
	10 Guaranteed payments to partners			10	
	11 Repairs and maintenance			11	
	12 Bad debts			12	
	13 Rent			13	
	14 Taxes and licenses			14	
	15 Interest			15	
	16 a Depreciation (if required, attach Form 4562)	16a			
	b Less depreciation reported on Schedule A and elsewhere on return	16b		16c	
	17 Depletion (Do not deduct oil and gas depletion.)			17	
	18 Retirement plans, etc.			18	
	19 Employee benefit programs			19	
	20 Other deductions (attach schedule)			20	
	21 Total deductions Add the amounts shown in the far right column for lines 9 through 20			21	
22 Ordinary business income (loss) Subtract line 21 from line 8			22	0.	

Sign Here	Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than general partner or limited liability company member) is based on all information of which preparer has any knowledge.			
	Signature of general partner or limited liability company member manager	Date		
Paid Preparer's Use Only	Preparer's signature	Date 03/27/08	Check if self-employed 9	Preparer's SSN or PTIN 9639
	Firm's name (or yours if self-employed), address, and ZIP code	EIN	Phone no.	
	ORB MANAGEMENT, LTD. 421 HUDSON STREET NEW YORK, NY 10014			
	212 243 1320			

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Form 1065(2007)

Schedule A Cost of Goods Sold(see the instructions)

1	Inventory at beginning of year	1
2	Purchases less cost of items withdrawn for personal use	2
3	Cost of labor	3
4	Additional section 263A cost (attach schedule)	4
5	Other cost (attach schedule)	5
6	Total. Add lines 1 through 5	6
7	Inventory at end of year	7
8	Cost of goods sold. Subtract line 7 from line 6. Enter here and on page 1, line 2	8

9 a Check all methods used for valuing closing inventory:

(i) Cost as described in Regulations section 1.471-3

(ii) Lower of cost or market as described in Regulations section 1.471-4

(iii) Other (specify method used and attach explanation)

- b Check this box if there was a writedown of "subnormal" goods as described in Regulations section 1.471-2(c)
- c Check this box if the LIFO inventory method was adopted this tax year for the goods (attach Form 970)
- d Do the rules of section 263A (for property produced or acquired for resale) apply to the partnership? Yes No
- e Was there any change in determining quantities, cost, or valuations between opening and closing inventory? Yes No
- If "Yes," attach explanation

Schedule B Other Information

	Yes	No
1 What type of entity is filing this return? Check the applicable box:		
a Domestic general partnership b <input checked="" type="checkbox"/> Domestic limited partnership		
c Domestic limited liability company Domestic limited liability partnership		
e Foreign partnership f Other		
2 Are any partners in this partnership also partnerships?	<input checked="" type="checkbox"/>	
3 During the partnership's tax year, did the partnership own any interest in another partnership or in any foreign entity that was disregarded as an entity separate from its owner under Regulations sections 301.7701-2 and 301.7701-3? If "Yes," see instructions for required attachment		<input checked="" type="checkbox"/>
4 Did the partnership file Form 8893, Election of Partnership Level Tax Treatment, or an election statement under section 6231(a)(1)(B)(ii) for partnership-level tax treatment, that is in effect for this tax year? See Form 8893 for more details		<input checked="" type="checkbox"/>
5 Does this partnership meet all three of the following requirements?		
a The partnership's total receipts for the tax year were less than \$250,000;		
b The partnership's total assets at the end of the tax year were less than \$600,000; and		
c Schedules K-1 are filed with the return and furnished to the partners on or before the due date (including extensions) for the partnership return	<input checked="" type="checkbox"/>	
If "Yes," the partnership is not required to complete Schedules L, M-1, and M-2; Item F on page 1 of Form 1065; or Item L on Schedule K-1.		
6 Does this partnership have any foreign partners? If "Yes," the partnership may have to file Forms 8804, 8805 and 8813. See the instructions		<input checked="" type="checkbox"/>
7 Is this partnership a publicly traded partnership as defined in section 469(k)(2)?		<input checked="" type="checkbox"/>
8 Has this partnership filed, or is it required to file, a return under section 6111 to provide information on any reportable transaction?	<input checked="" type="checkbox"/>	
9 At any time during calendar year 2007, did the partnership have an interest in or a signature or other authority over a financial account in a foreign country (such as a bank account, securities account, or other financial account)? See the instructions for exceptions and filing requirements for Form TD F 90-22.1. If "Yes," enter the name of the foreign country.		<input checked="" type="checkbox"/>
10 During the tax year, did the partnership receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? If "Yes," the partnership may have to file Form 3520. See the instructions		<input checked="" type="checkbox"/>
11 Was there a distribution of property or a transfer (for example, by sale or death) of a partnership interest during the tax year? If "Yes," you may elect to adjust the basis of the partnership's assets under section 754 by attaching the statement described under Elections Made By the Partnership in the instructions		<input checked="" type="checkbox"/>
12 Enter the number of Forms 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships, attached to this return		

Designation of Tax Matters Partner(see the instructions)

Enter below the general partner designated as the tax matters partner (TMP) for the tax year of this return:

Name of designated TMP **WINTHROP CHAMBERLIN** Identifying number of TMP **8611**

Address of designated TMP **421 HUDSON STREET**

NEW YORK, NY 10014

JWA
711011
12-27-07

Form 1065 (2007)

Schedule K Partners' Distributive Share Items

Total amount

Ordinary Income	1	Ordinary business income (loss) (page 1, line 22)	1	0.
	2	Net rental real estate income (loss) (attach Form 8825) SEE STATEMENT 1	2	<5,330,181.>
	3a	Other gross rental income (loss)	3a	
	b	Expenses from other rental activities (attach statement)	3b	
	c	Other net rental income (loss). Subtract line 3b from line 3a	3c	
	4	Guaranteed payments	4	
	5	Interest income SEE STATEMENT 2	5	277,805.
	6	Dividends: a Ordinary dividends SEE STATEMENT 3	6a	36,773.
	b	Qualified dividends	6b	
	7	Royalties	7	
	8	Net short-term capital gain (loss) (attach Schedule D (Form 1065))	8	
Capital Gains	9a	Net long-term capital gain (loss) (attach Schedule D (Form 1065))	9a	
	b	Collectibles (28%) gain (loss)	9b	
	c	Unrecaptured section 1250 gain (attach statement)	9c	
Other Income	10	Net section 1231 gain (loss) (attach Form 4797)	10	
	11	Other income (loss) (see instructions)	11	
	12	Section 179 deduction (attach Form 4562)	12	
	13a	Contributions	13a	
Deductions	b	Investment interest expense	13b	
	c	Section 59(e)(2) expenditure: Type (2) Amount	13c(2)	
	d	Other deductions (see instructions)	13d	
Self-Employment Income	14a	Net earnings (loss) from self-employment	14a	
	b	Gross farming or fishing income	14b	
	c	Gross nonfarm income	14c	
Rental Income	15a	Low-income housing credit (section 42(j)(5))	15a	
	b	Low-income housing credit (other)	15b	
	c	Qualified rehabilitation expenditures (rental real estate) (attach Form 3468)	15c	
	d	Other rental real estate credits (see instructions)	15d	
	e	Other rental credits (see instructions)	15e	
	f	Other credits (see instructions)	15f	
Foreign Income	16a	Name of country or U.S. possession		
	b	Gross income from all sources	16b	
	c	Gross income sourced at partner level	16c	
	d	Foreign gross income sourced at partnership level		
	e	General category	16f	
	f	Other		
	g	Interest expense	16h	
	h	Other		
	i	General category	16k	
	j	Other		
	k	Other	16l	
l	Total foreign taxes (check one) Paid Accrued	16m		
17a	Post-1986 depreciation adjustment	17a	153,784.	
AMT Items	b	Adjusted gain or loss	17b	
	c	Depletion (other than oil and gas)	17c	
	d	Oil, gas, and geothermal properties - gross income	17d	
	e	Oil, gas, and geothermal properties - deductions	17e	
	f	Other AMT items (attach statement)	17f	
	Other Income	18a	Tax-exempt interest income	18a
b		Other tax-exempt income	18b	
c		Nondeductible expenses	18c	
19a		Distributions of cash and marketable securities	19a	4,000,000.
b		Distributions of other property	19b	
20a		Investment income	20a	314,578.
b		Investment expenses	20b	
c	Other items and amounts (attach statement)			

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12-27-07

Form 1065 (2007)

Analysis of Net Income (Loss)

1 Net income (loss). Combine Schedule K, lines 1 through 11. From the result, subtract the sum of Schedule K, lines 12 through 13d, and 16l.						1	<5,015,603.>
2 Analysis by partner type:	(i) Corporate	(ii) Individual (active)	(iii) Individual (passive)	(iv) Partnership	(v) Exempt organization	(vi) Nominee/Other	
a General partners		<3,202,287.>					
b Limited partners			<1,694,196.>	<31,348.>		<87,772.>	

Schedule L Balance Sheets per Books

Assets	Beginning of tax year		End of tax year	
	(a)	(b)	(c)	(d)
1 Cash		503,622.		730,599.
2a Trade notes and accounts receivable	679,020.		190,645.	
b Less allowance for bad debts		679,020.		190,645.
3 Inventories				
4 U.S. government obligations				
5 Tax-exempt securities				
6 Other current assets (attach statement) STATEMENT 4		9,608,470.		803,951.
7 Mortgage and real estate loans				
8 Other investments (attach statement)				
9a Buildings and other depreciable assets	25,352,931.		50,474,480.	
b Less accumulated depreciation	18,961,739.	6,391,192.	19,584,498.	30,889,982.
10a Depletable assets				
b Less accumulated depletion				
11 Land (net of any amortization)		577,905.		4,332,382.
12a Intangible assets (amortizable only)	1,773,955.		2,937,449.	
b Less accumulated amortization	1,193,521.	580,434.	1,768,634.	1,168,815.
13 Other assets (attach statement) STATEMENT 5		226,552.		615,396.
14 Total assets		✓18,567,195.		38,731,770. ✓
Liabilities and Capital				
15 Accounts payable		4,666,726.		6,316,844.
16 Mortgages, notes, bonds payable in less than 1 year		266,728.		
17 Other current liabilities (attach statement) STATEMENT 6		✓34,385.		1,579,942. ✓
18 All nonrecourse loans		43,765,541.		69,612,222.
19 Mortgages, notes, bonds payable in 1 year or more				
20 Other liabilities (attach statement) STATEMENT 7		18,625.		423,175.
21 Partners' capital accounts		<30,184,810.>		<39,200,413.>
22 Total liabilities and capital		18,567,195.		38,731,770.

Schedule M-1 Reconciliation of Income (Loss) per Books With Income (Loss) per Return

Note: Schedule M-3 may be required instead of Schedule M-1 (see instructions).

1 Net income (loss) per books	<5,015,603.>	2 Income recorded on books this year not included on Schedule K, lines 1 through 11 (itemize):
2 Income included on Schedule K, lines 1, 2, 3c, 5, 6a, 7, 8, 9a, 10, and 11, not recorded on books this year (itemize):		a Tax-exempt interest \$
3 Guaranteed payments (other than health insurance)		7 Deductions included on Schedule K, lines 1 through 13d, and 16l, not charged against book income this year (itemize):
4 Expenses recorded on books this year not included on Schedule K, lines 1 through 13d, and 16l (itemize):		a Depreciation \$
a Depreciation \$		8 Add lines 6 and 7
b Travel and entertainment \$		9 Income (loss) (Analysis of Net Income (Loss), line 1). Subtract line 8 from line 5
5 Add lines 1 through 4	<5,015,603.>	<5,015,603.>

Schedule M-2 Analysis of Partners' Capital Accounts

1 Balance at beginning of year	<30,184,810.>	2 Distributions: a Cash	4,000,000.
2 Capital contributed: a Cash		b Property	
b Property		7 Other decreases (itemize):	
3 Net income (loss) per books	<5,015,603.>	8 Add lines 6 and 7	4,000,000.
4 Other increases (itemize):		9 Balance at end of year. Subtract line 8 from line 5	<39,200,413.>
5 Add lines 1 through 4	<35,200,413.>		

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12-27-07 JWA

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Form 1065 (2007)

11190327 707017 305SECONDAVE 2007.06020 305 SECOND AVENUE ASSOCIATE 305SEC01

10036-0004
Case No.: A-16

RA 000923

Form **1065**Department of the Treasury
Internal Revenue Service**U.S. Return of Partnership Income**
For calendar year 2008, or tax year beginning _____, 2008,
ending _____, 20 _____.
▶ See separate instructions.

OMB No. 1545-0099

2008**A** Principal business activity**REAL ESTATE RENTAL****B** Principal product or service**HISTORIC STRCTR APTS****C** Business code number**531110****Use the
IRS
label.
Other-
wise,
print
or type.**

Name of partnership

305 SECOND AVENUE ASSOCIATES LP**C/O ORB MANAGEMENT**

Number, street, and room or suite number. If a P.O. box, see the instructions.

421 HUDSON STREET

City or town

NEW YORK

State ZIP code

NY 10014**D** Employer identification
number**8160****E** Date business started**09/23/83****F** Total assets (see instrs)**\$ 40,463,127.****G** Check applicable boxes: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Name change (4) ☐ Address change (5) ☐ Amended return(6) ☐ Technical termination - also check (1) or (2)**H** Check accounting method: (1) ☐ Cash (2) ☒ Accrual (3) ☐ Other (specify) _____**I** Number of Schedules K-1. Attach one for each person who was a partner at any time during the tax year **77****J** Check if Schedule M-3 attached ☒**Caution.** Include **only** trade or business income and expenses on lines 1a through 22 below. See the instructions for more information.

		1a	1b	1c
INCOME	1 a Gross receipts or sales			
	b Less returns and allowances			
	2 Cost of goods sold (Schedule A, line 8)			
	3 Gross profit. Subtract line 2 from line 1c			
	4 Ordinary income (loss) from other partnerships, estates, and trusts (attach statement)			
	5 Net farm profit (loss) (attach Schedule F (Form 1040))			
	6 Net gain (loss) from Form 4797, Part II, line 17 (attach Form 4797)			
	7 Other income (loss) (attach statement)			
8 Total income (loss). Combine lines 3 through 7				
SEE INSTRUCTIONS FOR DEDUCTIONS LIMITATIONS	9 Salaries and wages (other than to partners) (less employment credits)			
	10 Guaranteed payments to partners			
	11 Repairs and maintenance			
	12 Bad debts			
	13 Rent			
	14 Taxes and licenses			
	15 Interest			
	16a Depreciation (if required, attach Form 4562)			
	b Less depreciation reported on Schedule A and elsewhere on return			
	17 Depletion (Do not deduct oil and gas depletion.)			
	18 Retirement plans, etc			
	19 Employee benefit programs			
	20 Other deductions (attach statement)			
	21 Total deductions. Add the amounts shown in the far right column for lines 9 through 20			
22 Ordinary business income (loss). Subtract line 21 from line 8				

**Sign
Here**

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than general partner or limited liability company member manager) is based on all information of which preparer has any knowledge.

Signature of general partner or limited liability company member manager

Date

May the IRS discuss this return
with the preparer shown below
(see instrs)?☒ Yes ☐ No**Paid
Preparer's
Use Only**Preparer's
signature

Date

03/09/09Check if self-
employed

Preparer's SSN or PTIN

1463Firm's name
(or yours if
self-employed),
address, and
ZIP code**REILLY, DEANE & RABOY, LLP****60 EAST 42ND STREET, STE. 558****NEW YORK****NY 10165**EIN ▶ **9293**

Phone no. (212) 986-3667

BAA For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

PTPA0112 10/08/08

Form **1065** (2008)**10037-0001
Case No.: A-16****RA 000924**

Cost of Goods Sold (see the instructions)

1	Inventory at beginning of year	1	
2	Purchases less cost of items withdrawn for personal use	2	
3	Cost of labor	3	
4	Additional section 263A costs (attach statement)	4	
5	Other costs (attach statement)	5	
6	Total. Add lines 1 through 5	6	
7	Inventory at end of year	7	
8	Cost of goods sold. Subtract line 7 from line 6. Enter here and on page 1, line 2	8	

9a Check all methods used for valuing closing inventory:

- (i) ☐ Cost as described in Regulations section 1.471-3
(ii) ☐ Lower of cost or market as described in Regulations section 1.471-4
(iii) ☐ Other (specify method used and attach explanation)

b Check this box if there was a writedown of 'subnormal' goods as described in Regulations section 1.471-2(c) ☐ Yes ☐ No

c Check this box if the LIFO inventory method was adopted this tax year for any goods (if checked, attach Form 970) ☐ Yes ☐ No

d Do the rules of section 263A (for property produced or acquired for resale) apply to the partnership? ☐ Yes ☐ No

e Was there any change in determining quantities, cost, or valuations between opening and closing inventory? ☐ Yes ☐ No

If 'Yes,' attach explanation

Other Information**1** What type of entity is filing this return? Check the applicable box:

- a** ☐ Domestic general partnership **b** ☒ Domestic limited partnership
c ☐ Domestic limited liability company **d** ☐ Domestic limited liability partnership
e ☐ Foreign partnership **f** ☐ Other

2 At any time during the tax year, was any partner in the partnership a disregarded entity, a partnership (including an entity treated as a partnership), a trust, an S corporation, an estate (other than an estate of a deceased partner), or a nominee or similar person? ☐ Yes ☒ No

3 At the end of the tax year:

- a** Did any foreign or domestic corporation, partnership (including any entity treated as a partnership), or trust own, directly or indirectly, an interest of 50% or more in the profit, loss, or capital of the partnership? For rules of constructive ownership, see instructions. If 'Yes,' complete (i) through (v) below ☐ Yes ☒ No

(i) Name of Entity	(ii) Employer Identification Number (if any)	(iii) Type of Entity	(iv) Country of Organization	(v) Maximum Percentage Owned in Profit, Loss, or Capital

b Did any individual or estate own, directly or indirectly, an interest of 50% or more in the profit, loss, or capital of the partnership? For rules of constructive ownership, see instructions. If 'Yes,' complete (i) through (iv) below ☐ Yes ☒ No

(i) Name of Individual or Estate	(ii) Social Security Number or Employer Identification Number (if any)	(iii) Country of Citizenship (see instructions)	(iv) Maximum Percentage Owned in Profit, Loss, or Capital

4 At the end of the tax year, did the partnership:

- a** Own directly 20% or more, or own, directly or indirectly, 50% or more of the total voting power of all classes of stock entitled to vote of any foreign or domestic corporation? For rules of constructive ownership, see instructions. If 'Yes,' complete (i) through (iv) below ☐ Yes ☒ No

(i) Name of Corporation	(ii) Employer Identification Number (if any)	(iii) Country of Incorporation	(iv) Percentage Owned in Voting Stock

		Yes	No	
b Own directly an interest of 20% or more, or own, directly or indirectly, an interest of 50% or more in the profit, loss, or capital in any foreign or domestic partnership (including an entity treated as a partnership) or in the beneficial interest of a trust? For rules of constructive ownership, see instructions. If 'Yes,' complete (i) through (v) below			X	
(i) Name of Entity	(ii) Employer Identification Number (if any)	(iii) Type of Entity	(iv) Country of Organization	(v) Maximum Percentage Owned in Profit Loss, or Capital
5 Did the partnership file Form 8893, Election of Partnership Level Tax Treatment, or an election statement under section 6231(a)(1)(B)(ii) for partnership-level tax treatment, that is in effect for this tax year? See Form 8893 for more details			X	
6 Does this partnership satisfy all four of the following conditions? a The partnership's total receipts for the tax year were less than \$250,000. b The partnership's total assets at the end of the tax year were less than \$1 million. c Schedules K-1 are filed with the return and furnished to the partners on or before the due date (including extensions) for the partnership return. d The partnership is not filing and is not required to file Schedule M-3 If 'Yes,' the partnership is not required to complete Schedules L, M-1, and M-2; Item F on page 1 of Form 1065; or Item L on Schedule K-1.		X		
7 Is this partnership a publicly traded partnership as defined in section 469(k)(2)?			X	
8 During the tax year, did the partnership have any debt that was cancelled, was forgiven, or had the terms modified so as to reduce the principal amount of the debt?			X	
9 Has this partnership filed, or is it required to file, Form 8918, Material Advisor Disclosure Statement, to provide information on any reportable transaction?			X	
10 At any time during calendar year 2008, did the partnership have an interest in or a signature or other authority over a financial account in a foreign country (such as a bank account, securities account, or other financial account)? See the instructions for exceptions and filing requirements for Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts. If 'Yes,' enter the name of the foreign country.			X	
11 At any time during the tax year, did the partnership receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? If 'Yes,' the partnership may have to file Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts. See instructions			X	
12a Is the partnership making, or had it previously made (and not revoked), a section 754 election? See instructions for details regarding section 754 election.			X	
b Did the partnership make for this tax year an optional basis adjustment under section 743(b) or 734(b)? If 'Yes,' attach a statement showing the computation and allocation of the basis adjustment. See instructions			X	
c Is the partnership required to adjust the basis of partnership assets under section 743(b) or 734(b) because of a substantial built-in loss (as defined under section 743(d)) or substantial basis reduction (as defined under section 734(d))? If 'Yes,' attach a statement showing the computation and allocation of the basis adjustment. See instructions			X	
13 Check this box if, during the current or prior tax year, the partnership distributed any property received in a like-kind exchange or contributed such property to another entity (including a disregarded entity)			<input type="checkbox"/>	
14 At any time during the tax year, did the partnership distribute to any partner a tenancy-in-common or other undivided interest in a partnership property?			X	
15 If the partnership is required to file Form 8858, Information Return of U.S. Persons With Respect To Foreign Disregarded Entities, enter the number of Forms 8858 attached. See instructions				
16 Does the partnership have any foreign partners? If 'Yes,' enter the number of Forms 8805, Foreign Partner's Information Statement of Section 1446 Withholding Tax, filed for this partnership.			X	
17 Enter the number of Forms 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships, attached to this return				

Designation of Tax Matters Partner (see the instructions)

Enter below the general partner designated as the tax matters partner (TMP) for the tax year of this return:

Name of designated TMP ► WINTHROP CHAMBERLIN

Identifying number of TMP 8611

Address of designated TMP ▶ 421 HUDSON STREET
NEW YORK, NY 10014

Partners' Distributive Share Items		Total amount
Income (Loss)	1 Ordinary business income (loss) (page 1, line 22)	1
	2 Net rental real estate income (loss) (attach Form 8825)	2 -2,124,104.
	3a Other gross rental income (loss)	3a
	3b Expenses from other rental activities (attach stmt)	3b
	3c Other net rental income (loss). Subtract line 3b from line 3a	3c
	4 Guaranteed payments	4
	5 Interest income	5 7,495.
	6 Dividends: a Ordinary dividends	6a
	b Qualified dividends	6b
	7 Royalties	7
	8 Net short-term capital gain (loss) (attach Schedule D (Form 1065))	8
Deductions	9a Net long-term capital gain (loss) (attach Schedule D (Form 1065))	9a
	b Collectibles (28%) gain (loss)	9b
	c Unrecaptured section 1250 gain (attach statement)	9c
	10 Net section 1231 gain (loss) (attach Form 4797)	10
Self-Employment	11 Other income (loss) (see instructions) Type ▶	11
	12 Section 179 deduction (attach Form 4562)	12
	13a Contributions	13a
	b Investment interest expense	13b
Credits	c Section 59(e)(2) expenditures: (1) Type ▶ (2) Amount ▶	13c (2)
	d Other deductions (see instructions) Type ▶	13d
	14a Net earnings (loss) from self-employment	14a
	b Gross farming or fishing income	14b
	c Gross nonfarm income	14c
	15a Low-income housing credit (section 42(j)(5))	15a
Foreign Transactions	b Low-income housing credit (other)	15b
	c Qualified rehabilitation expenditures (rental real estate) (attach Form 3468)	15c
	d Other rental real estate credits (see instructions) Type ▶	15d
	e Other rental credits (see instructions) Type ▶	15e
	f Other credits (see instructions) Type ▶	15f
	16a Name of country or U.S. possession ▶	16a
Alternative Minimum Tax (AMT) Items	b Gross income from all sources	16b
	c Gross income sourced at partner level	16c
	Foreign gross income sourced at partnership level	
	d Passive category ▶ e General category ▶ f Other ▶	16f
	Deductions allocated and apportioned at partner level	
	g Interest expense ▶ h Other ▶	16h
	Deductions allocated and apportioned at partnership level to foreign source income	
	i Passive category ▶ j General category ▶ k Other ▶	16k
	l Total foreign taxes (check one): Paid <input type="checkbox"/> Accrued <input type="checkbox"/>	16l
	m Reduction in taxes available for credit (attach statement)	16m
n Other foreign tax information (attach statement)		
Other Information	17a Post-1986 depreciation adjustment	17a 314,229.
	b Adjusted gain or loss	17b
	c Depletion (other than oil and gas)	17c
	d Oil, gas, and geothermal properties — gross income	17d
	e Oil, gas, and geothermal properties — deductions	17e
	f Other AMT items (attach stmt)	17f
	18a Tax-exempt interest income	18a
	b Other tax-exempt income	18b
BAA	c Nondeductible expenses	18c
	19a Distributions of cash and marketable securities	19a 324,183.
	b Distributions of other property	19b
	20a Investment income	20a 7,495.
	b Investment expenses	20b
	c Other items and amounts (attach stmt)	

Form 1065 (2008)