

# SECURITIES AND EXCHANGE COMMISSION

## FORM 8-K

Current report filing

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### FILER

#### **SUPERTEL HOSPITALITY INC**

CIK: **929545** | IRS No.: **521889548** | State of Incorpor.: **VA** | Fiscal Year End: **1231**  
Type: **8-K** | Act: **34** | File No.: **000-25060** | Film No.: **07866675**  
SIC: **6798** Real estate investment trusts

#### Mailing Address

309 NORTH FIFTH STREET  
NORFOLK NE 68701

#### Business Address

309 NORTH FIFTH STREET  
NORFOLK NE 68701  
4023712520

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549**

**FORM 8-K**

**CURRENT REPORT PURSUANT  
TO SECTION 13 OR 15(D) OF THE  
SECURITIES EXCHANGE ACT OF 1934**

May 16, 2007

Date of report (Date of earliest event reported)

Supertel Hospitality, Inc.  
(Exact Name of Registrant as Specified in Its Charter)

Virginia  
(State or Other Jurisdiction of Incorporation)

0-25060  
(Commission File Number)

52-1889548  
(IRS Employer Identification No.)

309 North Fifth Street  
Norfolk, NE  
(Address of Principal Executive Offices)

68701  
(Zip Code)

(402) 371-2520  
(Registrant's Telephone Number, Including Area Code)

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

## Item 1.01. Entry into Material Definitive Agreement.

On May 16, 2007, Supertel Limited Partnership (“SLP”), a limited partnership 97% owned by Supertel Hospitality, Inc. (“Supertel”), acquired fifteen hotels, which are operated under the Masters Inn name, from entities in which two individuals own all or a majority of the capital stock. The purchase price for the fifteen hotels was \$42,700,000. The hotels are located in: Tuscaloosa, Alabama; Orlando, Florida; Kissimmee, Florida (2); Seffner, Florida; East Tampa, Florida; Doraville, Georgia; Marietta, Georgia; Tucker, Georgia; Augusta, Georgia; Garden City, Georgia; Mt. Pleasant, South Carolina; Charleston, South Carolina; and Cayce, South Carolina (2).

The purchase agreement for the fifteen hotels is filed with this report as Exhibit 2.1 and incorporated herein by reference.

On May 16, 2007, TRS Leasing, Inc. (“TRS”), an indirect wholly-owned taxable REIT subsidiary of Supertel and the lessee of the fifteen hotels, entered into a management agreement with HLC Hotels, Inc. (“HLC”), an affiliate of the sellers of the hotels. The management agreement provides for HLC to operate and manage the fifteen hotels for a term of two years and receive management fees equal to five percent of the gross revenues derived from the operation of the hotels. The management agreement requires TRS to reimburse HLC for all budgeted direct operating costs and expenses incurred in the operation of the hotels. HLC, an eligible independent contractor, also manages other hotels for parties unrelated to Supertel.

The description of the management agreement for the fifteen hotels is qualified in its entirety by the management agreement filed with this report as Exhibit 10.1 and incorporated herein by reference.

The \$42,700,000 purchase price for the fifteen hotels was funded by \$6,405,000 of borrowings from Supertel’s existing credit facilities with Great Western Bank and a \$27,755,000 term loan and \$8,540,000 bridge loan from General Electric Capital Corporation (“GECC”) entered into on May 16, 2007 by SLP. The GECC term loan requires monthly interest payments in the first two years of the loan, monthly interest and principal (equal to one-twelfth of one percent of the loan amount) payments in the third year of the loan and monthly interest and principal (amortized over twenty years) payments in the fourth through tenth years of the loan. The principal balance of the GECC term loan is due and payable on June 1, 2017. The GECC term loan bears interest at three-month LIBOR plus 1.70% (reset monthly) and can be converted to a fixed rate equal to the seven-year weekly U.S. dollar interest rate swap plus 1.98% between the seventh and thirty-sixth months of the loan. The GECC bridge loan requires monthly interest payments with the principal balance due and payable on December 1, 2007. The GECC bridge loan bears interest at three-month LIBOR plus 5.00% (reset monthly).

The GECC loans are secured by first priority mortgages or deeds to secure debt on the fifteen acquired hotels and the tangible and intangible property located on or used exclusively in connection with the operations on the hotel properties, including inventory, equipment, fixtures, accounts and general intangibles. The GECC loans contain certain affirmative and negative covenants with which SLP must comply, including maintenance of a 1.3:1 fixed charge coverage ratio (as defined in the loan agreement filed with this report as Exhibit 10.2) with respect to the

hotels, maintenance of insurance, reporting requirements and restrictions on property transfers and the granting of liens. Customary events of default are included in the GECC loans, including payment defaults, breaches of covenants and insolvency/bankruptcy events, the occurrence of which give GECC the right to accelerate repayment of the loans. The GECC loans are guaranteed by Supertel.

The description of the GECC loans is qualified in its entirety by the loan documents filed with this report as Exhibits 10.2 and 10.3 and incorporated herein by reference.

Item 2.01. Completion of Acquisition or Disposition of Assets.

The information provided in Item 1.01 of this report is incorporated herein by reference.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information provided in Item 1.01 of this report is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(a) Financial Statements of Business Acquired.

Financial statements for the Masters Inn hotels will be filed under cover of a Form 8-K/A no later than August 1, 2007.

(b) Pro Forma Financial Information.

Pro forma financial information on the Masters Inn hotel acquisition will be filed under cover of a Form 8-K/A no later than August 1, 2007.

(c) Exhibits.

2.1 Hotel Purchase Agreement, dated March 7, 2007, among MEI I Properties, LP, HLC Properties, LP, HLC Atlanta Properties, LP, HLC ATLTU Properties, LLC, HLC ORLID Properties, LLC, HLC Kissimmee Properties, LP, HLC Main Gate Properties, LP, HLC Tampa Properties, LP, MEI 2 Properties, LP, RCL Properties, LLP, Masters Economy Inns, Inc., J. Roger Hammond, Charles M. Aimone and Supertel Limited Partnership (incorporated by reference to Exhibit 2.1 to Supertel's Current Report on Form 8-K dated March 7, 2007).

10.1 Management Agreement, dated May 16, 2007, between TRS Leasing, Inc. and HLC Hotels, Inc.

- 10.2 Promissory Notes, Loan Agreement and form of Deed to Secure Debt, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated May 16, 2007, by Supertel Limited Partnership to and for the benefit of General Electric Capital Corporation.
  - 10.3 Unconditional Guaranty of Payment and Performance, dated May 16, 2007, by Supertel Hospitality, Inc. to and for the benefit of General Electric Capital Corporation.
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## SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Supertel Hospitality, Inc.

Date: May 21, 2007

By: /s/ Donavon A. Heimes

Name: Donavon A. Heimes

Title: Chief Financial Officer, Treasurer and  
Secretary

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## EXHIBIT INDEX

Exhibit	Description	Page. No.
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**MANAGEMENT AGREEMENT**

THIS AGREEMENT, made this 16<sup>th</sup> day of May, 2007, between TRS LEASING, INC., a Virginia corporation (hereinafter referred to as "OWNER"), and HLC Hotels, Inc., a corporation organized and existing under the laws of the State of Georgia (hereinafter referred to as "AGENT"),

WITNESSETH THAT:

Whereas, Owner and Agent desire to enter into an agreement for the management and operation of 15 Hotels (as hereinafter defined), by Agent, upon the terms and conditions hereinafter set forth;

NOW THEREFORE, in consideration of the mutual covenants herein contained, Owner and Agent agree as follows:

ARTICLE I

Engagement of Agent to Operate Hotel

Owner hereby hires and engages Agent as the exclusive operator and manager of 15 Masters Inns hotels (hereinafter the "Hotels") described on Schedule A attached hereto and incorporated by reference hereto, and Agent agrees to operate and manage the Hotels pursuant to the terms and conditions hereinafter set forth. An individual Hotel may sometimes be referred to as a "Hotel".

ARTICLE II

Term

The term of the agreement ("Term of Contract") shall be for a period of two years, commencing on May 16, 2007 and continuing through May 16, 2009, together with any renewal terms as herein provided. This agreement may be renewed for additional terms upon the

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mutual agreement of both the Owner and the Agent provided this agreement is not otherwise terminated as herein provided.

### ARTICLE III

#### Purpose

The primary purpose for which this agreement is being made is to hire Agent to provide management services in connection with the operation and management of the Hotels and related facilities for the account of Owner and, so far as is economically and legally possible, in accordance with the same procedures, practices, management technique and other rules of operation used by similar hotels and those managed by Agent for the account of others.

### ARTICLE IV

#### Services and Duties of Agent

In connection with the general authority of Agent to operate the Hotels hereinafter set forth, the Agent shall render and perform the following specific services and duties:

- (a) Act as the sole and exclusive manager of the Hotels and perform, direct and control the management and operation of the Hotels in accordance with prevailing industry standards for a hotel of comparable location and facilities;
- (b) Use its best efforts and due diligence in renting all of the rooms and facilities to desirable guests and tenants. Agent may rent rooms and lease stores and concessions in or about the Hotels at rates approved by Owner;
- (c) Execute, and deliver, on behalf of Owner, on terms approved by Owner, concession agreements for stores, office or lobby space, or other rooms or rental space comprising a portion of the Hotels provided that no such lease shall be for a term greater than 30 days without the written consent of Owner;

- (d) Apply for, obtain and maintain in the name of and at the expense of Owner or its designees, all licenses and permits required of Owner or Agent in connection with the management and operation of the Hotels. Owner agrees to cooperate fully with Agent in the procurement and maintenance of such licenses and permits and to provide to Agent such information and ancillary documentation as Agent shall request in connection with procuring and maintaining such licenses or permits. In the event such licenses or permits cannot be obtained or maintained, then this agreement shall terminate at the option of Agent thirty (30) days after written notice to Owner of the exercise of such option to terminate by Agent;
- (e) Supervise and attend to all advertising and promotional matters pertaining to the Hotels as determined by Owner. As part of the annual operating budget submitted to Owner by Agent pursuant to the terms of Article IV (m) hereof, Agent shall submit an annual promotional and advertising budget to Owner;
- (f) Hire, discharge, suspend, discipline and compensate all employees of Agent, necessary in Agent's sole discretion for the efficient operation of the Hotels (the "Operating Employees") and direct and supervise their work. Owner shall have neither right nor obligation to supervise, hire or discharge the Operating Employees. The wages, salaries and all additional remuneration to the Operating Employees, whether direct or indirect, and expenses incurred with the hiring and maintenance of the staff of the Operating Employees shall be an operating expense of the Hotels. Agent will do whatever is required by the laws of the state where the Hotels are located to comply with any federal or state withholding tax, Social Security, unemployment, or workers compensation laws existing or enacted in the future for the benefit of or affecting such employees;

- (g) Make, or cause to be made, with Owner' s consent, all ordinary maintenance, repairs and alterations to the Hotels, purchase such building maintenance and janitorial supplies as are necessary and appropriate for the operation of the Hotels, paying all bills therefore on behalf of Owner, and giving Owner the benefit of all discounts, and keep the Hotels and all its furniture, fixtures and equipment in good repair, and arrange for the orderly and appropriate replacements, improvements and changes to such assets as approved by Owner;
- (h) Report immediately to Owner any and all accidents or claims for damage resulting to the Hotels including any damage thereto or destruction thereof and provide Owner with written notice of such event or occurrence within seventy-two (72) hours thereafter. Agent shall cooperate and make any and all reports required by any insurance company in connection therewith;
- (i) Immediately upon receipt, deposit all funds collected from the operation of the Hotel in a special account or accounts with a bank or banks approved by Owner;
- (j) Immediately upon service of legal or other process upon the Agent which process affects or might affect Owner or the Hotels, Agent shall send such process to the attention of the Owner at the address for Owner hereinafter set forth or as Owner otherwise directs in writing;
- (k) Deliver to Owner, no later than the 15th day of each month, a detailed statement of income and expenditures made in connection with the operation of the Hotel for the period ending on the last day of the previous month. Agent shall be responsible for maintaining such records as shall conform to the American Hotel and Motel Associations' Uniform System of Accounts. Agent shall establish and supervise appropriate accounting and cost control systems operated by qualified

personnel. Agent shall cause accounting personnel to prepare and file all necessary reports with respect to withholding taxes, social security taxes, unemployment insurance, disability insurance, the Fair Labor Standards Act and all other statements and reports pertaining to the employment of labor on or about the Hotels. Agent shall also prepare profit and loss statements for the Hotels. All books of account shall at all times be open to the inspection and audit by any of Owner' s officers or authorized representatives. All books, records, bills, receipts, bank books, check books, check vouchers, correspondence, lists, files, index cards and books of account relating to lessees, concessionaires, guest and prospective guests, and employees of the Hotels, and other data and records pertaining to or relating to the management and operation of the Hotels shall be safely kept and preserved by Agent for at least 5 years. Upon the termination of this Agreement, such records shall be the property of Owner;

- (l) Procure and submit to Owner for payment by Owner in advance of the due date thereof, all tax bills and assessments relating to the Hotels and assist Owner in obtaining fair tax assessments for the Hotel, at Owner' s sole expenses;
- (m) Prepare and submit to Owner an annual operating budget as provided herein;
- (n) Arrange for, in the Hotels' names, all water, electrical, gas, fuel oil, telephone, vermin extermination, trash removal and other necessary services for the operation of the Hotels and purchase, upon credit of the Hotel, all food, beverages, operating supplies and other expendables necessary for use in the proper operation of the Hotels;
- (o) Provide all such services and functions as might reasonably be expected of a professional hotel management company' s central office, including, but not

limited to: supervision, operational analysis, personnel recruitment, contract negotiation, administrative and clerical functions, purchasing and all other reasonable and normal management functions at no cost to Owner;

- (p) Agent shall pay the wages or other compensation of its own employees who are engaged in the performance of duties imposed under this Agreement.
- (q) Agent agrees he will not collect or charge any undisclosed fee, rebate or discount, and if any such should be received by Agent, these will be credited to the account of the Owner; and
- (r) The reasonable and necessary costs, fees, compensation, and other expenses of any persons engaged by Owner or Agent to perform duties of a special nature, directly related to the Hotels, including but not limited to, attorneys, auditors and the like, shall be operating expenses of the Hotels.

## ARTICLE V

### Fees

Owner agrees that for the Term of Contract or any extension thereof, Owner shall pay Agent in legal United States currency in consideration of and as remuneration for management services provided hereunder, the management fees as set forth in Schedule B, attached hereto and incorporated by reference hereto.

Said compensation shall be computed and payable on a monthly basis. Owner shall reimburse Agent for all direct operating costs and expenses incurred in the operation of the Hotels which are included in the Budget (defined below). Such operating expenses may include reasonable employee travel expenses incurred in the management of the Hotels as approved in the Budget (as defined below) but not including travel expenses of the Principals (as defined below). Further, such operating expenses shall not include any of Agent's compensation,

overhead costs or other expenses not directly related to the operation of the Hotels. Such reimbursement shall be made within 5 business days after Owner's receipt of Agent's request for such reimbursement and Owner's approval of the supporting documentation for such reimbursement.

No later than November 1 of each year, Agent shall prepare and submit (following discussions with Owner) to Owner an annual budget for the operation of each Hotel for the forthcoming Fiscal Year containing detailed projections of Gross Revenues (as defined in Schedule B-1) and budgets of operating expenses for the Hotels (the "Budget"). The Budget shall be month-to-month as well as annual and shall be in the form designated and approved by Owner. The Budget shall provide for operating, equipping and maintaining the Hotel in accordance with the hotel standards determined by Owner in Owner's discretion (the "Hotel Standards"). Additionally, before the commencement of each Fiscal Year, Agent shall submit to Owner monthly budgeted occupancy, average daily rate and RevPAR statistics for each Hotel. The Budget and the monthly budgeted hotel operating statistics shall contain Agent's reasonable good faith estimates of the amounts set forth therein. Agent shall provide Owner, upon request, all details, information and assumptions used in preparing the Budget.

Agent shall review the Budget with Owner, and upon Owner's written approval of the Budget, it shall constitute the approved Budget for the succeeding Fiscal Year and shall be implemented by Agent. If Owner objects to any portion of the Budget within 30 days after receipt of the same, or to any portion of the revisions within 20 days after submission of the revisions by Agent to Owner, the parties hereto will call a special budget meeting to resolve the points of disagreement. In the event that Owner and Agent are unable to agree on the Budget for the Hotels prior to the commencement of the applicable Fiscal Year, an interim operating budget shall be implemented.

A budget meeting between Owner and Agent will be held at least quarterly. At each budget meeting and at any additional meetings during a Fiscal Year reasonably called by

Owner, Agent shall consult with Owner on matters of policy concerning management, sales, room rates, wage scales, personnel, general overall operating procedures, economics and operation and any other matters affecting the operation of the Hotels as requested by Owner. Owner shall have access to the Hotels at all times to inspect the same.

As used herein, the following terms shall have the following meanings: "Fiscal Year" shall mean each 12-month period ending December 31, except the first and last Fiscal Years may not be full calendar years; and RevPAR shall mean Hotel occupancy percentage multiplied by average daily rate.

## ARTICLE VI

### Relationship of the Parties

All duties performed by Agent under this agreement shall be performed as an independent contractor. Nothing in this agreement shall be construed as creating a partnership, joint venture, lease, sublease or any other relationship between Agent and Owner except that of independently contracting parties or as requiring Agent to bear any portion of losses arising out of or connected with the ownership or operation of the Hotels. Agent's rights under this Agreement shall be those of an agent only and shall not constitute an interest in real property. Nothing in this Agreement shall be construed to appoint or constitute Agent as an agent of Supertel Limited Partnership ("Supertel") for any purpose. Owner or Supertel shall have the right to lease, develop and sell excess land or structures not required for operation of the Hotels. It is expressly covenanted that this Agreement is no more than an agreement for the rendering of services by Agent on behalf of Owner in the operation and management of the Hotels. Agent represents to Owner that Agent also manages hotels/motels other than the Hotels.

## ARTICLE VII

### Insurance

Owner agrees that during the Term of Contract, and any extensions thereto, it will contract for and carry insurance in the minimum amounts deemed necessary by the Owner for the protection of the interests of Owner.

## ARTICLE VIII

### Interruption of Operations

In the event that a Hotel shall be damaged by fire, wind, or any Act of God to such an extent that Owner decides not to rebuild, this management agreement may be terminated by either party hereto with respect to that Hotel upon thirty (30) days' written notice after the decision not to rebuild has been made or should have been made in the exercise of reasonable diligence, but in any event not later than sixty (60) days following the occurrence of such damage. No termination fee shall be due on account of a termination under this Article VIII.

In the event that due to war, riot or insurrection, the operation of a Hotel is not feasible according to accepted practices of good hotel operations, Agent will be permitted to close that Hotel for a period of up to and including one hundred twenty (120) days and be freed during this time from operating such Hotel other than such services as are necessary for protection and basic maintenance of the property.

If at the end of the one hundred twenty (120) days the conditions that caused the interruption of operations have not ceased or improved sufficiently to permit the operation of the Hotel in accordance with this agreement, this management agreement may be terminated by either party hereto upon fifteen (15) days written notice.

## ARTICLE IX

### Termination

It is agreed that, if either Owner or Agent defaults in performing any of his or its obligations under this agreement and fails to correct or remedy such default within ten (10) days after written notice thereof the other party may terminate this agreement, but for the purpose of



this paragraph the defaulting party shall be deemed to have terminated this agreement. Agent shall not be entitled to a termination fee in the event this Agreement is terminated due to Agent' s default. Owner' s or Agent' s waiver of any breach or failure to enforce any of the terms and conditions hereof shall not in any way affect, limit or waive Owner' s or Agent' s right, respectively, at any time to enforce strict compliance with such terms or conditions.

The following shall constitute events of default on the part of Agent hereunder: (1) the failure of Agent to diligently and efficiently operate the Hotels in accordance with the provisions of this agreement; (2) the failure of Agent to pay any amount to Owner provided for herein for a period of five days after such sum is payable; (3) the filing of a voluntary petition in suspension of payments, bankruptcy or insolvency by Agent or any entity which owns or controls Agent or if Agent otherwise voluntarily avails of itself of any federal or state laws for the relief of debtors or admits in writing of its inability to pay its debts as they become due; (4) the consent to any involuntary petition in bankruptcy or the failure to vacate within 60 days from the date of entry thereof any order approving an involuntary petition by or against Agent, or the entering of an order, judgment or decree by any court of competent jurisdiction, on the application of a creditor, adjudicating Agent a bankrupt or insolvent or avoiding a judicial receiver, trustee or liquidator of all or a substantial part of such party' s assets, and such order, judgment or decree shall continue unstayed and in effect for a period of 120 consecutive days; (5) the failure of Agent to perform, keep or fulfill any of the other covenants, undertakings, obligations or conditions set forth in this agreement, and the continuance of any such default for a period of 30 days after written notice of such failure; (6) the operation or condition of any Hotel does not meet the Hotel Standards and such default is not remedied within 30 days after written notice of such failure; or (7) failure by Agent to pay, when due, the accounts payable for the Hotels.

Notwithstanding any provisions of this agreement, either Owner or Agent may terminate this agreement in the following cases:

- (a) In case Owner sells, leases or otherwise disposes of no more than three Hotels during any fiscal year, this agreement shall terminate as to such Hotels upon the closing date with no termination fee due. In case Owner sells, leases or otherwise disposes of more than three Hotels during any fiscal year, this agreement shall terminate upon the closing date of the sale or lease transaction. In the event of sale or disposal in the immediately preceding sentence, Agent shall receive a termination fee equal to 50% of the fee due under Article V of this Agreement during the 12 months prior to the effective date of such termination.
- (b) In case a receiver or trustee has been appointed to either Owner or Agent on behalf of creditors for insolvency or bankruptcy.

Owner may terminate this Agreement upon a change of control of Agent. Said termination will be exercised by delivery of written notice to Agent, such notice to be provided not less than 30 days prior to the effective date of such termination. For purposes hereof, a “change of control of Agent” shall be deemed to have occurred if (i) Roger Hammond and Charles Aimone, (collectively, the “Principals”) are not actively managing the Hotels (directly, or indirectly through Agent), (ii) the Principals (or corporate or other entities directly or indirectly controlled by the Principals) do not in the aggregate own more than 50% of the outstanding equity in voting interests in Agent, or (iii) both of the Principals die or become disabled (disability consisting of illness or injury pursuant to which the person is unable to perform his active management duties for a period of 60 consecutive days). Agent shall not be entitled to a termination fee in such event.

## ARTICLE X

### Laws and Ordinances

Agent agrees that it will at all times conduct the business of the Hotels in a lawful manner and in full compliance with all governmental laws, ordinances, rules and regulations and that

Agent will, provided that sufficient funds are available, comply with all such governmental laws, ordinances, rules and regulations as may be applicable to the business conducted by Agent on the Hotels pursuant hereto, any payments or obligations in connection therewith being considered as expenses of operation.

## ARTICLE XI

### Charges

It is agreed that Agent shall not be liable to third parties for any debts, liabilities or obligations of the Hotels by virtue of its management, supervision, control and operation of said property for Owner. Agent shall be liable only to Owner for the faithful performance of Agent' s obligations under this agreement.

## ARTICLE XII

### Records

All books, cards, registers, receipts, documents and any other papers connected with the operation of the Hotels in the custody of Agent, are and shall remain the property of Owner, and shall at any and all reasonable times during normal working hours be open and freely exhibited to Owner or an officer of duly authorized representative of the Owner, for the purpose of examination and/or audit.

## ARTICLE XIII

### Entire Agreement

All prior conversations, discussions and agreements between the parties herein are hereby merged into and set forth in writing as part of this agreement, which shall constitute the entire agreement between the parties. In particular, Owner acknowledges that there have been no representations, inducements, promises or agreements made by Agent other than those set forth herein.

The Agent's authority shall be derived solely from this agreement and the Agent has no authority to act for, or represent the Owner except as herein specified. However, Agent is hereby authorized to hire independent contractors and/or agents, at Owner's expense to perform any and all acts necessary to carry out the above responsibilities.

#### ARTICLE XIV

##### Interruption of Operations

Any provision of this agreement prohibited by law or invalidated by court decree in any locality or state shall remain effective within states and localities where not prohibited by law or invalidated by court decree.

The construction, interpretation and performance of this agreement shall be governed by the laws of the State of Georgia.

#### ARTICLE XV

##### Notice

All written notices from either party to the other shall be considered given upon delivery, by United States Mail, return receipt requested, to:

HLC Hotels, Inc.  
Attn: J. Roger Hammond  
7080 Abercorn Street  
Savannah, GA 31406

TRS Leasing, Inc.  
309 North 5<sup>th</sup> Street  
Norfolk, NE 68701

Either party may change its notice address in any written notice to the other party.

#### ARTICLE XVI

##### Assignment

Agent may not assign this Agreement or any of its rights under this Agreement without Owner's consent; nor shall this Agreement be transferable by operation of law or otherwise.

## ARTICLE XVII

### No Political Contributions

Any provision hereof to the contrary notwithstanding, no money or property of the Hotels shall be paid or used or offered, nor shall Owner or Agent directly or indirectly pay or use or offer, consent or agree to pay or use or offer any money or property of the Hotels, for or in aid of any political party, committee or organization, or for or in aid of, any corporation, joint stock or other association organized or maintained for political purposes, or for, or in aid or, any candidate for political office or for nomination for such office, or in connection with any election including referendum for constitutional amendment, or for any political purpose whatever, or for lobbying in connection with legislation or regulation thereunder, or for the reimbursement for indemnification of any person for money or property so used.

## ARTICLE XVIII

### Eligible Independent Contractor

- (a) At the effective time of this Agreement, Agent shall qualify as an "eligible independent contractor" as defined in Section 856(d)(9) of the Internal Revenue Code of 1986, as amended (the "Code"). To that end:
  - (i) during the term of this Agreement, Agent shall not permit wagering activities to be conducted at or in connection with the Hotels;
  - (ii) during the term of this Agreement, Agent shall not own, directly or indirectly (within the meaning of Section 856(d)(5) of the Code), more than 35% of the shares of Supertel Hospitality Trust, Inc. ("Parent");
  - (iii) during the term of this Agreement, no more than 35% of the total combined voting power of Agent's outstanding stock (or 35% of the total shares of all classes of its outstanding stock) shall be owned, directly or

indirectly, by one or more persons owning 35% or more of the outstanding stock of Parent; and

- (iv) At the effective time, Agent shall be actively engaged in the trade or business of operating "qualified lodging facilities" (defined below) for a person who is not a "related person" within the meaning of Section 856(d)(9)(F) of the Code with respect to the Parent or Owner ("Unrelated Persons"). In order to meet this requirement, Agent agrees that it (i) shall derive at least 10% of both its revenue and profit from operating "qualified lodging facilities" for Unrelated Persons and (ii) shall comply with any regulations or other administrative guidance under Section 856(d)(9) of the Code with respect to the amount of hotel management business with Unrelated Persons that is necessary to qualify as an "eligible independent contractor" with the meaning of such Code Section.
  
- (b) A "qualified lodging facility" is defined in Section 856(d)(9)(D) of the Code and means a "lodging facility" (defined below), unless wagering activities are conducted at or in connection with such facility by any person who is engaged in the business of accepting wagers and who is legally authorized to engage in such business at or in connection with such facility. A "lodging facility" is a hotel, motel or other establishment more than one-half of the dwelling units in which are used on a transient basis, and includes customary amenities and facilities operated as part of, or associated with, the lodging facility so long as such amenities and facilities are customary for other properties of a comparable size and class owned by other owners unrelated to Parent.
  
- (c) Agent shall not sublet any Hotel or enter into any similar arrangement on any basis such that the rental or other amounts to be paid by the sublessee

thereunder would be based, in whole or in part, on either (a) the net income or profits derived by the business activities of the sublessee, or (b) any other formula such that any portion of the rent would fail to qualify as "rents from real property" within the meaning of Section 856(d) of the Internal Revenue Code, or any similar or successor provision thereto.

## ARTICLE XIX

### Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

IN WITNESS HEREOF, the parties hereto have executed this agreement as of the day and year first above written.

**AS OWNER:**

**AS AGENT:**

TRS LEASING, INC.

HLC HOTELS, INC.

By: /s/ Donavon A. Heimes

By: /s/ Charles M. Aimone

Title: Vice President / Treasurer

Title: President



## **SCHEDULE A**

### Masters Inns Hotels

3027 Washington Road, Augusta, GA  
613 Knox Abbott Drive, Cayce, SC  
2125 Commerce Drive, Cayce, SC  
6100 Rivers Avenue North, Charleston, SC  
3092 Presidential Parkway, Doraville, GA  
4200 Highway 21 N, Garden City, GA  
5367 West Irlo Bronson Memorial Highway, Kissimmee, FL  
2945 Entry Point Boulevard, Kissimmee, FL  
2682 Windy Hill Road, Marietta, GA  
300 Wingo Way, Mt. Pleasant, SC  
8222 Jamaican Court, Orlando, FL  
6010 CR 579, Seffner, FL  
6606 Dr. Martin Luther King Boulevard, Tampa, FL  
1435 Montreal Road, Tucker, GA  
3600 McFarland Boulevard, Tuscaloosa, AL

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## **SCHEDULE B**

### **Agent' s Compensation**

As compensation for the services to be rendered hereunder, Owner shall pay Agent on the first day of each month, during the Term of Contract or any extension thereof, a basic fee equal to 5% of the Gross Revenues as defined or qualified in Schedule B-1.

## **SCHEDULE B-1**

### **Computation of Revenue**

The term "Gross Revenues" as used herein, shall mean all revenue of any and every kind, derived directly or indirectly for the operation of the Hotel, including revenues from the rental of guest units, food and beverage revenues, and rental or other payments from lessees, or concessionaires, (but not the gross receipts of such lessees or concessionaires), less (i) such amounts as may be received and held as security or other special deposits so long as the funds are so held, and (ii) amounts returned to payors as rebates or as having been received by mistake or by reason of overcharges.

## PROMISSORY NOTE

\$27,755,000.00

Dated as of May 16, 2007  
Scottsdale, Arizona

**SUPERTEL LIMITED PARTNERSHIP**, a Virginia limited partnership ("Borrower"), for value received, hereby promises to pay to **GENERAL ELECTRIC CAPITAL CORPORATION**, a Delaware corporation ("Lender"), whose address is 8377 East Hartford Drive, Suite 200, Scottsdale, Arizona 85255, or order, on or before June 1, 2017 (the "Maturity Date"), the principal sum of \$27,755,000.00 ("Loan Amount"), as herein provided. Initially capitalized terms which are not otherwise defined in this Note shall have the meanings set forth in that certain Loan Agreement dated as of the date of this Note between Borrower and Lender, as such agreement may be amended, restated and/or supplemented from time to time (the "Loan Agreement").

In addition, the following terms shall have the following meanings for all purposes of this Note.

*"Amortization Period"* means a period of two hundred forty months commencing on the first day of the month immediately following the Closing Month.

*"Fixed Rate"* means, a per annum rate of interest equal to the weekly average seven (7)-year swap rate for U.S. Dollar Interest Rate Swaps (as published in Federal Reserve Statistical Release H.15[519] <http://www.federalreserve.gov/releases/H15/>), as in effect two Business Days prior to Rate Conversion Date, plus 198 basis points, and is fixed for the balance of the Loan Term.

*"Monthly Payment"* means the monthly amount of principal and interest that would fully amortize the Loan Amount outstanding on a Reference Date, over the then remaining Amortization Period, at an interest rate equal to the Variable Rate in effect on the last Business Day of the second month preceding such Reference Date. The Monthly Payment amount so computed will be the Monthly Payment commencing on the Payment Date immediately following such Reference Date and for the next succeeding 11 months.

*"Reference Date"* means the Initial Payment Date and each anniversary of the Initial Payment Date.

*"Variable Rate"* means a rate per annum equal to 170 basis points added to the Variable Rate Base in effect on the last Business Day of the month preceding each Variable Rate Set Date. The Variable Rate is set as of the first day of the Closing Month and reset as of the first day of each succeeding month (each, a *"Variable Rate Set Date"*). The Variable Rate so determined is effective from, and including, the first day of each such month through, and including, the last day of such month.

*"Variable Rate Base"* means a rate per annum (rounded upwards, if necessary, to the nearest 1/100th of one percent) equal to the 90-day London Interbank Offered Rate as published in *The Wall Street Journal*. If for any reason such rate is no longer published in *The Wall Street Journal*, Lender shall select such replacement index as Lender in its sole discretion determines most closely approximates such rate.

Interest shall accrue on the Loan Amount at the Variable Rate, as it changes from time to time, from the date the Loan Amount is advanced to Borrower, computed on the basis of a 360 day year for the actual number of days elapsed, in arrears. Borrower agrees to pay an effective rate of interest that is the sum of the interest rate provided for in this Note, together with any additional rate of interest resulting from any other charges of interest or in the nature of interest paid or to be paid pursuant to any of the other Loan Documents.

Provided no Event of Default shall have occurred and be continuing, Borrower shall have an option (the “*Rate Conversion Option*”), exercisable only once between December 2007 and May 2010, inclusive (the “*Exercise Period*”), to convert the interest rate for the Loan from the Variable Rate to the Fixed Rate. To exercise the Rate Conversion Option, Borrower must provide Lender with written notice of Borrower’s election during the Exercise Period (the “*Rate Conversion Notice*”). The Rate Conversion shall be deemed effective on the first day of the second calendar month following delivery of the Conversion Notice to Lender (the “*Rate Conversion Date*”).

Interest is payable in arrears, except that interest on the unpaid Loan Amount for the period commencing on the day the Loan Amount is advanced (the “*Advance Date*”) through the last day of the month in which the Advance Date occurs (the “*Closing Month*”) is due and payable at Closing. Commencing on the first day of the second month following the Closing Month (the “*Initial Payment Date*”) and continuing on the first day of each succeeding month thereafter (each, with the Initial Payment Date, a “*Payment Date*”) through June 1, 2009, Borrower shall pay consecutive monthly installments of interest only. Commencing on July 1, 2009 until and including June 1, 2010, Borrower shall pay consecutive monthly installments of interest and principal equal to one-twelfth of one percent (1%) of the Loan Amount. Commencing on July 1, 2010 through the Maturity Date, Borrower shall make combined principal and interest payments equal to the Monthly Payment then in effect ***provided, however***, that if Borrower properly exercises the Rate Conversion Option, then commencing on the first Payment Date following the Rate Conversion and continuing on each Payment Date thereafter through the Maturity Date, the “***Monthly Payment***” shall be the combined principal and interest payment that is required to fully amortize the principal balance of the Loan as of the Rate Conversion Date over the remaining Amortization Period at the Fixed Rate. If a particular Monthly Payment is insufficient to pay all of the then accrued and unpaid interest as of the date such Monthly Payment is paid, then that portion of the accrued and unpaid interest in excess of the portion actually paid shall thereupon be added to the unpaid principal balance of the Loan and shall thereafter accrue interest at the Variable Rate or Fixed Rate, as applicable.

Upon execution of this Note, Borrower shall authorize Lender to establish arrangements whereby all payments of principal and interest hereunder are transferred by Automated Clearing House Debit initiated by Lender directly from an account at a U.S. bank in the name of Borrower to an account designated by Lender. Each payment of principal and interest hereunder shall be applied first toward any past due payments under this Note (including payment of all Costs (as herein defined), then to accrued interest at the Adjustable Rate, and the balance, after the payment of such accrued interest, if any, shall be applied to the unpaid principal balance of this Note; provided, however, each payment hereunder after an Event of Default has occurred under this Note shall be applied as Lender in its sole discretion may determine. After application of any Monthly Payment in the above manner, in the event that the outstanding principal amount of this Note exceeds 110% of the original principal balance of this Note, Borrower shall prepay, without premium or penalty, on the first day of the next succeeding calendar month after each such occurrence, a principal amount equal to the difference between the outstanding principal balance of this Note and the original principal balance of this Note (the “*Negative Amortization Amount*”). Lender shall notify Borrower in writing on or before the twenty-fifth day of each calendar month during the term of this Note of Lender’s determination of the Negative Amortization Amount, if any, payable on the first day of the next succeeding calendar month. Lender shall also notify Borrower in writing on or before the twenty-fifth day of the calendar month prior to the Payment Date following each Reference Date during the term of this Note of Lender’s determination of the Monthly Payment to be paid by Borrower on such Payment Date and for the next succeeding 11 months.

Unless otherwise expressly provided in the Loan Documents: (i) prepayments must be made on a Payment Date; (ii) Borrower must give Lender at least 30 days' prior written notice of the proposed prepayment; (iii) the prepayment must be for the full outstanding principal balance of the Loan; and (iv) the prepayment must be accompanied by payment to Lender of: (A) interest on the prepaid principal through the permitted prepayment date; (B) if the prepayment is a full prepayment, any and all other amounts due and payable with respect to the Loan; and (C) a Prepayment Fee in the amount described below, which is required regardless of whether the prepayment is the result of a voluntary prepayment by Borrower or as a result of acceleration by Lender in exercise of Lender's default rights.

The "**Prepayment Fee**" is an amount equal to 2% of the amount prepaid, if made prior to the first anniversary of the Closing, and 1% of the amount prepaid, if made on or after the first anniversary but prior to the second anniversary of the Closing; **provided, however**, that from and after the Rate Conversion Date, the "**Prepayment Fee**" will be an amount equal to: (i) 1% of the prepaid principal; plus (ii) an amount equal to the positive difference (if any) between (A) the present value of the stream of monthly principal and interest payments that would be due with respect to the Loan, assuming no prepayment, from and after the prepayment date (without counting the monthly payment otherwise due on the prepayment date) through the scheduled Maturity Date (the "**Payment Stream**"), calculated using the interpolated yield, in effect as of the date that Lender provides a final Prepayment Fee quote to Borrower, of the weekly average swap rates for the two U.S. Dollar Interest Rate Swaps whose terms most closely match the number of months associated with the Payment Stream (one month for each monthly payment included in the Payment Stream), as published in Federal Reserve Statistical Release H.15[519] <http://www.federalreserve.gov/releases/H15/>; and (B) the present value of the Payment Stream, calculated using the interpolated yield, in effect as of the Rate Conversion Date, of the weekly average swap rates for the two U.S. Dollar Interest Rate Swaps whose terms most closely match the number of months associated with the number of monthly payments due during the entire original Loan Term (one month for each monthly payment due during the original Loan Term, not counting any payment made on the Closing Date).

The foregoing Prepayment Fee shall be due and payable regardless of whether such prepayment is the result of a voluntary prepayment by Borrower or as a result of Lender declaring the unpaid principal balance of this Note, accrued interest and all other sums due under this Note, the Mortgage, the other Loan Documents, and any Other Agreements, due and payable as contemplated below; provided, however, the prohibition on a partial prepayment and the prepayment fee and the prepayment premium, as applicable, shall not be applicable with respect to a prepayment of this Note in connection with an application of condemnation proceeds as contemplated by the Mortgage or if exception is otherwise made in the Loan Documents.

This Note is secured by the Mortgage and the other Loan Documents. Upon the occurrence of an Event of Default, Lender may declare the entire unpaid principal balance of this Note, accrued interest, if any, and all other sums due under this Note and any Loan Documents or Other Agreements due and payable at once without notice to Borrower. All past-due principal and/or interest shall bear interest from the due date to the date of actual payment at a rate (the "Default Rate") equal to the lesser of (a) the highest rate for which the undersigned may legally contract or (b) the greater of 14% and the rate which is 6% per annum above the Variable Rate (or 14% per annum in the event the Rate Conversion Option has been exercised), and such Default Rate shall continue to apply following a judgment in favor of Lender under this Note. If Borrower fails to make any payment or installment due under this Note within five days of its due date, Borrower shall pay to Lender, in addition to any other sum due Lender under this Note or any other Loan Document, a late charge equal to 5% of such past-due payment or installment (the "Late Charge"), which Late Charge is a reasonable estimate of the loss that may be sustained by Lender due to the failure of Borrower to make timely payments. All payments of principal and interest due hereunder shall be made (a) without deduction of any present and future taxes, levies, imposts, deductions, charges or withholdings, which amounts shall be paid by Borrower, and (b) without any other right of abatement, reduction, setoff, defense, counterclaim, interruption, deferment or recoupment for any reason whatsoever. Borrower will pay the amounts necessary such that the gross amount of the principal and interest received by Lender is not less than that required by this Note.

No delay or omission on the part of Lender in exercising any remedy, right or option under this Note shall operate as a waiver of such remedy, right or option. In any event, a waiver on any one occasion shall not be construed as a waiver or bar to any such remedy, right or option on a future occasion. Borrower hereby waives presentment, demand for payment, notice of dishonor, notice of protest, and protest, notice of intent to accelerate, notice of acceleration and all other notices or demands in connection with delivery, acceptance, performance, default or endorsement of this Note. All notices, consents, approvals or other instruments required or permitted to be given by either party pursuant to this Note shall be given in accordance with the notice provisions in the Loan Agreement. Should any indebtedness represented by this Note be collected at law or in equity, or in bankruptcy or other proceedings, or should this Note be placed in the hands of attorneys for collection after default, Borrower shall pay, in addition to the principal and interest due and payable hereon, all costs of collecting or attempting to collect this Note (the "Costs"), including reasonable outside attorneys' fees and expenses of Lender (including those fees and expenses incurred in connection with any appeal) and court costs whether or not a judicial action is commenced by Lender. This Note may not be amended or modified except by a written agreement duly executed by the party against whom enforcement of this Note is sought. In the event that any one or more of the provisions contained in this Note shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Note, and this Note shall be construed as if such provision had never been contained herein or therein. Time is of the essence in the performance of each and every obligation under this Note.

With the intent to comply with any applicable usury laws, it is agreed that, any provisions in this Note or any of the other Loan Documents to the contrary notwithstanding, in no event shall this Note or any other Loan Document require the payment or permit the collection of interest or any amount in the nature of interest or fees in excess of the maximum amount permitted by applicable law. If any such excess interest is contracted for, charged or received pursuant to this Note or any other Loan Document, so that the amount of such interest contracted for, charged or received shall exceed the maximum amount of interest permitted by applicable law, then in such event any such excess which may have been collected shall, at Lender's option, either be credited to the principal balance of the Loan as a prepayment of principal, without any Prepayment Fee, or refunded to Borrower, and the effective rate of interest shall automatically be reduced to the maximum lawful rate allowed under applicable law. Without limiting the foregoing, all calculations of the rate of interest contracted for, charged or received with respect to the Loan or under this Note or any other Loan Document which are made for the purpose of determining whether such rate exceeds the maximum lawful contract rate, shall be made, to the fullest extent permitted by applicable law, by amortizing, prorating, allocating and spreading in equal parts during the period of the full stated term of the indebtedness, all interest at any time contracted for, charged to or received from Borrower in connection with such indebtedness; ***provided, however***, that if any applicable state law is amended or the law of the United States of America preempts any applicable state law, so that it becomes lawful for Lender to receive a greater interest per annum rate than is presently allowed, Borrower agrees that, on the effective date of such amendment or preemption, as the case may be, the lawful maximum hereunder shall be increased to the maximum interest per annum rate allowed by the amended state law or the law of the United States of America.

This obligation shall bind Borrower and its successors and assigns, and the benefits hereof shall inure to Lender and its successors and assigns.

IN WITNESS WHEREOF, Borrower has executed and delivered this Note effective as of the date first set forth above.

BORROWER:

**SUPERTEL LIMITED PARTNERSHIP,**  
a Virginia limited partnership

By **SUPERTEL HOSPITALITY REIT TRUST,**  
a Maryland real estate investment trust,  
Its General Partner

By /s/ Donavon A. Heimes  
Donavon A. Heimes,  
Vice President /Treasurer

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## PROMISSORY NOTE

\$8,540,000

Dated as of May 16, 2007

Scottsdale, Arizona

**SUPERTEL LIMITED PARTNERSHIP**, a Virginia limited partnership ("Borrower"), for value received, hereby promises to pay to **GENERAL ELECTRIC CAPITAL CORPORATION**, a Delaware corporation ("Lender"), whose address is 8377 East Hartford Drive, Suite 200, Scottsdale, Arizona 85255, or order, on or before December 1, 2007, (the "Maturity Date"), the principal sum of \$8,540,000 ("Loan Amount"), as herein provided. Initially capitalized terms which are not otherwise defined in this Promissory Note (this "Note") shall have the meanings set forth in that certain Loan Agreement dated as of the date of this Note between Borrower and Lender, as such agreement may be amended, restated and/or supplemented from time to time (the "Loan Agreement").

In addition, the following terms shall have the following meanings for all purposes of this Note.

"*Variable Rate*" means a rate per annum equal to 500 basis points added to the Variable Rate Base in effect on the last Business Day of the month preceding each Variable Rate Set Date. The Variable Rate is set as of the first day of the Closing Month and reset as of the first day of each succeeding month (each, a "*Variable Rate Set Date*"). The Variable Rate so determined is effective from, and including, the first day of each such month through, and including, the last day of such month.

"*Variable Rate Base*" means a rate per annum (rounded upwards, if necessary, to the nearest 1/100th of one percent) equal to the 90-day London Interbank Offered Rate as published in *The Wall Street Journal*. If for any reason such rate is no longer published in *The Wall Street Journal*, Lender shall select such replacement index as Lender in its sole discretion determines most closely approximates such rate.

Interest shall accrue on the Loan Amount at the Variable Rate, determined monthly as described above, on the basis of a 360-day year for the actual number of days elapsed, in arrears. Borrower agrees to pay an effective rate of interest that is the sum of the interest rate provided for in this Note, together with any additional rate of interest resulting from any other charges of interest or in the nature of interest paid or to be paid pursuant to any of the other Loan Documents.

Interest is payable in arrears, except that interest on the unpaid Loan Amount for the period commencing on the day the Loan Amount is advanced (the "*Advance Date*") through the last day of the month in which the Advance Date occurs (the "*Closing Month*") is due and payable at Closing. Commencing on the first day of the second month following the Closing Month (the "*Initial Payment Date*") and continuing on the first day of each succeeding month thereafter (each, with the Initial Payment Date, a "*Payment Date*") Borrower shall pay consecutive monthly installments of interest only. All outstanding principal and unpaid accrued interest shall be paid on the Maturity Date.

Upon execution of this Note, Borrower shall authorize Lender to establish arrangements whereby all payments of principal and interest hereunder are transferred by Automated Clearing House Debit initiated by Lender directly from an account at a U.S. bank in the name of Borrower to an account designated by Lender. Each payment of interest hereunder shall be applied first toward any past due payments under this Note (including payment of all Costs (as herein defined), then to accrued interest at the Variable Rate, and the balance, after the payment of such accrued interest, if any, shall be applied to the unpaid principal balance of this Note; provided, however, each payment hereunder after an Event of Default has occurred under this Note shall be applied as Lender in its sole discretion may determine.

Borrower may prepay this Note in full, but not in part (except as otherwise set forth below), including all accrued but unpaid interest hereunder and all sums advanced by Lender pursuant to the



Loan Documents and any Other Agreements, provided that (a) no Event of Default has occurred under any of the Loan Documents or any Other Agreements and is continuing, and (b) any such prepayment shall only be made on a Payment Date upon not less than 30 days prior written notice from Borrower to Lender. Notwithstanding the foregoing, Borrower shall prepay this Note in full if additional funds sufficient to make such prepayment become available to Borrower prior to the Maturity Date, whether through assets sales, a public or private offering of securities by Borrower or an affiliate of Borrower or any other event that increases the liquid assets of Borrower.

This Note is secured by the Mortgage and the other Loan Documents. Upon the occurrence of an Event of Default, Lender may declare the entire unpaid principal balance of this Note, accrued interest, if any, and all other sums due under this Note and any Loan Documents or Other Agreements due and payable at once without notice to Borrower. All past-due principal and/or interest shall bear interest from the due date to the date of actual payment at a rate (the "Default Rate") equal to the lesser of (a) the highest rate for which the undersigned may legally contract or (b) the greater of 14% and the rate which is 6% per annum above the Variable Rate, and such Default Rate shall continue to apply following a judgment in favor of Lender under this Note. If Borrower fails to make any payment or installment due under this Note within five days of its due date, Borrower shall pay to Lender, in addition to any other sum due Lender under this Note or any other Loan Document, a late charge equal to 5% of such past-due payment or installment (the "Late Charge"), which Late Charge is a reasonable estimate of the loss that may be sustained by Lender due to the failure of Borrower to make timely payments. All payments of principal and interest due hereunder shall be made (a) without deduction of any present and future taxes, levies, imposts, deductions, charges or withholdings, which amounts shall be paid by Borrower, and (b) without any other right of abatement, reduction, setoff, defense, counterclaim, interruption, deferment or recoupment for any reason whatsoever. Borrower will pay the amounts necessary such that the gross amount of the principal and interest received by Lender is not less than that required by this Note.

No delay or omission on the part of Lender in exercising any remedy, right or option under this Note shall operate as a waiver of such remedy, right or option. In any event, a waiver on any one occasion shall not be construed as a waiver or bar to any such remedy, right or option on a future occasion. Borrower hereby waives presentment, demand for payment, notice of dishonor, notice of protest, and protest, notice of intent to accelerate, notice of acceleration and all other notices or demands in connection with delivery, acceptance, performance, default or endorsement of this Note. All notices, consents, approvals or other instruments required or permitted to be given by either party pursuant to this Note shall be given in accordance with the notice provisions in the Loan Agreement. Should any indebtedness represented by this Note be collected at law or in equity, or in bankruptcy or other proceedings, or should this Note be placed in the hands of attorneys for collection after default, Borrower shall pay, in addition to the principal and interest due and payable hereon, all costs of collecting or attempting to collect this Note (the "Costs"), including reasonable outside attorneys' fees and expenses of Lender (including those fees and expenses incurred in connection with any appeal) and court costs whether or not a judicial action is commenced by Lender. This Note may not be amended or modified except by a written agreement duly executed by the party against whom enforcement of this Note is sought. In the event that any one or more of the provisions contained in this Note shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Note, and this Note shall be construed as if such provision had never been contained herein or therein. Time is of the essence in the performance of each and every obligation under this Note.

Notwithstanding anything to the contrary contained in any of the Loan Documents, the obligations of Borrower to Lender under this Note and any other Loan Documents are subject to the limitation that payments of interest and late charges to Lender shall not be required to the extent that receipt of any such payment by Lender would be contrary to provisions of applicable law limiting the maximum rate of interest that may be charged or collected by Lender. The portion of any such payment received by Lender that is in excess of the maximum interest permitted by such provisions of law shall be credited to the principal balance of this Note or if such excess portion exceeds the outstanding principal balance of this Note, then such excess portion shall be refunded to Borrower. All interest paid or agreed to be paid to Lender shall, to the extent permitted by applicable law, be amortized, prorated, allocated and/or spread

throughout the full term of this Note (including, without limitation, the period of any renewal or extension thereof) so that interest for such full term shall not exceed the maximum amount permitted by applicable law.

This obligation shall bind Borrower and its successors and assigns, and the benefits hereof shall inure to Lender and its successors and assigns.

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IN WITNESS WHEREOF, Borrower has executed and delivered this Note effective as of the date first set forth above.

BORROWER:

**SUPERTEL LIMITED PARTNERSHIP,**  
a Virginia limited partnership

By **SUPERTEL HOSPITALITY REIT TRUST,**  
a Maryland real estate investment trust,  
Its General Partner

By /s/ Donavon A. Heimes  
Donavon A. Heimes,  
Vice President /Treasurer

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## LOAN AGREEMENT

THIS **LOAN AGREEMENT** (this “Agreement”) is made as of May 16, 2007 (the “Closing Date”), by and between **GENERAL ELECTRIC CAPITAL CORPORATION**, a Delaware corporation (“Lender”), and **SUPERTEL LIMITED PARTNERSHIP**, a Virginia limited partnership (“Borrower”).

### AGREEMENT:

In consideration of the mutual covenants and provisions of this Agreement, the parties agree as follows:

1. **Definitions.** The following terms shall have the following meanings for all purposes of this Agreement:

“*ADA*” means the Americans with Disabilities Act of 1990, as such act may be amended from time to time.

“*Affiliate*” means any Person that directly or indirectly controls, is under common control with, or is controlled by any other Person. For purposes of this definition, “controls”, “under common control with” and “controlled by” mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities or otherwise.

“*Anti-Money Laundering Laws*” means all applicable laws, regulations and government guidance on the prevention and detection of money laundering, including 18 U.S.C. § § 1956 and 1957, and the BSA.

“*Applicable Regulations*” means all applicable statutes, regulations, rules, ordinances, codes, licenses, permits, orders and approvals of each Governmental Authority having jurisdiction over the Premises, including, without limitation, all health, building, fire, safety and other codes, ordinances and requirements, and all applicable standards of the National Board of Fire Underwriters and the ADA in each case, as amended, and any judicial or administrative interpretation thereof, including any judicial order, consent, decree or judgment applicable to any of the Borrower Parties or any of the Lessee Parties.

“*Borrower Parties*” means, collectively, Borrower and any guarantors of the Loan (including, in each case, any predecessors-in-interest).

“*Bridge Loan*” means that certain loan extended by Lender to Borrower which has a maturity date of December 1, 2007.

“*Bridge Note*” means the promissory note dated as of the date of this Agreement executed by Borrower in favor of Lender evidencing the Bridge Loan in the amount of \$8,540,000, as the same may be amended, restated or substituted from time to time.

“*BSA*” means the Bank Secrecy Act (31 U.S.C. § § 5311 et. seq.), and its implementing regulations, Title 31 Part 103 of the U.S. Code of Federal Regulations.

“*Business Day*” means any day on which Lender is open for business other than a Saturday, Sunday or a legal holiday, ending at 5:00 P.M. Phoenix, Arizona time.

“*Change of Control*” means the occurrence of any of the following: (a) any merger or consolidation by Supertel Hospitality, Inc. with or into any other entity (other than any Affiliates of Supertel Hospitality, Inc.) where Supertel Hospitality, Inc. is not the surviving party; (b) any merger or consolidation

by the Borrower with or into any other entity (other than any Affiliates of the Borrower) where, following consummation of such merger or consolidation, Supertel Hospitality, Inc. ceases to be the “beneficial owner” (as defined in Rule 13d-3 under the Securities and Exchange Act of 1934, as amended (the “Exchange Act”)) of 50% or more of the combined voting power of the outstanding securities of the surviving party to such merger or consolidation; or (c) if any “person” (as defined in Section 3(a)(9) of the Exchange Act and as used in Section 13(d) and 14(d) thereof, including a “group” as defined in Section 13(d) of the Exchange Act, but excluding the Borrower Parties and their Affiliates) becomes, subsequent to the Closing, the “beneficial owner” (as defined in Rule 13d-3 of the Exchange Act) of securities of any of the Borrower Parties, as applicable, representing 50% or more of the combined voting power of such Borrower Party’s then outstanding securities (other than indirectly as a result of the redemption by any of the Borrower Parties, as applicable, of its securities).

“*Closing*” means the disbursement of the Loan Amount by Title Company as contemplated by this Agreement.

“*Code*” means Title 11 of the United States Code, 11 U.S.C. Sec. 101 *et seq.*, as amended.

“*Default Rate*” has the meaning set forth in the Note.

“*Entity*” means any entity that is not a natural person.

“*Environmental Indemnity Agreement*” means the environmental indemnity agreement dated as of the date of this Agreement executed by Borrower for the benefit of the Indemnified Parties and such other parties as are identified in such agreement with respect to the Premises, as the same may be amended from time to time.

“*Event of Default*” has the meaning set forth in Section 9.

“*Fee*” means an underwriting, site assessment, valuation, processing and commitment fee equal to 0% of the Loan Amount.

“*Fixed Charge Coverage Ratio*” has the meaning set forth in Section 6.J.

“*GAAP*” means generally accepted accounting principles consistently applied.

“*Governmental Authority*” means any governmental authority, agency, department, commission, bureau, board, instrumentality, court or quasi-governmental authority having jurisdiction or supervisory or regulatory authority over the Premises or any of the Borrower Parties.

“*Ground Lease*” means, collectively, the Ground Leases (as defined in the Mortgage) relating to the Premises and all modifications, amendments and supplements thereto and assignments thereof, and all modifications, amendments and supplements consented to by Lender pursuant to the terms of the Mortgage.

“*Ground Lessor*” means the lessor under the Ground Lease.

“*Indemnified Parties*” means Lender, the trustees under the Mortgage, if applicable, and any person or entity who is or will have been involved in the origination of the Loan, any person or entity who is or will have been involved in the servicing of the Loan, any person or entity in whose name the encumbrance created by the Mortgage is or will have been recorded, persons and entities who may hold or acquire or will have held a full or partial interest in the Loan (including, but not limited to, investors or prospective investors in any Securitization, Participation or Transfer, as well as custodians, trustees and other fiduciaries who hold or have held a full or partial interest in the Loan for the benefits of third parties), as well as the respective directors, officers, shareholders, partners, members, employees, lenders, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants,

successors and assigns of any and all of the foregoing (including, but not limited to, any other person or entity who holds or acquires or will have held a participation or other full or partial interest in the Loan or the Premises, whether during the term of the Loan or as a part of or following a foreclosure of the Loan and including, but not limited to, any successors by merger, consolidation or acquisition of all or a substantial portion of Lender's assets and business).

*"Indemnity Agreements"* means all indemnity agreements executed for the benefit of any of the Borrower Parties, Lessee Parties or any prior owner, lessee or occupant of the Premises in connection with Hazardous Materials, including, without limitation, the right to receive payments under such indemnity agreements.

*"Lease"* means the lease between Borrower, as lessor, and Lessee, as lessee, with respect to the Premises together with all amendments, modifications and supplements thereto.

*"Lender Entities"* means, collectively, Lender (including any predecessor-in-interest to Lender) and any Affiliate of Lender (including any Affiliate of any predecessor-in-interest to Lender).

*"Lessee"* means TRS Leasing, Inc., a Virginia corporation, and its successors.

*"Lessee Parties"* means, collectively, Lessee and any guarantors of the Lease (including, in each case, any predecessors in interest).

*"Loan"* means the loan for the Premises described in Section 2.

*"Loan Amount"* means \$36,295,000.00.

*"Loan Documents"* means, collectively, this Agreement, the Note, the Bridge Note, the Mortgage, the Environmental Indemnity Agreement, the Subordination Agreement, the UCC-1 Financing Statements, the Authorization Regarding Information form previously delivered on behalf of the Borrower Parties to Lender and all other documents, instruments and agreements executed in connection therewith or contemplated thereby, as the same may be amended from time to time.

*"Loan Pool"* means: (a) in the context of a Securitization, any pool or group of loans that are a part of such Securitization; (b) in the context of a Transfer, all loans which are sold, transferred or assigned to the same transferee; and (c) in the context of a Participation, all loans as to which participating interests are granted to the same participant.

*"Management Agreement"* means a management agreement between Lessee and Manager relating to the Premises which is reasonably acceptable to Lender and which meets the conditions of Section 4.I. hereof.

*"Manager"* means HLC Hotels, Inc. or any other manager reasonably acceptable to Lender. Royco Hotels, Inc. (f/k/a Royal Host Management, Inc.) is acceptable to Lender as a replacement manager.

*"Material Adverse Effect"* means a material adverse effect on (a) the Premises, including, without limitation, the operation of the Premises as a Permitted Concept, or (b) Borrower's ability to perform its obligations under the Loan Documents.

*"Mortgage"* means, collectively, each deed of trust, deed to secure debt or mortgage dated as of the date of this Agreement executed by Borrower for the benefit of Lender with respect to the Premises, as the same may be amended from time to time.

“*Note*” means the promissory note dated as of the date of this Agreement executed by Borrower in favor of Lender evidencing the Loan, as the same may be amended, restated, extended, supplemented, substituted, or renewed from time to time.

“*Obligations*” has the meaning set forth in the Mortgage.

“*OFAC Laws and Regulations*” means Executive Order 13224 issued by the President of the United States of America, the Terrorism Sanctions Regulations (Title 31 Part 595 of the U.S. Code of Federal Regulations), the Terrorism List Governments Sanctions Regulations (Title 31 Part 596 of the U.S. Code of Federal Regulations), the Foreign Terrorist Organizations Sanctions Regulations (Title 31 Part 597 of the U.S. Code of Federal Regulations), and the Cuban Assets Control Regulations (Title 31 Part 515 of the U.S. Code of Federal Regulations), and all other present and future federal, state and local laws, ordinances, regulations, policies, lists (including, without limitation, the Specially Designated Nationals and Blocked Persons List) and any other requirements of any Governmental Authority (including, without limitation, the United States Department of the Treasury Office of Foreign Assets Control) addressing, relating to, or attempting to eliminate, terrorist acts and acts of war, each as hereafter supplemented, amended or modified from time to time, and the present and future rules, regulations and guidance documents promulgated under any of the foregoing, or under similar laws, ordinances, regulations, policies or requirements of other states or localities.

“*Other Agreements*” means, collectively, all agreements and instruments between or among (a) any of the Borrower Parties or any Affiliate of any of the Borrower Parties (including any Affiliate of any predecessor-in-interest to any of the Borrower Parties) and, (b) any of the Lender Entities, including, without limitation, promissory notes and guaranties; provided, however, the term “Other Agreements” shall not include the agreements and instruments defined as the Loan Documents.

“*Participation*” means one or more grants by Lender or any of the other Lender Entities to a third party of a participating interest in notes evidencing obligations to repay secured or unsecured loans owned by Lender or any of the other Lender Entities or any or all servicing rights with respect thereto.

“*Permitted Concept*” means a hotel using the Masters Inn trade name or any other trade name reasonably acceptable to Lender and related operations.

“*Permitted Exceptions*” means (a) the lien for current real property taxes and assessments, not yet due and payable; (b) liens and security interests in favor of Lender; (c) those easements, restrictions, liens and encumbrances set forth as exceptions in the title insurance policy issued by Title Company to Lender and approved by Lender in its sole discretion; (d) the Lease; (e) purchase money security interests not to exceed \$100,000 in the aggregate on all the Premises, and (f) any other matters which have been approved in writing by Lender.

“*Person*” means any individual, corporation, partnership, limited liability company, trust, unincorporated organization, Governmental Authority or any other form of entity.

“*Personal Property*” has the meaning set forth in the Mortgage.

“*Premises*” means the parcel or parcels of real estate legally described on Exhibit A attached hereto, together with all rights, privileges and appurtenances associated therewith and all buildings, fixtures and other improvements now or hereafter located thereon (whether or not affixed to such real estate) and the Personal Property.

“*Restoration*” has the meaning set forth in the Mortgage.

“*Securitization*” means one or more sales, dispositions, transfers or assignments by Lender or any of the other Lender Entities to a special purpose corporation, trust or other entity identified by Lender or any of the other Lender Entities of notes evidencing obligations to repay secured or unsecured loans

owned by Lender or any of the other Lender Entities (and, to the extent applicable, the subsequent sale, transfer or assignment of such notes to another special purpose corporation, trust or other entity identified by Lender or any of the other Lender Entities), and the issuance of bonds, certificates, notes or other instruments evidencing interests in pools of such loans, whether in connection with a permanent asset securitization or a sale of loans in anticipation of a permanent asset securitization. Each Securitization shall be undertaken in accordance with all requirements which may be imposed by the investors or the rating agencies involved in each such sale, disposition, transfer or assignment or which may be imposed by applicable securities, tax or other laws or regulations.

“*SubLease*” means, collectively, the leases relating to the portion of the Premises in Seffner, Florida described as (a) the lease dated October 1, 2002 between Borrower (or Borrower’s predecessor) and Subway Real Estate Corp. and (b) the lease dated June 4, 1987 between Borrower (or Borrower’s predecessor) and Wendy’s International, Inc., as the foregoing leases may be amended, extended and assigned from time to time.

“*Subordination Agreement*” means the subordination and attornment agreement dated as of the date of this Agreement executed by Borrower, Lessee and Lender with respect to the Lease as the same may be amended from time to time.

“*Substitute Documents*” has the meaning set forth in Section 11.

“*Substitute Premises*” means one or more parcels of real estate substituted for the Premises in accordance with the requirements of Section 11, together with all rights, privileges and appurtenances associated therewith and all buildings, fixtures and other improvements, equipment, trade fixtures, appliances and other personal property located thereon (whether or not affixed to such real estate). For purposes of clarity, where two or more parcels of real estate comprise a Substitute Premises, such parcels or interests shall be aggregated and deemed to constitute the Substitute Premises for all purposes of this Agreement.

“*Title Company*” means Madison County Abstract Company.

“*Transfer*” means one or more sales, transfers or assignments by Lender or any of the other Lender Entities to a third party of notes evidencing obligations to repay secured or unsecured loans owned by Lender or any of the other Lender Entities or any or all servicing rights with respect thereto.

“*UCC-1 Financing Statements*” means such UCC-1 Financing Statements as Lender shall file with respect to the transactions contemplated by this Agreement.

“*UCC*” has the meaning set forth in the Mortgage.

“*U.S. Publicly-Traded Entity*” is an Entity whose securities are listed on a national securities exchange or quoted on an automated quotation system in the U.S. or a wholly-owned subsidiary of such an Entity.

**2. *Transaction.*** On the terms and subject to the conditions set forth in the Loan Documents, Lender shall make the Loan and the Bridge Loan. The Loan will be evidenced by the Note and secured by the Mortgage. The Bridge Loan will be evidenced by the Bridge Note and secured by the Mortgage. Borrower shall repay the outstanding principal amount of the Loan and the Bridge Loan together with interest thereon in the manner and in accordance with the terms and conditions of the Note, the Bridge Note and the other Loan Documents. The Premises shall be leased to the Lessee pursuant to the Lease and, at Closing, Borrower shall assign the Lease to Lender pursuant to the Mortgage. The Loan and the Bridge Loan shall be advanced at the Closing in cash or otherwise immediately available funds subject to any prorations and adjustments required by this Agreement.



**3. Escrow Agent; Closing Costs.** Borrower and Lender hereby employ Title Company to act as escrow agent in connection with the transactions described in this Agreement. Borrower and Lender will deliver to Title Company all documents, pay to Title Company all sums and do or cause to be done all other things necessary or required by this Agreement, in the reasonable judgment of Title Company, to enable Title Company to comply herewith and to enable any title insurance policy provided for herein to be issued. Title Company shall not cause the transaction to close unless and until it has received written instructions from Lender and Borrower to do so. Title Company is authorized to pay, from any funds held by it for Lender's or Borrower's respective credit all amounts necessary to procure the delivery of such documents and to pay, on behalf of Lender and Borrower, all charges and obligations payable by them, respectively. Borrower will pay all charges payable by it to Title Company. Title Company is authorized, in the event any conflicting demand is made upon it concerning these instructions or the escrow, at its election, to hold any documents or funds deposited hereunder until an action shall be brought in a court of competent jurisdiction to determine the rights of Borrower and Lender or to interplead such documents or funds in an action brought in any such court. Deposit by Title Company of such documents and funds shall relieve Title Company of all further liability and responsibility for such documents and funds. Title Company's receipt of this Agreement and opening of an escrow pursuant to this Agreement shall be deemed to constitute conclusive evidence of Title Company's agreement to be bound by the terms and conditions of this Agreement pertaining to Title Company. Disbursement of any funds shall be made by check, certified check or wire transfer, as directed by Borrower and Lender. Title Company shall be under no obligation to disburse any funds represented by check or draft, and no check or draft shall be payment to Title Company in compliance with any of the requirements hereof, until it is advised by the bank in which such check or draft is deposited that such check or draft has been honored. The employment of Title Company as escrow agent shall not affect any rights of subrogation under the terms of any title insurance policy issued pursuant to the provisions thereof.

**4. Closing Conditions.** The obligation of Lender to consummate the transaction contemplated by this Agreement is subject to the fulfillment or waiver of each of the following conditions:

**A. Title Insurance Commitments.** Lender shall have received for the Premises a preliminary title report and irrevocable commitment to insure title in the amount of the Loan, by means of a mortgagee's, ALTA extended coverage policy of title insurance (or its equivalent, in the event such form is not issued in the jurisdiction where the Premises is located) issued by Title Company showing Borrower vested with good and marketable title to the fee or leasehold interest in the real property comprising such Premises, as applicable, committing to insure Lender's first priority lien upon and security interest in such real property subject only to Permitted Exceptions, and containing such endorsements as Lender may require.

**B. Survey.** Lender shall have received a current ALTA survey of the Premises or its equivalent, the form and substance of which shall be satisfactory to Lender in its reasonable discretion. Lender shall have obtained a flood certificate indicating that the location of the Premises is not within the 100-year flood plain or identified as a special flood hazard area as defined by the Federal Emergency Management Agency, or if the Premises is in such a flood plain or special flood hazard area, Borrower shall have provided Lender with evidence of flood insurance maintained on the Premises in an amount and on terms and conditions reasonably satisfactory to Lender.

**C. Environmental.** Lender shall have completed such environmental due diligence of the Premises as it deems necessary or advisable in its sole discretion, and Lender shall have approved the environmental condition of the Premises in its sole discretion.

**D. Compliance With Representations, Warranties and Covenants.** All of the representations and warranties set forth in Section 5 shall be true, correct and complete in all material respects as of the Closing Date, and Borrower shall be in compliance in all material respects with each of the covenants set forth in Section 6 as of the Closing Date. No event shall have occurred or condition shall exist or information shall have been disclosed by Borrower or discovered by Lender which has had or would be reasonably likely to have a Material Adverse Effect on the Premises, any of the Borrower Parties or Lessee Parties or Lender's willingness to consummate the transaction contemplated by this Agreement, as determined by Lender in its sole and absolute discretion.

E. *Proof of Insurance.* Borrower shall have delivered to Lender certificates of insurance and copies of insurance policies showing that all insurance required by the Loan Documents and providing coverage and limits satisfactory to Lender are in full force and effect.

F. *Legal Opinions.* Borrower shall have delivered to Lender such legal opinions as Lender may reasonably require all in form and substance reasonably satisfactory to Lender and its counsel.

G. *Fee and Closing Costs.* Borrower shall have paid the Fee to Lender and shall have paid all costs of the transactions described in this Agreement, including, without limitation, the cost of title insurance premiums and all endorsements required by Lender, survey charges, UCC and litigation search charges, the attorneys' fees of Borrower, reasonable outside attorneys' fees and expenses of Lender, the cost of the environmental due diligence undertaken pursuant to Section 4.C, Lender's site inspection costs and fees, stamp taxes, mortgage taxes, transfer fees, escrow, filing and recording fees and UCC filing and recording fees (including preparation, filing and recording fees for UCC continuation statements). Borrower shall have also paid all real and personal property and other applicable taxes and assessments and other charges relating to the Premises which are due and payable on or prior to the Closing Date as well as taxes and assessments due and payable subsequent to the Closing Date but which Title Company requires to be paid at Closing as a condition to the issuance of the title insurance policy described in Section 4.A.

H. *Lease and Subordination Agreement.* Borrower and Lessee shall have executed and delivered the Lease and the Subordination Agreement. The Lease and the Subordination Agreement shall be in form and substance reasonably satisfactory to Lender.

I. *Management Agreement.* The Management Agreement shall be in full force and effect. Lender shall have approved the Management Agreement in its reasonable discretion and Manager and Lessee shall have delivered to Lender such subordination agreements, collateral assignments of management agreement and consents to collateral assignment of management agreement as Lender may require in its sole discretion.

J. *Ground Lease.* The Ground Lease shall be in full force and effect and Borrower shall be entitled to occupy the Premises. Lender shall have approved the Ground Lease in its sole discretion. Borrower shall have provided Lender with a recorded copy (or executed original in recordable form) of a memorandum of ground lease for the Premises. If any mortgages or deeds of trust (or other similar security agreements) encumber fee simple title to the Premises, and the mortgage was recorded after such memorandum of lease was recorded, the holders of such instruments shall have delivered nondisturbance agreements to Borrower and Lender in form and substance acceptable to Lender in its reasonable discretion, or Lender has waived receipt of such in writing or accepted a reasonable alternative to such nondisturbance.

K. *Closing Documents.* At or prior to the Closing Date, Lender or the Borrower Parties, as may be appropriate, shall have executed and delivered or shall have caused to be executed and delivered to Lender, or as Lender may otherwise direct, the Loan Documents and such other documents, payments, instruments and certificates, as Lender may require in form acceptable to Lender.

Upon fulfillment or waiver of all of the above conditions, Lender shall deposit funds necessary to close this transaction with the Title Company and this transaction shall close in accordance with the terms and conditions of this Agreement.

**5. Representations and Warranties of Borrower.** The representations and warranties of Borrower contained in this Section are being made by Borrower as of the Closing Date to induce Lender to enter into this Agreement and consummate the transactions contemplated herein and shall survive the Closing. Borrower represents and warrants to Lender as follows:

A. *Financial Information.* Borrower has delivered to Lender certain financial statements and other information concerning the Borrower Parties in connection with the transaction described in this Agreement (collectively, the “Financial Information”). The Financial Information is true, correct and complete in all material respects; there have been no amendments to the Financial Information since the date such Financial Information was prepared or delivered to Lender. Borrower understands that Lender is relying upon the Financial Information and Borrower represents that such reliance is reasonable. All financial statements included in the Financial Information were prepared in accordance with GAAP (except as otherwise noted) and fairly present as of the date of such financial statements the financial condition of each individual or entity to which they pertain. No change has occurred with respect to the financial condition of any of the Borrower Parties or the Premises as reflected in the Financial Information, which has had, or could reasonably be expected to result in, a Material Adverse Effect, and has not been disclosed in writing to Lender.

B. *Organization and Authority.* Each of the Borrower Parties (other than individuals), as applicable, is duly organized or formed, validly existing and in good standing under the laws of its state of incorporation or formation. Borrower is qualified as a foreign corporation, partnership or limited liability company, as applicable, to do business in each state where the Premises are located, and each of the Borrower Parties is qualified as a foreign corporation, partnership or limited liability company, as applicable, to do business in any other jurisdiction where the failure to be qualified would reasonably be expected to result in a Material Adverse Effect. All necessary action has been taken to authorize the execution, delivery and performance by the Borrower Parties of this Agreement and the other Loan Documents. The person(s) who have executed this Agreement on behalf of Borrower are duly authorized so to do. Borrower is not a “foreign corporation”, “foreign partnership”, “foreign trust”, “foreign estate” or “foreign person” (as those terms are defined by the Internal Revenue Code of 1986, as amended). Borrower's U.S. Federal Tax Identification number, Organization Identification number and principal place of business are correctly set forth on the signature page of this Agreement. None of the Borrower Parties, and, to the best of their knowledge, no individual or entity owning directly or indirectly any interest in any of the Borrower Parties, is an individual or entity whose property or interests are subject to being blocked under any of the OFAC Laws and Regulations or is otherwise in violation of any of the OFAC Laws and Regulations; provided, however, the representation contained in this sentence shall not apply to any Person to the extent such Person's interest is in or through a U.S. Publicly-Traded Entity.

C. *Enforceability of Documents.* Upon execution by the Borrower Parties, this Agreement and the other Loan Documents shall constitute the legal, valid and binding obligations of the Borrower Parties, respectively, enforceable against the Borrower Parties in accordance with their respective terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, liquidation, reorganization and other laws affecting the rights of creditors generally and general principles of equity.

D. *Litigation.* There are no suits, actions, proceedings or investigations pending, or to the best of its knowledge, threatened against or involving the Borrower Parties or the Premises before any arbitrator or Governmental Authority, except for such suits, actions, proceedings or investigations which, individually or in the aggregate, have not had, and would not reasonably be expected to result in, a Material Adverse Effect.

E. *Absence of Breaches or Defaults.* The Borrower Parties are not, and the authorization, execution, delivery and performance of this Agreement and the other Loan Documents will not result, in any breach or default under any other document, instrument or agreement to which any of the Borrower Parties is a party or by which any of the Borrower Parties, the Premises or any of the property of any of the Borrower Parties is subject or bound, except for such breaches or defaults which, individually or in the aggregate, have not had, and would not reasonably be expected to result in, a Material Adverse Effect. The authorization, execution, delivery and performance of this Agreement and the other Loan Documents will not violate any applicable law, statute, regulation, rule, ordinance, code, rule or order. The Premises is not subject to any right of first refusal, right of first offer or option to purchase or lease granted to a third party (other than the Ground Lease, Subleases, Lease and room rentals in the ordinary course of business).

F. *Utilities.* Adequate public utilities are available at the Premises to permit utilization of the Premises as a Permitted Concept and all utility connection fees and use charges will have been paid in full prior to delinquency.

G. *Zoning; Compliance With Laws.* The Premises is in compliance with all applicable zoning requirements, and the use of the Premises as a Permitted Concept does not constitute a nonconforming use under applicable zoning requirements. The Borrower Parties and the Premises are in compliance with all Applicable Regulations except for such noncompliance which has not had, and would not reasonably be expected to result in, a Material Adverse Effect.

H. *Area Development; Wetlands.* No condemnation or eminent domain proceedings affecting the Premises have been commenced or, to the best of Borrower's knowledge, are contemplated. Neither the Premises, nor to the best of Borrower's knowledge, the real property bordering the Premises, are designated by any Governmental Authority as a wetlands.

I. *Licenses and Permits; Access.* All required licenses and permits, both governmental and private, to use and operate the Premises as a Permitted Concept are in full force and effect, except for such licenses and permits the failure of which to obtain has not had, and would not reasonably be expected to result in, a Material Adverse Effect. Adequate rights of access to public roads and ways are available to the Premises for unrestricted ingress and egress and otherwise to permit utilization of the Premises for their intended purposes, and all such public roads and ways have been completed and dedicated to public use.

J. *Condition of Premises.* The Premises, including the Personal Property, is in good condition and repair and well maintained, ordinary wear and tear excepted, fully equipped and operational, free from structural defects, safe and properly lighted.

K. *Environmental.* The representations and warranties of Borrower set forth in Section 2 of the Environmental Indemnity Agreement, together with the corresponding definitions, are incorporated by reference into this Agreement as if stated in full in this Agreement.

L. *Title to Premises; First Priority Lien.* Title to the fee or leasehold interest in the real property comprising the Premises is vested in Borrower, as applicable, free and clear of all liens, encumbrances, charges and security interests of any nature whatsoever, except the Permitted Exceptions. Borrower is owner of all Personal Property, free and clear of all liens, encumbrances, charges and security interests of any nature whatsoever, except the Permitted Exceptions, and no Affiliate of Borrower owns any of the Personal Property. Upon Closing, Lender shall have a first priority lien upon and security interest in the fee or leasehold interest in such real property pursuant to the Mortgage, as applicable, and first priority lien upon and security interest in such Person Property pursuant to the UCC-1 Financing Statements, subject only to the Permitted Exceptions.

M. *No Mechanics' Liens.* There are no delinquent accounts payable or mechanics' liens in favor of any materialman, laborer, or any other person or entity in connection with labor or materials furnished to or performed on any portion of the Premises; and no work has been performed or is in progress nor have materials been supplied to the Premises or agreements entered into for work to be performed or materials to be supplied to the Premises prior to the date hereof, which will be delinquent on or before the Closing Date.

N. *Lease.* Borrower has delivered to Lender a true, correct and complete copy of the Lease. The Lease is the only lease with respect to the Premises (except the Ground Lease, the Sublease and room rentals in the ordinary course of business), and is in full force and effect, and constitutes the legal, valid and binding obligation of the parties thereto, enforceable against such parties in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, liquidation, reorganization and other laws affecting the rights of creditors generally and general principles of equity. Except pursuant to the Loan Documents, Borrower has not assigned, transferred, mortgaged, hypothecated or otherwise encumbered the Lease or any rights thereunder or any interest therein, and

Borrower has not received any notice that the Lessee has made any assignment, pledge or hypothecation of all or any part of its rights or interests in the Lease. Borrower has not received any notice of default from the Lessee which has not been cured or given any notice of default to the Lessee which has not been cured. No event has occurred and no condition exists which, with the giving of notice or the lapse of time or both, would constitute a default by the Lessee or Borrower under the Lease.

O. *Ground Lease*. Borrower has delivered to Lender a true, correct and complete copy of the Ground Lease. The Ground Lease is the only lease or agreement between the Ground Lessor and Borrower with respect to the Premises. The Ground Lease is in full force and effect and constitutes the legal, valid and binding obligations of Borrower and the Ground Lessor, enforceable against Borrower and the Ground Lessor in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, liquidation, reorganization and other laws affecting the rights of creditors generally and general principles of equity. None of the Borrower Parties has assigned, transferred, mortgaged, hypothecated or otherwise encumbered the Ground Lease or any rights thereunder or any interest therein (except in favor of Lender), and none of the Borrower Parties has received any notice that the Ground Lessor has made any assignment, pledge or hypothecation of all or any part of its rights or interest in the Ground Lease, except as set forth in the title commitments set forth in Section 4.A above. No notice of default from the Ground Lessor has been received under the Ground Lease that has not been cured and no notice of default to the Ground Lessor has been given under the Ground Lease that has not been cured. No event has occurred and no condition exists which, with the giving of notice or the lapse of time or both, would constitute a default under the Ground Lease. The Ground Lease has a term (including renewal options) that will expire after the fifth anniversary of the scheduled maturity date of the Note.

P. *Money Laundering*. Borrower is in full compliance with all Applicable Regulations relating to or attempting to eliminate, prevent, or detect money laundering, drug trafficking, terrorist acts and activities, and acts of war (collectively, the “**Anti-Money Laundering and Anti-Terrorism Laws**”). Neither Borrower nor any other Borrower Party is (a) listed on the Specially Designated Nationals and Blocked Person List maintained by the Office of Foreign Assets Control, Department of the Treasury (“**OFAC**”) or any other similar lists maintained by OFAC pursuant to any authorizing statute, Executive Order or regulation; or (b) a person designated under Section 1(b), (c) or (d) of Executive Order No. 13224 (September 23, 2001), any related enabling legislation, or any other similar Executive Orders. All businesses in which Borrower and the other Borrower Parties are engaged are and will continue to be legitimate businesses, and all funds of Borrower and the other Borrower Parties have been and will continue to be derived from legitimate sources.

Q. *Management Agreement*. Borrower has delivered to Lender a true, correct and complete copy of the Management Agreement. The Management Agreement is in full force and effect and constitutes the legal, valid and binding obligations of the parties to the Management Agreement, enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, liquidation, reorganization and other laws affecting the rights of creditors generally and general principles of equity. Except pursuant to the Loan Documents, Borrower has not assigned, transferred, mortgaged, hypothecated or otherwise encumbered the Management Agreement or any rights thereunder or any interest therein, and Borrower has not received any notice that Manager has made any assignment, pledge or hypothecation of all or any part of its rights or interest in the Management Agreement. No notice of default from Manager has been received under the Management Agreement that has not been cured and no notice of default to Manager has been given under the Management Agreement which has not been cured. No event has occurred and no condition exists which, with the giving of notice or the lapse of time or both, would constitute a default under the Management Agreement.

6. **Covenants**. Borrower covenants to Lender from and after the Closing Date and until all of the Obligations are satisfied in full, as follows:

A. *Payment of the Note*. Borrower shall punctually pay, or cause to be paid, the principal, interest and all other sums to become due in respect of the Note and the other Loan Documents in

accordance with the Note and the other Loan Documents. Borrower shall authorize Lender to establish arrangements whereby all scheduled payments made in respect of the Obligations are transferred by Automated Clearing House Debit initiated by Lender directly from an account at a U.S. bank in the name of Borrower to such account as Lender may designate or as Lender may otherwise designate.

B. *Title.* Borrower shall maintain good and marketable title to the fee or leasehold interest in the real property comprising the Premises, as applicable, and title to the Personal Property and the remainder of the Premises, free and clear of all liens, encumbrances, charges and other exceptions to title, except the Permitted Exceptions. Lender shall have valid first liens upon and security interests in the fee or leasehold interest in such real property pursuant to the Mortgage, as applicable, and valid first liens upon and security interests in such Personal Property pursuant to the UCC-1 Financing Statements, subject only to the Permitted Exceptions.

C. *Organization and Status of Borrower; Preservation of Existence.* Each of the Borrower Parties (other than individuals), as applicable, shall be validly existing and in good standing under the laws of its state of incorporation or formation. Borrower shall be qualified as a foreign corporation, partnership or limited liability company to do business in each state where the Premises is located, and each of the Borrower Parties shall be qualified as a foreign corporation, partnership or limited liability company in any other jurisdiction where the failure to be qualified would reasonably be expected to result in a Material Adverse Effect. Borrower shall preserve its current form of organization and shall not change its legal name, its state of formation, nor, in one transaction or a series of related transactions, merge with or into, or consolidate with, any other entity without providing, in each case, Lender with 30 days' prior written notice and obtaining Lender's prior written consent (to the extent such consent is required under Section 7 of this Agreement).

D. *Licenses and Permits.* All required licenses and permits, both governmental and private, to use and operate the Premises as a Permitted Concept shall be maintained in full force and effect.

E. *Compliance With Laws Generally.* The use and occupation of the Premises, and the condition thereof, including, without limitation, any Restoration, shall comply with all Applicable Regulations now or hereafter in effect, including, without limitation, the OFAC Laws and Regulations and Anti-Money Laundering Laws. In addition, the Borrower Parties shall comply with all Applicable Regulations now or hereafter in effect. Without limiting the generality of the other provisions of this Section, Borrower shall materially comply with the ADA, and all regulations promulgated thereunder, as it affects the Premises.

F. *Compliance With Environmental Provisions.* The covenants, obligations and agreements of Borrower set forth in Sections 3 through 7 of the Environmental Indemnity Agreement, together with the corresponding definitions, are incorporated by reference into this Agreement as if stated in full in this Agreement.

G. *Financial Statements.* Within 45 days after the end of each fiscal quarter and within 120 days after the end of each fiscal year of Borrower, Borrower shall deliver to Lender (1) complete financial statements of the Borrower Parties including a balance sheet, profit and loss statement (for the individual sites as well as the consolidated statement for Borrower), statement of cash flows and all other related schedules for the fiscal period then ended; (2) income statements for the business at the Premises; (3) standard hotel data of rooms rented and rooms available, as well as gross revenue breakdown of room revenue from other revenue, so that occupancy ADR and RevPar Statistics can be calculated; and (4) such other financial information as Lender may reasonably request in order to establish compliance with the financial covenants in the Loan Documents, including, without limitation, Section 6.J of this Agreement. All such financial statements shall be prepared in accordance with GAAP, or as otherwise allowed by Lender from period to period, and shall be certified to be accurate and complete in all material respects by Borrower (or the Treasurer or other appropriate officer of Borrower). In the event the property and business at the Premises is ordinarily consolidated with other business for financial statement purposes, such financial statements shall be prepared on a consolidated basis and Borrower shall show separately the sales, profits and losses, assets and liabilities pertaining to the Premises with the basis for allocation of overhead of other charges being clearly set forth. The financial statements delivered to



Lender need not be audited, but Borrower shall deliver to Lender copies of any audited financial statements of Borrower which may be prepared, as soon as they are available. Borrower shall also cause to be delivered to Lender copies of any financial statements required to be delivered to Borrower by any tenants of the Premises.

H. *Lost Note*. Borrower shall, if the Note is mutilated, destroyed, lost or stolen (a “Lost Note”), promptly deliver to Lender, upon receipt from Lender of an affidavit and indemnity in a form reasonably acceptable to Lender and Borrower stipulating that the Note has been mutilated, destroyed, lost or stolen, in substitution therefor, a new promissory note containing the same terms and conditions as the Lost Note with a notation thereon of the unpaid principal and accrued and unpaid interest. Borrower shall provide fifteen (15) days’ prior notice to Lender before making any payments to third parties in connection with the Lost Note.

I. *Inspections*. Borrower shall, during normal business hours (or at any time in the event of an emergency), (1) provide Lender and Lender’s officers, employees, agents, advisors, attorneys, accountants, architects, and engineers with access to the Premises, all drawings, plans, and specifications for the Premises in possession of any of the Borrower Parties, all engineering reports relating to the Premises in the possession of any of the Borrower Parties, the files, correspondence and documents relating to the Premises, and the financial books and records, including lists of delinquencies, relating to the ownership, operation, and maintenance of the Premises (including, without limitation, any of the foregoing information stored in any computer files), (2) allow such persons to make such inspections, tests, copies, and verifications as Lender considers necessary, and (3) if Borrower is in breach of the Fixed Charge Coverage Ratio requirement set forth in the following subsection J, pay expenses reasonably incurred by Lender from time to time in conducting such inspections, tests, copies and verifications upon demand (such amounts to bear interest at the Default Rate if not paid upon demand until paid).

J. *Fixed Charge Coverage Ratio*. Borrower shall maintain a Fixed Charge Coverage Ratio that equals or exceeds 1.30 before dividend payouts measured on an aggregate of all twenty-seven Lender financed sites, as determined as of the last day of each fiscal year of Borrower. For purposes of this Section, the term “Fixed Charge Coverage Ratio” shall mean with respect to the twelve month period of time immediately preceding the date of determination, the ratio calculated for such period of time, each as determined in accordance with GAAP and calculated according to the Uniform System of Accounts for Hotels, of (a) the sum of net income, interest expense, income taxes, depreciation, amortization, management fees, replacement reserves, and operating lease expense with respect to the Premises, minus 4% of total room revenues with respect to the Premises as an assumed reserve for replacement (or actual reserve for replacement if greater) and 4% of total room revenues with respect to the Premises as an assumed management fee (or actual management fee if greater), plus or minus other non-cash adjustments or non-recurring items with respect to the Premises (as allowed by Lender), plus or minus changes in officers or shareholders loans and dividends or distributions with respect to the Premises not otherwise expensed on the Borrower's income statement, to (b) the sum of operating lease expense with respect to the Premises, principal payments under the Note, current portion of all capital leases with respect to the Premises, and interest expense under the Note (excluding non-cash interest expense and amortization of non-cash financing expenses). Attached hereto as Exhibit B is the computation of the Fixed Charge Coverage Ratio as of December 31, 2006 agreed upon by Borrower and Lender.

K. *Affiliate Transactions*. Unless otherwise approved by Lender, all transactions between Borrower and any of its Affiliates shall be on terms substantially as advantageous to Borrower as those which could be obtained by Borrower in a comparable arm’s length transaction with a non-Affiliate of Borrower.

L. *Compliance Certificates*. Within 60 days after the end of each fiscal year of Borrower, Borrower shall deliver a compliance certificate to Lender in a form to be provided by Lender in order to establish that Borrower is in compliance in all material respects with all of its obligations, duties and covenants under the Loan Documents.

M. *OFAC Laws and Regulations*. Borrower will comply and will use its best efforts to cause each other Borrower Party to comply with the Anti-Money Laundering and Anti-Terrorism Laws, including ensuring that neither Borrower nor any other Borrower Party is or shall be (a) listed on the Specially Designated Nationals and Blocked Person List maintained by OFAC or any other similar lists maintained by OFAC pursuant to any authorizing statute, Executive Order or regulation or (b) a person designated under Section 1(b), (c) or (d) of Executive Order No. 13224 (September 23, 2001), any related enabling legislation or any other similar Executive Orders.

N. *Management Agreement*. The Management Agreement shall be maintained in full force and effect with regard to the Premises. No event shall occur nor shall any condition exist which, with the giving of notice or the lapse of time or both, would constitute a breach or default under the Management Agreement. Borrower shall give prompt notice to Lender of any claim of default by or to the Manager under the Management Agreement and shall provide Lender with a copy of any such default notice given or received by the Manager under the Management Agreement and any information submitted or referenced in support of such claim of default. Borrower shall also give prompt notice to Lender of the expiration or termination of the Management Agreement. Lender acknowledges that the Manager and the related Management Agreement are expected to change within the next two years and consents to such change, subject to Borrower providing a replacement Manager and Management Agreement as defined herein.

7. ***Prohibition on Change of Control and Pledge***. A. Without limiting the terms and conditions of Section 3.09 of the Mortgage, Borrower agrees that, from and after the Closing Date and until all of the Obligations are satisfied in full, without the prior written consent of Lender: (1) no Change of Control shall occur; and (2) no interest in any of the Borrower Parties shall be pledged, encumbered, hypothecated or assigned as collateral for any obligation of any of the Borrower Parties (each, a “Pledge”). Notwithstanding the foregoing, individual stockholders or limited partners of the Borrower Parties may pledge their interests in the Borrower Parties so long as such pledge does not, or could not potentially, result in a Change of Control or a change in ownership of a majority interest in the Borrower Parties.

B. Lender’s consent to a Change of Control or Pledge shall be subject to the satisfaction of such conditions as Lender shall determine in its sole discretion, including, without limitation, (1) the execution and delivery of such modifications to the terms of the Loan Documents as Lender shall request, (2) the proposed Change of Control or Pledge having been approved by each of the rating agencies which have issued ratings in connection with any Securitization of the Loan as well as any other rating agency selected by Lender, and (3) the proposed transferee having agreed to comply with all of the terms and conditions of the Loan Documents (including any modifications requested by Lender pursuant to clause (1) above). In addition, any such consent shall be conditioned upon payment by Borrower to Lender of (a) a fee equal to one percent (1%) of the then outstanding principal balance of the Note and (b) all out-of-pocket costs and expenses incurred by Lender in connection with such consent, including, without limitation, reasonable attorneys’ fees. Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Obligations immediately due and payable upon a Change of Control or Pledge in violation of this Section. The provisions of this Section shall apply to every Change of Control or Pledge regardless of whether voluntary or not, or whether or not Lender has consented to any previous Change of Control or Pledge.

8. ***Transaction Characterization***. A. It is the intent of the parties hereto that this Agreement and the other Loan Documents are a contract to extend a financial accommodation (as such term is used in the Code) for the benefit of Borrower and that the Loan Documents evidence one unitary, unseverable transaction pertaining to the Premises.

B. It is the intent of the parties hereto that the business relationship created by the Loan Documents is solely that of creditor and debtor and has been entered into by both parties in reliance upon the economic and legal bargains contained in the Loan Documents. None of the agreements contained in the Loan Documents is intended, nor shall the same be deemed or construed, to create a partnership (either de jure or de facto) between Borrower and Lender, to make them joint venturers, to make



Borrower an agent, legal representative, partner, subsidiary or employee of Lender, nor to make Lender in any way responsible for the debts, obligations or losses of Borrower.

**9. Default and Remedies.** A. Each of the following shall be deemed an event of default by Borrower (each, an “Event of Default”):

(1) If any representation or warranty of any of the Borrower Parties set forth in any of the Loan Documents is false in any material respect when made, or if any of the Borrower Parties renders any statement or account which is false in any material respect.

(2) If any principal, interest or other monetary sum due under the Note, the Mortgage or any other Loan Document is not paid within five days after the date when due; provided, however, notwithstanding the occurrence of such an Event of Default, Lender shall not be entitled to exercise its rights and remedies set forth below unless and until Lender shall have given Borrower notice thereof and a period of five days from the delivery of such notice shall have elapsed without such Event of Default being cured.

(3) If Borrower fails to observe or perform any of the other covenants, conditions, or obligations of this Agreement (except with respect to a breach of the Fixed Charge Coverage Ratio, which breach is addressed in sub item (7) below); provided, however, if any such failure does not involve the payment of any monetary sum, is not willful or intentional, does not place any rights or interest in collateral of Lender in immediate jeopardy, and is within the reasonable power of Borrower to promptly cure after receipt of notice thereof, all as determined by Lender in its reasonable discretion, then such failure shall not constitute an Event of Default hereunder, unless otherwise expressly provided herein, unless and until Lender shall have given Borrower notice thereof and a period of 30 days shall have elapsed, during which period Borrower may correct or cure such failure, upon failure of which an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required. If such failure cannot reasonably be cured within such 30-day period, as determined by Lender in its reasonable discretion, and Borrower is diligently pursuing a cure of such failure, then Borrower shall have a reasonable period to cure such failure beyond such 30-day period, which shall not exceed 90 days after receiving notice of the failure from Lender. If Borrower shall fail to correct or cure such failure within such 90-day period, an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required.

(4) If any of the Borrower Parties becomes insolvent within the meaning of the Code, files or notifies Lender that it intends to file a petition under the Code, initiates a proceeding under any similar law or statute relating to bankruptcy, insolvency, reorganization, winding up or adjustment of debts (collectively, an “Action”), becomes the subject of either a petition under the Code or an Action, or is not generally paying its debts as the same become due.

(5) If there is an “Event of Default” or a breach or default, after the passage of all applicable notice and cure or grace periods, under the Lease, any of the Other Agreements, or any other Loan Document.

(6) If a final, nonappealable judgment is rendered by a court against any of the Borrower Parties which (a) has a Material Adverse Effect on the operation of the Premises as a Permitted Concept, or (b) is in an amount greater than \$100,000.00 and not covered by insurance, and, in either case, is not discharged or provision made for such discharge within 60 days from the date of entry of such judgment.

(7) If there is a breach of the Fixed Charge Coverage Ratio requirement and Lender shall have given Borrower notice thereof and Borrower shall have failed within a period of 30 days from the delivery of such notice to (a) pay to Lender the FCCR Amount (without premium or penalty), (b) prepay the Note in whole but not in part (without premium or penalty) or (c) notify Lender of Borrower’s election to substitute a Substitute Premises for the Premises in accordance with the terms of Section 11 (the failure of Borrower to complete such substitution within 60 days after Lender shall have given the notice discussed above shall be deemed to be an Event of Default without further notice or demand of any kind being

required). For purposes of the preceding sentence, "FCCR Amount" means that sum of money which, when subtracted from the outstanding principal amount of the Note, and assuming the resulting principal balance is reamortized in equal monthly payments over the remaining term of the Note at the rate of interest set forth therein, will result in an adjusted Fixed Charge Coverage Ratio for the Premises of at least 1.3:1 prior to dividend payouts, measured on an aggregate of all twenty-seven Lender financed sites, based on the prior year's operations. Promptly after Borrower's payment of the FCCR Amount, Borrower and Lender shall execute an amendment to the Note in form and substance reasonably acceptable to Lender reducing the principal amount payable to Lender under the Note and reamortizing the principal amount of the Note in equal monthly payments over the then remaining term of the Note at the rate of interest set forth therein.

(8) If there is a breach or default, after the passage of any applicable notice and grace period, under the Ground Lease, and such breach or default is continuing, or if the Ground Lease terminates or expires prior to the scheduled maturity date of the Note.

(9) If there is a breach or default, after the passage of all applicable notice and cure or grace periods, under the Management Agreement, or if the Management Agreement terminates or expires prior to the payment in full of the Note in accordance with its terms and a substitute agreement for the terminated or expired agreement is not entered into with Manager prior to such expiration or termination, which substitute agreement shall be in form and substance reasonably satisfactory to Lender and shall expire after the scheduled maturity date of the Note.

B. Upon the occurrence and during the continuance of an Event of Default, subject to the limitations set forth in subsection A, Lender may declare all or any part of the obligations of Borrower under the Note, this Agreement and any other Loan Document to be due and payable, and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind except as otherwise expressly provided herein, and Borrower hereby waives notice of intent to accelerate the obligations secured by the Mortgage and notice of acceleration. Thereafter, Lender may exercise, at its option, concurrently, successively or in any combination, all remedies available at law or in equity, including without limitation any one or more of the remedies available under the Note, the Mortgage or any other Loan Document. Neither the acceptance of this Agreement nor its enforcement shall prejudice or in any manner affect Lender's right to realize upon or enforce any other security now or hereafter held by Lender, it being agreed that Lender shall be entitled to enforce this Agreement and any other security now or hereafter held by Lender in such order and manner as it may in its absolute discretion determine. No remedy herein conferred upon or reserved to Lender is intended to be exclusive of any other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Lender, or to which Lender may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Lender.

10. **Indemnity; Release.** A. Initially capitalized terms in this Section that are not otherwise defined in this Agreement shall have the meanings set forth in the Environmental Indemnity Agreement. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless each of the Indemnified Parties for, from and against any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement and damages of whatever kind or nature (including, without limitation, reasonable attorneys' fees, court costs and other costs of defense) (collectively, "Losses") (excluding Losses suffered by an Indemnified Party directly arising out of such Indemnified Party's gross negligence or willful misconduct; provided, however, that the term "gross negligence" shall not include gross negligence imputed as a matter of law to any of the Indemnified Parties solely by reason of Borrower's interest in the Premises or Borrower's failure to act in respect of matters which are or were the obligation of Borrower under the Loan Documents), and costs of Remediation (whether or not performed voluntarily), engineers' fees, environmental consultants' fees, and costs of investigation (including but not limited to sampling, testing, and analysis of soil, water, air, building materials and other materials and substances whether solid, liquid or gas) imposed upon or incurred by or asserted against any Indemnified Parties, and directly or indirectly

arising out of or in any way relating to any one or more of the following: (1) any presence of any Hazardous Materials in, on, above, or under the Premises; (2) any past, present or Threatened Release in, on, above, under or from the Premises; (3) any activity by Borrower, any person or entity affiliated with Borrower or any tenant or other user of the Premises in connection with any actual, proposed or threatened use, treatment, storage, holding, existence, disposition or other Release, generation, production, manufacturing, processing, refining, control, management, abatement, removal, handling, transfer or transportation to or from the Premises of any Hazardous Materials at any time located in, under, on or above the Premises; (4) any activity by Borrower, any person or entity affiliated with Borrower or any tenant or other user of the Premises in connection with any actual or proposed Remediation of any Hazardous Materials at any time located in, under, on or above the Premises, whether or not such Remediation is voluntary or pursuant to court or administrative order, including but not limited to any removal, remedial or corrective action; (5) any past, present or threatened non-compliance or violations of any Environmental Laws (or permits issued pursuant to any Environmental Law) in connection with the Premises or operations thereon, including but not limited to any failure by Borrower, any person or entity affiliated with Borrower or any tenant or other user of the Premises to comply with any order of any Governmental Authority in connection with any Environmental Laws; (6) the imposition, recording or filing or the threatened imposition, recording or filing of any Environmental Lien encumbering the Premises; (7) any administrative processes or proceedings or judicial proceedings in any way connected with any matter addressed in this Agreement; (8) any past, present or threatened injury to, destruction of or loss of natural resources in any way connected with the Premises, including but not limited to costs to investigate and assess such injury, destruction or loss; (9) any acts of Borrower, any person or entity affiliated with Borrower or any tenant or other user of the Premises in arranging for disposal or treatment, or arranging with a transporter for transport for disposal or treatment, of Hazardous Materials owned or possessed by Borrower, any person or entity affiliated with Borrower or any tenant or other user, at any facility or incineration vessel owned or operated by another person or entity and containing such or similar Hazardous Materials; (10) any acts of Borrower, any person or entity affiliated with Borrower or any tenant or other user of the Premises, in accepting any Hazardous Materials for transport to disposal or treatment facilities, incineration vessels or sites selected by Borrower, any person or entity affiliated with Borrower or any tenant or other user of the Premises, from which there is a Release, or a Threatened Release of any Hazardous Materials which causes the incurrence of costs for Remediation; (11) any personal injury, wrongful death, or property damage arising under any statutory or common law or tort law theory, including but not limited to damages assessed for the maintenance of a private or public nuisance or for the conducting of an abnormally dangerous activity on or near the Premises; (12) any disclosures of information, financial or otherwise, (x) made by Lender or Lender's employees, officers, agents and designees to any third party as contemplated by Section 11.R of this Agreement, or (y) obtained from any credit reporting agency with respect to Borrower, any guarantor of the Loan, any of the other Borrower Parties or any operator or lessee of the Premises; or (13) any misrepresentation or inaccuracy in any representation or warranty or material breach or failure to perform any covenants or other obligations pursuant to this Agreement.

B. Borrower fully and completely releases, waives and covenants not to assert any claims, liabilities, actions, defenses, challenges, contests or other opposition against Lender, however characterized, known or unknown, foreseen or unforeseen, now existing or arising in the future, relating to any Hazardous Materials, Releases or Remediation on, at or affecting the Premises.

11. **Substitution/Release.** (a) Borrower shall have the right to obtain a release of all liens granted in favor of Lender with respect to the Premises by substituting a Substitute Premises for the Premises, subject to fulfillment of the following conditions:

(1) Borrower shall provide Lender with thirty (30) days notice of its intention to substitute a Substitute Premises and the closing of the substitution shall take place within 60 days following the giving of such notice.

(2) Borrower must provide for the substitution of a Substitute Premises, and the proposed Substitute Premises must: (a) be a Permitted Concept, in good condition and repair, ordinary wear and tear excepted; (b) have for the twelve month period preceding the date of the closing of such substitution

a Fixed Charge Coverage Ratio (with the definitions of Section 6.J being deemed to be modified if necessary and as applicable to provide for a calculation of the Fixed Charge Coverage Ratio for the Premises on an individual basis rather than on an aggregate basis with other properties) at least equal to the Fixed Charge Coverage Ratio for the Premises being replaced and the substitution must cure the breach of the Fixed Charge Coverage Ratio requirement, to the extent that there is one; (c) be owned in fee simple by Borrower; (d) Borrower's right, title and interest in and to the proposed Substitute Premises shall be free and clear of all liens, restrictions, easements and encumbrances, except such matters as are acceptable to Lender (the "Substitute Premises Permitted Exceptions"); (e) have a fair market value no less than the greater of the then fair market value of the Premises or the fair market value of the Premises as of the Closing, all as reasonably determined by Lender's in-house inspectors and underwriters.

(3) Lender shall have inspected and approved the Substitute Premises utilizing such site inspection and underwriting approval criteria that would be used by a prudent institutional mortgage loan lender. Borrower shall have paid all costs and expenses resulting from such proposed substitution, including, without limitation, the cost of title insurance premiums and all endorsements required by Lender, survey charges, UCC and litigation search charges, the attorneys' fees of Borrower, reasonable attorneys' fees and expenses of Lender, the cost of the environmental due diligence undertaken pursuant to subsection (6) below, including, without limitation, Lender's site inspection costs and fees, stamp taxes, mortgage taxes, transfer fees, escrow, filing and recording fees and UCC filing and recording fees (including preparation, filing and recording fees for UCC continuation statements).

(4) Lender shall have received a preliminary title report and irrevocable commitment to insure title in the amount of the then outstanding principal balance of the Loan relating to the particular property by means of a mortgagee's ALTA extended coverage policy of title insurance (or its equivalent, in the event such form is not issued in the jurisdiction where the proposed Substitute Premises is located) for the proposed Substitute Premises issued by Title Company showing Borrower vested with good and marketable title in the real property comprising the Substitute Premises and committing to insure Lender's first priority lien upon and security interest in the proposed Substitute Premises, subject only to the Substitute Premises Permitted Exceptions and containing endorsements substantially comparable to those required by Lender at the Closing.

(5) Lender shall have received a current ALTA survey of such proposed Substitute Premises or its equivalent, the form of which shall be comparable to those received by Lender at the Closing and sufficient to cause the standard survey exceptions set forth in the title policy referred to in the preceding subsection to be deleted, and disclosing no matters other than the Substitute Premises Permitted Exceptions.

(6) Lender shall have completed such environmental due diligence of the proposed Substitute Premises as it deems necessary or advisable in its sole discretion, and Lender shall have approved the environmental condition of the Substitute Premises based on such environmental due diligence as Lender deems necessary or advisable in its sole discretion; provided, however, from and after such time as the Loan is included in a Securitization, this sub item (6) shall be modified to read as follows: Lender shall have completed such environmental due diligence of the proposed Substitute Premises as a prudent institutional mortgage loan lender would deem necessary or advisable, and Lender shall have approved the environmental due diligence as a prudent institutional mortgage loan lender would deem necessary or advisable.

(7) Borrower shall deliver, or cause to be delivered, such legal opinions as Lender may reasonably require with respect to the proposed substitution, all in a form and substance which would be satisfactory to a prudent institutional mortgage loan lender and its counsel. If the Loan is part of a Securitization, such opinions shall include, without limitation, an opinion of counsel to the rating agencies which have issued ratings in connection with such Securitization that the substitution does not constitute a "significant modification" of such Loan under Section 1001 of the Internal Revenue Code or otherwise cause a tax to be imposed on a "prohibited transaction" by any REMIC Trust.

(8) no Event of Default shall have occurred and be continuing under any of the Loan Documents.

(9) The Borrower Parties shall have executed such documents as are comparable to the security documents executed and delivered at Closing, as applicable (but with such revisions as may be reasonably required by Lender to address matters unique to the Substitute Premises) or amendments to such documents, including, without limitation, a Mortgage and UCC-1 Financing Statements (the "Substitute Documents"), to provide Lender with a first priority lien on the proposed Substitute Premises, subject only to the Substitute Premises Permitted Exceptions, and all other rights, remedies and benefits with respect to the proposed Substitute Premises which Lender holds in the Premises to be replaced, all of which documents shall be in a form and substance which would be satisfactory to a prudent institutional mortgage loan lender.

(10) the representations and warranties set forth in the Substitute Documents and Section 5 of this Agreement applicable to the proposed Substitute Premises shall be true and correct in all material respects as of the date of substitution, and Borrower shall have delivered to Lender an officer's certificate to that effect.

(11) Borrower shall have delivered to Lender certificates of insurance and insurance policies showing that all insurance required by the Substitute Documents is in full force and effect.

Upon satisfaction of the foregoing conditions with respect to the release of the Premises: (a) the proposed Substitute Premises shall be deemed substituted for the Premises; (b) the Loan Amount for the Substitute Premises shall be the same as for the Premises; (c) the Substitute Premises shall be referred to herein as a "Premises" and included within the definition of "Premises" and shall secure the same Obligations as were secured by the Premises; (d) the Substitute Documents shall be dated as of the date of the substitution; and (e) Lender will release, or cause to be released, the lien of the Mortgage, UCC-1 Financing Statements and any other Loan Documents encumbering the replaced Premises.

(b) Notwithstanding the provisions in any mortgage or deed of trust securing obligations under any Other Agreement which permit the release of a hotel real property site ("Release Site") from the lien of such mortgage or deed of trust, no such release shall be effective unless at the time of such proposed release (i) no Event of Default has occurred or is continuing under the Loan Documents with Lender or any of its Affiliates, (ii) the Fixed Charge Coverage Ratio (as defined in the Loan Documents) on all remaining properties securing the Obligations exceeds 1.3:1 on an aggregate and individual basis, (iii) the Release Site is being sold by the Borrower in an arms-length transaction, (iv) proceeds from the sale of the Release Site are being used to repay in full the Obligations assigned to the Release Site, and such payment shall be subject to any applicable prepayment premiums or penalties, (v) Borrower gives at least 30-days prior notice to Lender, (vi) a minimum of twenty-one (21) hotel real property sites remain in the portfolio (in other words, continue to secure the Obligations), (vii) more than nine (9) months have passed since the date of this Mortgage, and (viii) the remaining unexpired term of the Loan exceeds six (6) months. With respect only to the hotel property on Pine Street in Atlanta, Georgia, if such property shall be the Release Site clauses (i), (iv) and (v) of the foregoing conditions shall be the only conditions applicable to the release of such property.

## **12. *Miscellaneous Provisions.***

A. *Notices.* All notices, consents, approvals or other instruments required or permitted to be given by either party pursuant to this Agreement or any of the other Loan Documents shall be in writing and given by (i) hand delivery, (ii) facsimile, (iii) express overnight delivery service or (iv) certified or registered mail, return receipt requested, and shall be deemed to have been delivered upon (a) receipt, if hand delivered, (b) transmission, if delivered by facsimile, (c) the next Business Day, if delivered by express overnight delivery service, or (d) the third Business Day following the day of deposit of such notice with the United States Postal Service, if sent by certified or registered mail, return receipt requested. Notices shall be provided to the parties and addresses (or facsimile numbers, as applicable) specified below. If to Borrower: Supertel Limited Partnership, 309 North 5th Street, PO Box 1448, Norfolk, Nebraska 68701, Attention: Donavon Heimes, Telephone: (402) 371-2520, Telecopy: (402) 371-4229; and if to Lender: General Electric Capital Corporation, 8377 East Hartford Drive, Suite 200,

B. *Real Estate Commission.* Lender and Borrower represent and warrant to each other that they have dealt with no real estate or mortgage broker, agent, finder or other intermediary in connection with the transactions contemplated by this Agreement or the other Loan Documents. Lender and Borrower shall indemnify and hold each other harmless from and against any costs, claims or expenses, including attorneys' fees, arising out of the breach of their respective representations and warranties contained within this Section.

C. *Waiver and Amendment; Document Review.* (1) No provisions of this Agreement or the other Loan Documents shall be deemed waived or amended except by a written instrument unambiguously setting forth the matter waived or amended and signed by the party against which enforcement of such waiver or amendment is sought. Waiver of any matter shall not be deemed a waiver of the same or any other matter on any future occasion.

(2) In the event Borrower makes any request upon Lender requiring Lender or Lender's attorneys to review or prepare (or cause to be reviewed or prepared) any documents, plans, specifications or other submissions in connection with or arising out of this Agreement or any of the other Loan Documents, then Borrower shall (a) reimburse Lender promptly upon Lender's demand for all out-of-pocket costs and expenses incurred by Lender in connection with such review or preparation, including, without limitation, reasonable outside attorneys' fees, and (b) pay Lender a reasonable processing and review fee.

D. *Captions.* Captions are used throughout this Agreement and the other Loan Documents for convenience of reference only and shall not be considered in any manner in the construction or interpretation hereof.

E. *Lender's Liability.* Notwithstanding anything to the contrary provided in this Agreement or the other Loan Documents, it is specifically understood and agreed, such agreement being a primary consideration for the execution of this Agreement and the other Loan Documents by Lender, that (1) there shall be absolutely no personal liability on the part of any shareholder, director, officer or employee of Lender, with respect to any of the terms, covenants and conditions of this Agreement or the other Loan Documents, (2) Borrower waives all claims, demands and causes of action against Lender's officers, directors, employees and agents in the event of any breach by Lender of any of the terms, covenants and conditions of this Agreement or the other Loan Documents to be performed by Lender and (3) Borrower shall look solely to the assets of Lender for the satisfaction of each and every remedy of Borrower in the event of any breach by Lender of any of the terms, covenants and conditions of this Agreement or the other Loan Documents to be performed by Lender, such exculpation of liability to be absolute and without any exception whatsoever.

F. *Severability.* The provisions of this Agreement and the other Loan Documents shall be deemed severable. If any part of this Agreement or the other Loan Documents shall be held invalid, illegal or unenforceable, the remainder shall remain in full force and effect, and such invalid, illegal or unenforceable provision shall be reformed by such court so as to give maximum legal effect to the intention of the parties as expressed therein.

G. *Construction Generally.* This Agreement and the other Loan Documents have been entered into by parties who are experienced in sophisticated and complex matters similar to the transaction contemplated by this Agreement and the other Loan Documents and are entered into by both parties in reliance upon the economic and legal bargains contained therein and shall be interpreted and construed in a fair and impartial manner without regard to such factors as the party which prepared the instrument, the relative bargaining powers of the parties or the domicile of any party. Borrower and Lender were each represented by legal counsel competent in advising them of their obligations and liabilities hereunder.



H. *Further Assurances.* Borrower will, at its sole cost and expense, do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, documents, conveyances, notes, mortgages, deeds of trust, assignments, security agreements, financing statements and assurances as Lender shall from time to time reasonably require or deem advisable to carry into effect the purposes of this Agreement and the other Loan Documents, to perfect any lien or security interest granted in any of the Loan Documents and for the better assuring and confirming of all of Lender's rights, powers and remedies under the Loan Documents.

I. *Attorneys' Fees.* In the event of any judicial or other adversarial proceeding between the parties concerning this Agreement or the other Loan Documents, the prevailing party shall be entitled to recover its attorneys' fees and other costs in addition to any other relief to which it may be entitled.

J. *Entire Agreement.* This Agreement and the other Loan Documents, together with any other certificates, instruments or agreements to be delivered in connection therewith, constitute the entire agreement between the parties with respect to the subject matter hereof, and there are no other representations, warranties or agreements, written or oral, between Borrower and Lender with respect to the subject matter of this Agreement and the other Loan Documents. Notwithstanding anything in this Agreement and the other Loan Documents to the contrary, with respect to the Premises, upon the execution and delivery of this Agreement by Borrower and Lender, any bid proposals or loan commitments with respect to the transactions contemplated by this Agreement shall be deemed null and void and of no further force and effect and the terms and conditions of this Agreement shall control notwithstanding that such terms and conditions may be inconsistent with or vary from those set forth in such bid proposals or loan commitments.

K. *Forum Selection; Jurisdiction; Venue; Choice of Law.* Borrower acknowledges that this Agreement and the other Loan Documents were substantially negotiated in the State of Arizona, this Agreement and the other Loan Documents were executed by Lender in the State of Arizona and delivered by Borrower in the State of Arizona, all payments under the Note will be delivered in the State of Arizona and there are substantial contacts between the parties and the transactions contemplated herein and the State of Arizona. For purposes of any action or proceeding arising out of this Agreement or any of the other Loan Documents, the parties hereto hereby expressly submit to the jurisdiction of all federal and state courts located in the State of Arizona and Borrower consents that it may be served with any process or paper by registered mail or by personal service within or without the State of Arizona in accordance with applicable law. Furthermore, Borrower waives and agrees not to assert in any such action, suit or proceeding that it is not personally subject to the jurisdiction of such courts, that the action, suit or proceeding is brought in an inconvenient forum or that venue of the action, suit or proceeding is improper. It is the intent of the parties hereto that all provisions of this Agreement and the Note shall be governed by and construed under the laws of the State of Arizona, without giving effect to its principles of conflicts of law. To the extent that a court of competent jurisdiction finds Arizona law inapplicable with respect to any provisions of this Agreement or the Note, then, as to those provisions only, the laws of the state where the Premises is located shall be deemed to apply. Nothing in this Section shall limit or restrict the right of Lender to commence any proceeding in the federal or state courts located in the state in which the Premises is located to the extent Lender deems such proceeding necessary or advisable to exercise remedies available under this Agreement or the other Loan Documents.

L. *Counterparts.* This Agreement and the other Loan Documents may be executed in one or more counterparts, each of which shall be deemed an original.

M. *Assignments by Lender; Binding Effect.* Lender may assign in whole or in part its rights under this Agreement, including, without limitation, in connection with any Transfer, Participation or Securitization, in compliance with all applicable laws. Upon any unconditional assignment of Lender's entire right and interest hereunder, Lender shall automatically be relieved, from and after the date of such assignment, of liability for the performance of any obligation of Lender contained herein. This Agreement and the other Loan Documents shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and permitted assigns, including, without limitation, any United States trustee, any debtor in possession or any trustee appointed from a private panel.

N. *Survival*. Except for the conditions of Closing set forth in Section 4, which shall be satisfied or waived as of the Closing Date, all representations, warranties, agreements, obligations and indemnities of Borrower and Lender set forth in this Agreement and the other Loan Documents shall survive the Closing.

O. *Waiver of Jury Trial and Punitive, Consequential, Special and Indirect Damages*. **BORROWER AND LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER OR ITS SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, ANY OF THE OTHER LOAN DOCUMENTS OR ANY DOCUMENT CONTEMPLATED HEREIN OR RELATED HERETO. THIS WAIVER BY THE PARTIES HERETO OF ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY HAS BEEN NEGOTIATED AND IS AN ESSENTIAL ASPECT OF THEIR BARGAIN. FURTHERMORE, BORROWER AND LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES FROM THE OTHER AND ANY OF THE OTHER'S AFFILIATES, OFFICERS, DIRECTORS OR EMPLOYEES OR ANY OF THEIR SUCCESSORS WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER OR ANY OF THE OTHER'S AFFILIATES, OFFICERS, DIRECTORS OR EMPLOYEES OR ANY OF THEIR SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, ANY OF THE OTHER LOAN DOCUMENTS OR ANY DOCUMENT CONTEMPLATED HEREIN OR RELATED HERETO. THE WAIVER BY BORROWER AND LENDER OF ANY RIGHT THEY MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES HAS BEEN NEGOTIATED BY THE PARTIES HERETO AND IS AN ESSENTIAL ASPECT OF THEIR BARGAIN.**

P. *Transfers, Participations and Securitizations*. (1) A material inducement to Lender's willingness to complete the transactions contemplated by the Loan Documents is Borrower's agreement that Lender may, at any time, complete a Transfer, Participation or Securitization with respect to the Note, Mortgage or any of the other Loan Documents or any or all servicing rights with respect thereto.

(2) Borrower agrees to cooperate in good faith with Lender in connection with any such Transfer, Participation or Securitization of the Note, Mortgage or any of the other Loan Documents, or any or all servicing rights with respect thereto, including, without limitation (a) providing such documents, financial and other data, and other information and materials which would typically be required with respect to the Borrower Parties, the Lessee Parties, and the Manager by a purchaser, transferee, assignee, servicer, participant, investor or rating agency involved with respect to such Transfer, Participation or Securitization, as applicable; provided, however, the Borrower Parties the Lessee Parties and the Manager shall not be required to make disclosures of any confidential information or any information which has not previously been made public unless required by applicable federal or state securities laws (the "Disclosures"); and (b) amending the terms of the transactions evidenced by the Loan Documents to the extent necessary so as to satisfy the requirements of purchasers, transferees, assignees, servicers, participants, investors or selected rating agencies involved in any such Transfer, Participation or Securitization, so long as such amendments would not have a Material Adverse Effect upon the Borrower Parties, the Lessee Parties or the transactions contemplated hereunder. Lender shall be responsible for preparing at its expense any documents evidencing the amendments referred to in the preceding sub item (b) and compliance with any applicable law.

(3) Borrower consents to Lender providing the Disclosures, as well as any other information which Lender may now have or hereafter acquire with respect to the Premises or Manager or the financial condition of the Borrower Parties or the Lessee Parties to each purchaser, transferee, assignee, servicer, participant, investor or rating agency involved with respect to each Transfer, Participation or Securitization, as applicable. Lender and Borrower (and their respective Affiliates) shall each pay their own attorneys' fees and other out-of-pocket expenses incurred in connection with the performance of their respective obligations under this Section.



(4) Notwithstanding anything to the contrary contained in this Agreement or the other Loan Documents: (a) an Event of Default or a breach or default, after the passage of all applicable notice and cure or grace periods, under any Loan Document or Other Agreement which relates to a loan or sale/leaseback transaction which has not been the subject of a Securitization, Participation or Transfer shall not constitute an Event of Default or a breach or default, as applicable, under any Loan Document or Other Agreement which relates to a loan which has been the subject of a Securitization, Participation or Transfer; (b) an Event of Default or a breach or default, after the passage of all applicable notice and cure or grace periods, under any Loan Document or Other Agreement which relates to a loan which is included in any Loan Pool shall not constitute an Event of Default or a breach or default, as applicable, under any Loan Document or Other Agreement which relates to a loan which is included in any other Loan Pool; (c) the Loan Documents and Other Agreement corresponding to the loans in any Loan Pool shall not secure the obligations of any of the Borrower Parties contained in any Loan Document or Other Agreement which does not correspond to a loan in such Loan Pool; and (d) the Loan Documents and Other Agreement which do not correspond to a loan in any Loan Pool shall not secure the obligations of any of the Borrower Parties contained in any Loan Document or Other Agreement which does correspond to a loan in such Loan Pool.

*Q. Estoppel Certificate.* At any time, and from time to time, each party agrees, promptly and in no event later than fifteen (15) days after a request from the other party, to execute, acknowledge and deliver to the other party a certificate in the form supplied by the other party, certifying: (a) to its knowledge, whether there are then any existing defaults by it or the other party in the performance of their respective obligations under this Agreement or any of the other Loan Documents, and, if there are any such defaults, specifying the nature and extent thereof; (b) that no notice of default has been given or received by it under this Agreement or any of the other Loan Documents which has not been cured, except as to defaults specified in the certificate; (c) the capacity of the person executing such certificate, and that such person is duly authorized to execute the same on behalf of it; and (d) any other information reasonably requested by the other party in connection with this Agreement and the other Loan Documents.

R. Borrower authorizes Lender and its employees, officers, agents, representatives and designees to:

(1) distribute to, or publish publicly available information for the use by, any third-parties for statistical analysis purposes the unit-level or corporate level operating results for the Premises, Borrower, any guarantor of the Loan, any Affiliate of Borrower, any of the other Borrower Parties or any operator or lessee of the Premises prepared by Lender from financial statements obtained from Borrower; and

(2) obtain personal credit reports, business credit reports or asset reports, as applicable, with respect to Borrower, any guarantor of the Loan, any Affiliate of Borrower, any of the other Borrower Parties or any operator or lessee of the Premises.

IN WITNESS WHEREOF, Borrower and Lender have entered into this Agreement as of the date first above written.

LENDER:

**GENERAL ELECTRIC CAPITAL CORPORATION,**  
a Delaware corporation

By /s/ Delaine D. Gordon  
Printed Name: Delaine D. Gordon  
Its: Authorized Signatory

BORROWER:

**SUPERTEL LIMITED PARTNERSHIP,**  
a Virginia limited partnership

By **SUPERTEL HOSPITALITY REIT TRUST,**  
a Maryland real estate investment trust,  
Its General Partner

By /s/ Donavon A. Heimes  
Donavon A. Heimes,  
Vice President /Treasurer

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**DEED TO SECURE DEBT, ASSIGNMENT OF RENTS AND LEASES,  
SECURITY AGREEMENT AND FIXTURE FILING**

THIS DEED TO SECURE DEBT, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (this "Deed to Secure Debt") is made as of May 16, 2007 by **SUPERTEL LIMITED PARTNERSHIP**, a Virginia limited partnership, whose address is 309 North 5th Street, PO Box 1448, Norfolk, Nebraska 68701 ("Grantor"), to and for the benefit of **GENERAL ELECTRIC CAPITAL CORPORATION**, a Delaware corporation ("Grantee"), whose address is 8377 East Hartford Drive, Suite 200, Scottsdale, Arizona 85255.

**PRELIMINARY STATEMENT:**

The capitalized terms used in this Deed to Secure Debt, if not elsewhere defined herein, are defined as indicated in Article I. Grantor holds fee simple title to the Premises, subject to the Permitted Exceptions. Grantor is executing this Deed to Secure Debt for the purpose of granting the interest of Grantor in and to the Deed Estate (as defined in the Granting Clauses below) as security for the payment of the Obligations. The Deed Estate shall be and remain subject to the lien of this Deed to Secure Debt and shall constitute security for the Obligations so long as the Obligations shall remain outstanding.

**GRANTING CLAUSES:**

GRANTOR IS JUSTLY INDEBTED TO GRANTEE IN THE SUM OF THIRTY-SIX MILLION TWO HUNDRED NINETY-FIVE THOUSAND AND NO/100 DOLLARS (\$36,295,000.00) IN LAWFUL MONEY OF THE UNITED STATES OF AMERICA, AND HAS AGREED TO PAY THE SAME, WITH INTEREST THEREON, ACCORDING TO THE TERMS OF THE BRIDGE NOTE (WHICH HAS A MATURITY DATE OF DECEMBER 1, 2007) AND THE PROMISSORY NOTE (WHICH HAS A MATURITY DATE OF JUNE 1, 2017).

Grantor, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, by these presents does hereby create a security interest in, mortgage, grant, bargain, sell, assign, pledge, give, transfer, set over and convey unto Grantee and to its successors and assigns WITH POWER OF SALE AND RIGHT OF ENTRY, for the benefit and security of Grantee and its successors and assigns, all of Grantor's estate, right, title and interest in, to and under any and all of the following property (the "Deed Estate"), whether now owned or hereafter acquired, subject only to the Permitted Exceptions:

**Premises, Rents and Derivative Interests**

The Premises, all rents, room rents, accounts, accounts receivable, receipts, issues, profits, royalties, income and other benefits derived from the property comprising the Premises and the Personal Property (as defined below) or any portion thereof, including, without limitation, any of the foregoing which may arise from any food and beverage service facilities (but not including tips and gratuities received by employees, the receipts of licensees, concessionaires, and any other third parties, or rebates and refunds) and from the use, licensing, leasing or letting of hotel rooms and suites, ballrooms, banquet halls, conference facilities, parking facilities, retail facilities, sports or health facilities, and any other sums received or receivable under any lease, sublease, license or rental agreement or in connection with the operation of any business or enterprise (including, but not limited to, a hotel business) conducted on the Premises, in whatever form (including, but not limited to, cash, checks and debit and credit card slips and payments), and all rights to receive the same (collectively, the "Rents"); all leases or subleases covering the Premises and the Personal Property or any portion thereof now or hereafter existing or entered into, including, without limitation, the Permitted Lease (collectively, "Leases" and individually, a "Lease"), including, without limitation, all cash or security deposits, advance rentals and deposits or payments of similar nature and all guaranties relating to the Leases; all options to purchase or lease the Premises and

the Personal Property or any portion thereof or interest therein, and any greater estate in the Premises; all interests, estate or other claims, both in law and in equity, with respect to the Premises and the Personal Property or any portion thereof; all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights and shares of stock evidencing the same; all land lying within the right-of-way of any street, open or proposed, adjoining the Premises and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Premises;

### **Personal Property**

All of the following described property, whether now owned or hereafter acquired, and located on the Premises or used exclusively in connection with the operation of the business located at the Premises, together with all replacements and substitutions therefor and all cash and non-cash proceeds (including insurance proceeds and any title and UCC insurance proceeds) and products thereof, and, in the case of tangible collateral, together with all additions, attachments, accessions, parts, equipment and repairs now or hereafter attached or affixed thereto or used in connection therewith: All of Grantor's right, title, and interest in: (a) all types of property included within the term "equipment" as defined by the UCC (except vehicles, boats and airplanes), including machinery, furniture, appliances, trade fixtures, tools, and office and record keeping equipment; (b) all of Grantor's inventory (including all goods held for sale, raw materials, work in process and materials or supplies used or consumed in Grantor's business); (c) all of Grantor's documents; general intangibles; accounts; contract rights; chattel paper and instruments; money; securities; investment properties; deposit accounts; supporting obligations; letters of credit and letter of credit rights; commercial tort claims; and records, software and information contained in computer media (such as data bases, source and object codes and information therein), together with any equipment and software to utilize, create, maintain or process any such records or data on electronic media; and (d) any and all plans and specifications, designs, drawings and other matters prepared for any construction on any real property owned by or leased to Grantor at the location(s) described above or regarding any improvements to any of such real property; and (e) all goodwill; provided, however, that the security interest in any franchise, license, or distributorship agreement is subject to the provisions of Section 9-408 of the UCC (all of the foregoing property being collectively referred to as the "Personal Property"); and

### **Claims and Awards**

All the claims or demands with respect to the Premises and the Personal Property or any portion thereof, including, without limitation, claims or demands with respect to the proceeds of insurance in effect with respect thereto, claims under any indemnity agreement, including, without limitation, any indemnity agreement executed for the benefit of the Premises and the Personal Property or any portion thereof with respect to Hazardous Materials or USTs, and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Premises and the Personal Property, including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages. The foregoing, together with any other portion of the Deed Estate as to which a security interest can be granted and perfected under the UCC, is also collectively referred to herein as Personal Property.

The Deed Estate shall include all products and proceeds of the foregoing property.

TO HAVE AND TO HOLD the Deed Estate hereby granted or mortgaged or intended to be granted or mortgaged, unto Grantee, and its successors and assigns, IN FEE SIMPLE FOREVER upon the terms, provisions and conditions set forth herein.

This instrument is a deed to secure debt passing legal title pursuant to the laws of the State of Georgia governing deeds to secure debt and is not a mortgage and should the Obligations (as hereinafter defined) be satisfied and paid in whole according to tenor and effect thereof when the same shall be due and payable and should Grantor perform all covenants contained herein and in all of the other Loan Documents, then this Deed to Secure Debt shall be cancelled and surrendered.

THIS DEED TO SECURE DEBT SHALL SECURE THE FOLLOWING INDEBTEDNESS AND OBLIGATIONS (the "Obligations"):

(i) Payment of indebtedness evidenced by the Note together with all extensions, renewals, amendments and modifications thereof;

(ii) Payment of all other indebtedness and other sums, with interest thereon, which may be owed under, and performance of all other obligations and covenants contained in, any Loan Document (other than the Environmental Indemnity Agreement), together with any other instrument given to evidence or further secure the payment and performance of any obligation secured hereby or thereby; and

(iii) Payment of all indebtedness and other sums, with interest thereon, which may be owed under, and performance of all other obligations and covenants contained in any Other Agreement, together with any other instrument given to evidence or further secure the payment and performance of any obligation secured thereby.

It is the intention of the parties hereto that the Deed Estate shall secure all of the Obligations presently or hereafter owed, and that the priority of the security interest created by this Deed to Secure Debt for all such Obligations shall be controlled by the time of proper recording of this Deed to Secure Debt. In addition, this Deed to Secure Debt shall also secure unpaid balances of advances made with respect to the Deed Estate for the payment of taxes, assessments, insurance premiums, costs or any other advances incurred for the protection of the Deed Estate, together with interest thereon until paid at the Default Rate, all as contemplated in this Deed to Secure Debt, all of which shall constitute a part of the Obligations. This paragraph shall serve as notice to all persons who may seek or obtain a lien on the Deed Estate subsequent to the date of recording of this Deed to Secure Debt, that until this Deed to Secure Debt is released, any debt owed Grantee by Grantor, including advances made subsequent to the recording of this Deed to Secure Debt, shall be secured with the priority afforded this Deed to Secure Debt as recorded.

Notwithstanding the foregoing or any other provisions of this Deed to Secure Debt to the contrary:

(x) in the event that the Loan becomes the subject of a Securitization, Participation or Transfer, this Deed to Secure Debt shall only secure indebtedness and obligations relating to the Loan and any other loans between any of the Grantor Parties on the one hand and any of the Grantee Entities on the other hand which are part of the same Loan Pool as the Loan; and

(y) in the event that any loans between any of the Grantor Parties on the one hand and any of the Grantee Entities on the other hand (other than the Loan) become the subject of a Securitization, Participation or Transfer, this Deed to Secure Debt shall not secure any indebtedness and obligations relating to such loans unless the Loan is part of the same Loan Pool as such loans.

IT IS HEREBY COVENANTED, DECLARED AND AGREED that the Note and the other Loan Documents are to be executed, delivered and secured and that the Deed Estate is to be held and disposed of by Grantee, upon and subject to the provisions of this Deed to Secure Debt.

## ARTICLE I

### DEFINED TERMS

Section 1.01. ***Incorporation of Definitions.*** Initially capitalized terms not otherwise defined in this Deed to Secure Debt shall have the meanings set forth in that certain Loan Agreement dated as of the date of this Deed to Secure Debt between Grantor and Grantee, as the same may be amended from time to time (the "Loan Agreement").

Section 1.02. ***Additional Definitions.*** Unless the context otherwise specifies or requires, the

following terms shall have the meanings specified (such definitions to be applicable equally to singular and plural nouns and verbs of any tense):

“*Bridge Note*” means the bridge promissory note dated as of even date herewith in the amount of \$8,540,000, executed by Grantor and payable to Grantee which is secured by this Deed to Secure Debt and any amendments, extensions or modifications thereof.

“*Deed Estate*” has the meaning set forth in the Granting Clause.

“*Environmental Indemnity Agreement*” means that certain Environmental Indemnity Agreement dated as of the date of this Deed to Secure Debt executed by Grantor for the benefit of Grantee and such other parties as are identified in such agreement with respect to the Premises, as the same may be amended from time to time.

“*Event of Default*” has the meaning set forth in Section 6.01.

“*Grantee Entities*” shall have the meaning ascribed to “Lender Entities” in the Loan Agreement.

“*Grantor Parties*” shall have the meaning ascribed to “Borrower Parties” in the Loan Agreement.

“*Improvements*” means all buildings, fixtures and other improvements now or hereafter located on the Land (whether or not affixed to the Land).

“*Indemnified Parties*” means Grantee and any person or entity who is or will have been involved in the origination of the Loan, any person or entity who is or will have been involved in the servicing of the Loan, any person or entity in whose name the encumbrance created by this Deed to Secure Debt is or will have been recorded, persons and entities who may hold or acquire or will have held a full or partial interest in the Loan (including, but not limited to, investors or prospective investors in any Securitization, Participation or Transfer, as well as custodians, trustees and other fiduciaries who hold or have held a full or partial interest in the Loan for the benefit of third parties), as well as the respective directors, officers, shareholders, partners, members, employees, lenders, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing (including but not limited to any other person or entity who holds or acquires or will have held a participation or other full or partial interest in the Loan or the Deed Estate, whether during the term of the Loan or as a part of or following a foreclosure of the Loan and including, but not limited to, any successors by merger, consolidation or acquisition of all or a substantial portion of Grantee’s assets and business).

“*Land*” means the parcel or parcels of real estate legally described in Exhibit A attached hereto, and all rights, privileges and appurtenances therewith.

“*Lease*” and “*Leases*” has the meaning set forth in the Granting Clause.

“*Lessee*” means TRS Leasing, Inc., a Virginia corporation.

“*Loan*” means the loan made by Grantee to Grantor, which is evidenced by the Note and secured by this Deed to Secure Debt.

“*Loan Agreement*” has the meaning set forth in Section 1.01.

“*Net Award*” has the meaning set forth in Section 4.01(b)(v).

“*Net Insurance Proceeds*” has the meaning set forth in Section 4.01(a)(iii).

“*Note*” means, collectively, the Promissory Note and the Bridge Note.

“*Obligations*” has the meaning set forth in the Granting Clause.

“*Other Agreements*” means, collectively, all agreements and instruments between or among

(1) any of the Grantor Parties and, (2) any of the Grantee Entities, including, without limitation, promissory notes and guaranties; provided, however, the term “Other Agreements” shall not include the agreements and instruments defined in the Loan Agreement as the Loan Documents.

“*Outstanding Obligations*” has the meaning set forth in Section 4.01(b)(iv)(x)(aa).

“*Partial Taking*” has the meaning set forth in Section 4.01(b)(ii).

“*Permitted Lease*” means the lease dated on or about the date of this Mortgage between Borrower, as lessor, and Lessee, as lessee, with respect to the Premises as the same may be amended from time to time.

“*Personal Property*” has the meaning set forth in the Granting Clause.

“*Premises*” means the Land and the Improvements.

“*Promissory Note*” means the promissory note dated as of even date herewith in the amount of \$27,755,000 executed by Grantor and payable to Grantee which is secured by this Deed to Secure Debt and any amendments, extensions or modifications thereof.

“*Rents*” has the meaning set forth in the Granting Clause.

“*Restoration*” means the restoration, replacement or rebuilding of the Premises, or any part thereof, as nearly as possible to its value, condition and character immediately prior to any damage, destruction or Taking.

“*State*” means the State in which the Premises is located.

“*Taking*” has the meaning set forth in Section 4.01(b)(i).

“*Total Taking*” has the meaning set forth in Section 4.01(b)(ii).

“*UCC*” has the meaning set forth in Section 6.02(c).

## ARTICLE II

### INCORPORATION OF REPRESENTATIONS, WARRANTIES AND COVENANTS OF GRANTOR

The representations, warranties and covenants of Grantor set forth in the Loan Agreement are incorporated by reference into this Deed to Secure Debt as if stated in full in this Deed to Secure Debt. All representations and warranties as incorporated herein shall be deemed to have been made as of the date of this Deed to Secure Debt and all representations, warranties and covenants incorporated herein shall survive the execution and delivery of this Deed to Secure Debt.

## ARTICLE III

### COVENANTS OF GRANTOR

In addition to any covenants of Grantor set forth in the Loan Agreement or any other Loan Document, Grantor hereby covenants to Grantee and agrees as follows until the Obligations are satisfied in full:

Section 3.01. **Recording.** Grantor shall, upon the execution and delivery hereof and thereafter from time to time, take such actions as Grantee may reasonably request to cause this Deed to Secure Debt, each supplement and amendment to such instrument and financing statements with respect thereto and each instrument of further assurance (collectively, the “Recordable Documents”), to be filed, registered and recorded as may be required by law to publish notice and maintain the first lien or security interest, as applicable, hereof upon the Deed Estate and to publish notice of and protect the validity of the Recordable



Documents. Grantor shall, from time to time, perform or cause to be performed any other act and shall execute or cause to be executed any and all further instruments (including financing statements, continuation statements and similar statements with respect to any of said documents) reasonably requested by Grantee for carrying out the intention of, or facilitating the performance of, this Deed to Secure Debt. Grantee shall be and is hereby irrevocably appointed the agent and attorney-in-fact of Grantor to comply therewith (including the execution, delivery and filing of such financing statements and other instruments), which appointment is coupled with an interest; provided, however, Grantee shall not exercise such power of attorney unless Grantor has first failed to comply with this Section, and provided, further, that this sentence shall not prevent any default in the observance of this Section from constituting an Event of Default. To the extent permitted by law, Grantor shall pay or cause to be paid recording taxes and fees incident thereto and all expenses, taxes and other governmental charges incident to or in connection with the preparation, execution, delivery or acknowledgment of the Recordable Documents, any instruments of further assurance and the Note.

**Section 3.02. *Use; Maintenance and Repair; Leases.*** (a) The Deed Estate shall be used solely for the operation of a Permitted Concept and for no other purpose. Except as set forth below, and except during periods when the Premises is untenable by reason of fire or other casualty or condemnation (provided, however, during all such periods while the Premises is untenable, Grantor shall strictly comply with the terms and conditions of Section 4.01 of this Deed to Secure Debt), Grantor shall at all times while this Deed to Secure Debt is in effect occupy the Deed Estate, or cause Lessee or Manager to occupy the Deed Estate, and diligently operate its business, or cause Lessee or Manager to diligently operate its business, on the Deed Estate. Grantor may cease (or allow Lessee or Manager to cease) diligent operation of business at the Deed Estate for a period not to exceed 90 days and may do so only once within any five-year period while this Deed to Secure Debt is in effect. If Grantor, Lessee or Manager does discontinue operation as permitted by this Section, Grantor shall (i) give written notice to Grantee within 10 days after Grantor, Lessee or Manager elects to cease operation, (ii) provide adequate protection and maintenance of the Deed Estate during any period of vacancy and (iii) pay all costs necessary to restore the Deed Estate to its condition on the day operation of the business ceased at such time as the Deed Estate is reopened for Grantor's, Lessee's or Manager's business operations or other substituted use. Notwithstanding anything herein to the contrary, Grantor shall pay monthly the principal and interest due under the Note during any period in which Grantor, Lessee or Manager discontinues operation.

Grantor shall not, and shall not permit any tenant to, by itself or through any lease or other type of transfer, convert the Premises to an alternative use while this Deed to Secure Debt is in effect without Grantee's consent, which consent shall not be unreasonably withheld. Grantee may consider any or all of the following in determining whether to grant its consent, without being deemed to be unreasonable: (i) whether the converted use will be consistent with the highest and best use of the Deed Estate, and (ii) whether the converted use will increase Grantee's risks or decrease the value of the Deed Estate.

(b) Grantor shall or shall cause Lessee to, (i) maintain the Deed Estate in good condition and repair, subject to reasonable and ordinary wear and tear, free from actual or constructive waste, (ii) operate, remodel, update and modernize the Deed Estate in accordance with Grantor's past practices for Permitted Concepts, and (iii) pay all operating costs of the Premises in the ordinary course of business. Grantor shall not do or allow any tenant or other user of the Premises to do any act that (1) materially increases the dangers to human health or the environment, (2) poses an unreasonable risk of harm to any person or entity (whether on or off the Premises), (3) impairs or is reasonably likely to impair in any material respect the value of the Premises, (4) is contrary to any requirement of any insurer, or (5) violates in any material respect any covenant, condition, agreement or easement applicable to the Premises.

(c) Grantor shall not, and shall not permit Lessee or Manager to, (i) enter into any Leases (other than the Permitted Lease and room rentals in the ordinary course of business) without Grantee's prior written consent; (ii) materially modify or amend the terms of any Lease without Grantee's prior written consent; (iii) grant any material consents under any Lease, including, without limitation, any consent to an assignment of any Lease, a mortgaging of the leasehold estate created by any Lease or a subletting by the tenant under any Lease (except room rentals in the ordinary course of business), without Grantee's prior written consent; (iv) terminate, cancel, surrender, or accept the surrender of, any Lease, or waive or



release any person from the observance or performance of any obligation to be performed under the terms of any Lease or liability on account of any warranty given thereunder, without Grantee's prior written consent; or (v) assign, transfer, mortgage, pledge or hypothecate any Lease or any interest therein to any party other than Grantee, without Grantee's prior written consent. Any lease, modification, amendment, grant, termination, cancellation, surrender, waiver or release in violation of the foregoing provision shall be null and void and of no force and effect. Unless Grantee otherwise consents or elects, Grantor's title to the Deed Estate and the leasehold interest in the Deed Estate created by any Lease shall not merge, but shall always be kept separate and distinct, notwithstanding the union of such estates in Grantor, Grantee or any other person by purchase, operation of law, foreclosure of this Deed to Secure Debt, sale of the Deed Estate pursuant to this Deed to Secure Debt or otherwise.

(d) Borrower shall (i) fulfill, perform and observe in all material respects each and every condition and covenant of Borrower contained in any Lease; (ii) give prompt notice to Lender of any claim or event of default under any Lease given to or by Borrower, together with a complete copy or statement of any information submitted or referenced in support of such claim or event of default; (iii) at the sole cost and expense of Borrower, enforce the performance and observance of each and every covenant and condition of any Lease to be performed or observed by any other party thereto, unless such enforcement is waived in writing by Lender; (iv) appear in and defend any action challenging the validity, enforceability or priority of the lien created hereby or the validity or enforceability of any Lease; and (v) hold that portion of the Rents which is sufficient to discharge all current sums due under the Note for use in the payment of such sums.

Section 3.03. ***Alterations and Improvements.*** Grantor shall not alter, or permit Lessee or Manager to alter, the exterior, structural, plumbing or electrical elements of the Deed Estate in any manner without the consent of Grantee, which consent shall not be unreasonably withheld or conditioned; provided, however, Grantor or Lessee may undertake nonstructural alterations to the Deed Estate costing less than \$100,000 without Grantee's consent. For purposes of this Deed to Secure Debt, alterations to the exterior, structural, plumbing or electrical elements of the Deed Estate shall mean:

(a) alterations which affect the foundation or "footprint" of the Improvements;

(b) alterations which involve the structural elements of the Improvements, such as a load-bearing wall, structural beams, columns, supports or roof; or

(c) alterations which materially affect any of the building systems, including, without limitation, the electrical systems, plumbing, HVAC and fire and safety systems.

If Grantee's consent is required hereunder and Grantee consents to the making of any such alterations, the same shall be made by Grantor, Lessee or Manager at Grantor's, Lessee's or Manager's sole expense by a licensed contractor and according to plans and specifications approved by Grantee and subject to such other conditions as Grantee shall reasonably require. Any work at any time commenced on the Deed Estate shall be prosecuted diligently to completion, shall be of good workmanship and materials and shall comply fully with all the terms of this Deed to Secure Debt. Upon completion of any alterations for which Grantee's consent is required hereunder or any Restoration, Grantor shall promptly provide Grantee with (i) evidence of full payment to all laborers and materialmen contributing to the alterations, (ii) an architect's certificate certifying the alterations to have been completed in conformity with the plans and specifications, (iii) a certificate of occupancy (if the alterations are of such a nature as would require the issuance of a certificate of occupancy), and (iv) any other documents or information reasonably requested by Grantee.

Section 3.04. ***After-Acquired Property.*** All right, title and interest of Grantor in and to all improvements, alterations, substitutions, restorations and replacements of, and all additions and appurtenances to, the Deed Estate, hereafter acquired by or released to Grantor, immediately upon such acquisition or release and without any further granting by Grantor, shall become part of the Deed Estate and shall be subject to the lien hereof fully, completely and with the same effect as though now owned by Grantor and specifically described in the Granting Clauses hereof. Grantor shall execute and deliver to Grantee any further assurances, mortgages, grants, conveyances or assignments thereof as the Grantee may reasonably require to subject the same to the lien hereof.

Section 3.05. **Taxes, Assessments, Charges and Other Impositions.** (a) Grantor shall do or cause to be done everything necessary to preserve the lien hereof without expense to Grantee, including, without limitation, paying and discharging or causing to be paid and discharged, whether or not payable directly by Grantor or subject to withholding at the source, (i) all taxes, assessments, levies, fees, water and sewer rents and charges and all other governmental charges, general, special, ordinary or extraordinary, and all charges for utility or communications services, which may at any time be assessed, levied or imposed upon Grantor, Lessee, the Deed Estate, this Deed to Secure Debt, the Obligations or the Rents or which may arise in respect of the occupancy, use, possession or operation thereof, (ii) all income, excess profits, sales, gross receipts and other taxes, duties or imposts, whether similar or not in nature, assessed, levied or imposed by any Governmental Authority on Grantor, Lessee, the Deed Estate or the Rents, and (iii) all lawful claims and demands of mechanics, laborers, materialmen and others which, if unpaid, might create a lien on the Deed Estate, or on the Rents, unless Grantor shall contest the amount or validity thereof in accordance with subsection (b).

(b) Grantor may, at its own expense, contest or cause to be contested, by appropriate legal proceedings conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any item specified in subsection (a) or lien therefor, provided that (i) Grantor shall provide written notice to Grantee of any contest involving more than \$10,000.00, (ii) such proceeding shall suspend the collection thereof from the Deed Estate or any interest therein, (iii) neither the Deed Estate nor any interest therein would be in any danger of being sold, forfeited or lost by reason of such proceedings, (iv) no Event of Default has occurred and is continuing, and (v) Grantor shall have deposited with Grantee adequate reserves for the payment of the taxes, together with all interest and penalties thereon, unless paid in full under protest, or Grantor shall have furnished the security as may be required in the proceeding or as may be required by Grantee to insure payment of any contested taxes.

Section 3.06. **Insurance.** (a) Grantor shall maintain, or shall cause Lessee or Manager to maintain, with respect to the Deed Estate, at its sole expense, the following types and amounts of insurance (which may be included under a blanket insurance policy if all the other terms hereof are satisfied), in addition to such other insurance as Grantee may reasonably require from time to time:

(i) Insurance against loss, damage or destruction by fire and other casualty, including theft, vandalism and malicious mischief, flood (if the Premises is in a location designated by the Federal Emergency Management Administration as a Special Flood Hazard Area), earthquake (if the Premises is in an area subject to destructive earthquakes within recorded history), boiler explosion (if there is any boiler upon the Premises), plate glass breakage, sprinkler damage (if the Premises have a sprinkler system), all matters covered by a standard extended coverage endorsement, special coverage endorsement commonly known as an "all risk" endorsement and such other risks as Grantee may reasonably require, insuring the Deed Estate for not less than 100% of their full insurable replacement cost.

(ii) Commercial general liability and property damage insurance, including a products liability clause, covering Grantee and Grantor against bodily injury liability, property damage liability and automobile bodily injury and property damage liability, including without limitation any liability arising out of the ownership, maintenance, repair, condition or operation of the Deed Estate or adjoining ways, streets or sidewalks and, if applicable, insurance covering Grantee, against liability arising from the sale of liquor, beer or wine on the Premises. Such insurance policy or policies shall contain a broad form contractual liability endorsement under which the insurer agrees to insure Grantor's obligations under Section 7.09 hereof to the extent insurable, and a "severability of interest" clause or endorsement which precludes the insurer from denying the claim of either Grantor or Grantee because of the negligence or other acts of the other, shall be in amounts of not less than \$2,000,000.00 per injury and occurrence with respect to any insured liability, whether for personal injury or property damage, or such higher limits as Grantee may reasonably require from time to time, and shall be of form and substance reasonably satisfactory to Grantee.

(iii) Business income insurance equal to 100% of the principal and interest payable under the Note for a period of not less than twelve months.

(iv) State Worker' s compensation insurance in the statutorily mandated limits, employer' s liability insurance with limits not less than \$500,000 or such greater amount as Grantee may from time to time require and such other insurance as may be necessary to comply with applicable laws.

(b) All insurance policies shall:

(i) Provide for a waiver of subrogation by the insurer as to claims against Grantee, its employees and agents and provide that such insurance cannot be unreasonably cancelled, invalidated or suspended on account of the conduct of Grantor, its officers, directors, employees or agents;

(ii) Provide that any "no other insurance" clause in the insurance policy shall exclude any policies of insurance maintained by Grantee and that the insurance policy shall not be brought into contribution with insurance maintained by Grantee;

(iii) Contain a standard without contribution mortgage clause endorsement in favor of Grantee and its successors and assigns as their interests may appear and any other Grantee designated by Grantee;

(iv) Provide that the policy of insurance shall not be terminated, cancelled or substantially modified without at least thirty (30) days' prior written notice to Grantee and to any lender covered by any standard mortgage clause endorsement;

(v) Provide that the insurer shall not have the option to restore the Premises if Grantee elects to terminate this Deed to Secure Debt in accordance with the terms hereof;

(vi) Be issued by insurance companies licensed to do business in the state in which the Premises is located and which are rated A-:VIII or better by Best' s Key Rating Guide or otherwise approved by Grantee; and

(vii) Provide that the insurer shall not deny a claim because of the negligence of Grantor, anyone acting for Grantor or any tenant or other occupant of the Deed Estate.

It is expressly understood and agreed that the foregoing minimum limits of insurance coverage shall not limit the liability of Grantor for its acts or omissions as provided in this Deed to Secure Debt. All liability insurance policies (with the exception of worker' s compensation insurance to the extent not available under statutory law) shall designate Grantee and its successors and assigns as additional insureds as their interests may appear and shall be payable as set forth in Article IV hereof. All such policies shall be written as primary policies, with deductibles not to exceed \$25,000. Notwithstanding the foregoing, the policy for Wind and Earthquake coverage shall have a deductible not to exceed \$250,000. Any other policies, including any policy now or hereafter carried by Grantee, shall serve as excess coverage. Grantor shall procure, or shall cause Lessee or Manager to procure, policies for all insurance for periods of not less than one year and shall provide to Grantee certificates of insurance or, upon Grantee' s request, duplicate originals of insurance policies evidencing that insurance satisfying the requirements of this Deed to Secure Debt is in effect at all times.

Section 3.07. **Impound Account.** Upon the occurrence of an Event of Default under this Deed to Secure Debt or any other Loan Document, Grantee may require Grantor to pay to Grantee sums which will provide an impound account (which shall not be deemed a trust fund) for paying up to the next one year of taxes, assessments and/or insurance premiums. Upon such requirement, Grantee will estimate the amounts needed for such purposes and will notify Grantor to pay the same to Grantee in equal monthly installments, as nearly as practicable, in addition to all other sums due under this Deed to Secure Debt. Should additional funds be required at any time, Grantor shall pay the same to Grantee on demand. Grantor shall advise Grantee of all taxes and insurance bills which are due and shall cooperate fully with Grantee in assuring that the same are paid. Grantee may deposit all impounded funds in accounts insured by any federal or state agency and may commingle such funds with other funds and accounts of Grantee.

Interest or other gains from such funds, if any, shall be the sole property of Grantee. If an Event of Default shall occur subsequent to Grantee requiring the establishment of an impound account pursuant to this Section, Grantee may apply all impounded funds against any sums due from Grantor to Grantee. Grantee shall give to Grantor an annual accounting showing all credits and debits to and from such impounded funds received from Grantor.

Section 3.08. **Advances by Grantee.** Grantee may make advances to perform any of the covenants contained in this Deed to Secure Debt on Grantor's behalf and all sums so advanced (and all sums advanced pursuant to any other provision hereof) by Grantee shall be secured hereby. Grantor shall repay on demand all sums so advanced with interest thereon at the Default Rate, such interest to be computed from and including the date of the making of such advance to and including the date of such repayment, and at Grantee's election, Grantee may add the amount of such advance to the principal balance of the Loan.

Section 3.09. **Negative Covenants.** Without limiting the terms and conditions of Section 7 of the Loan Agreement, Grantor agrees that Grantor shall not, without the prior written consent of Grantee (each, a "Prohibited Transaction"), sell, convey, mortgage, grant, bargain, encumber, pledge, assign, or otherwise transfer the Deed Estate or any part thereof or permit the Deed Estate or any part thereof to be sold, conveyed, mortgaged, granted, bargained, encumbered, pledged, assigned, or otherwise transferred, other than (a) sales/consumption of inventory in the ordinary course of business, (b) the replacement of obsolete, damaged or worn-out Personal Property, (c) in accordance with Section 7.01 herein, and (d) Permitted Exceptions. A sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer within the meaning of this Section shall be deemed to include, but not limited to, (a) an installment sales agreement wherein Grantor agrees to sell the Deed Estate or any part thereof for a price to be paid in installments; and (b) an agreement by Grantor leasing all or any part of the Deed Estate (other than the Permitted Lease and room rentals in the ordinary course of business) or a sale, assignment or other transfer of, or the grant of a security interest in, Grantor's right, title and interest in and to any Lease or any Rents. Notwithstanding the foregoing, individual stockholders or limited partners of the Grantor Parties may pledge their interests in the Grantor Parties so long as such pledge does not, or could not potentially, result in a Change of Control or a change in ownership of a majority interest in the Grantor Parties.

Grantee's consent to a Prohibited Transaction shall be subject to the satisfaction of such conditions as Grantee shall determine in its sole discretion, including, without limitation, (i) Grantor having executed and delivered such modifications to the terms of this Deed to Secure Debt and the other Loan Documents as Grantee shall request, (ii) the Prohibited Transaction having been approved by each of the rating agencies which have issued ratings in connection with any Securitization of the Loan as well as any other rating agency selected by Grantee, and (iii) the proposed transferee having assumed the Note, this Deed to Secure Debt and the other Loan Documents (as modified pursuant to clause (i) above). In addition, any such consent shall be conditioned upon the payment by Grantor to Grantee of (x) a fee equal to one percent (1%) of the then outstanding principal balance of the Note and (y) all out-of-pocket costs and expenses incurred by Grantee in connection with such consent, including, without limitation, reasonable attorneys' fees. Grantee shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Obligations immediately due and payable upon Grantor's sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Deed Estate without Grantee's consent, as required hereunder. The provisions of this Section shall apply to every sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Deed Estate regardless of whether voluntary or not, or whether or not Grantee has consented to any previous sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Deed Estate.

## ARTICLE IV

### POSSESSION, USE AND RELEASE OF THE DEED ESTATE

Section 4.01. **Casualty or Condemnation.** Grantor, immediately upon obtaining knowledge of any casualty to any portion of the Deed Estate or of any proceeding or negotiation for the taking of all or

any portion of the Deed Estate in condemnation or other eminent domain proceedings, shall notify Grantee of such casualty, proceeding or negotiation. Any award, compensation or other payment resulting from such casualty or condemnation or eminent domain proceeding, as applicable, shall be applied as set forth below (the "Proceeds"). Grantee may participate in any condemnation or eminent domain proceeding, and Grantor will deliver or cause to be delivered to Grantee all instruments reasonably requested by Grantee to permit such participation.

(a) *Casualty.* (i) In the event of any material damage to or destruction of the Deed Estate or any part thereof, Grantor will promptly give written notice to Grantee, generally describing the nature and extent of such damage or destruction. No damage to or destruction of the Deed Estate shall relieve Grantor of its obligation to pay any monetary sum due under the Loan Documents at the time and in the manner provided in the Loan Documents.

(ii) In the event of any damage to or destruction of the Deed Estate or any part thereof, Grantor, whether or not the Proceeds, if any, on account of such damage or destruction shall be sufficient for the purpose, at its expense, shall within a reasonable time thereafter cause the Restoration to be commenced and completed.

(iii) Proceeds received by Grantee and Grantor on account of any occurrence of damage to or destruction of the Deed Estate or any part thereof, less the costs, fees and expenses incurred by Grantee and Grantor in the collection thereof, including, without limitation, adjuster's fees and expenses and reasonable attorneys' fees and expenses (the "Net Insurance Proceeds"), shall be paid to (1) Grantor, if the amount of such Net Insurance Proceeds is less than \$100,000 and applied by Grantor toward the cost of the Restoration, and (2) Grantee, if the amount of such Net Insurance Proceeds is \$100,000 or greater. Net Insurance Proceeds paid to Grantee shall be held and disbursed by Grantee, or as Grantee may from time to time direct, as the Restoration progresses, to pay or reimburse Grantor for the cost of the Restoration, upon written request of Grantor accompanied by evidence, reasonably satisfactory to Grantee, that (aa) the Restoration is in full compliance with all Applicable Regulations and all private restrictions and requirements, (bb) the amount requested has been paid or is then due and payable and is properly a part of such cost, (cc) there are no mechanics' or similar liens for labor or materials theretofore supplied in connection with the Restoration, (dd) if the estimated cost of the Restoration exceeds the Net Insurance Proceeds (exclusive of Proceeds received from Grantor's business income insurance), Grantor has deposited into an escrow satisfactory to Grantee such excess amount, which sum will be disbursed pursuant to escrow instructions satisfactory to Grantee, and (ee) the balance of such Net Insurance Proceeds, together with the funds deposited into escrow, if any, pursuant to the preceding subsection (dd), after making the payment requested will be sufficient to pay the balance of the cost of the Restoration. Upon receipt by Grantee of evidence reasonably satisfactory to it that the Restoration has been completed and the cost thereof paid in full, and that there are no mechanics' or similar liens for labor or materials supplied in connection therewith, the balance, if any, of such Net Insurance Proceeds shall be paid to Grantor. If at the time of the damage or destruction to the Deed Estate or at any time thereafter an Event of Default shall have occurred and be continuing under the Loan Documents, all Net Insurance Proceeds shall be paid to Grantee, and Grantee may retain and apply the Net Insurance Proceeds toward the Obligations whether or not then due and payable, in such order, priority and proportions as Grantee in its discretion shall deem proper, or to cure such Event of Default, or, in Grantee's discretion, Grantee may pay such Net Insurance Proceeds in whole or in part to Grantor to be applied toward the cost of the Restoration. If Grantee shall receive and retain Net Insurance Proceeds, the lien of this Deed to Secure Debt shall be reduced only by the amount received and retained by Grantee and actually applied by Grantee in reduction of the Obligations.

(b) *Condemnation.* (i) In case of a taking of all or any part of the Deed Estate or the commencement of any proceedings or negotiations which might result in a taking, for any public or quasi-public purpose by any lawful power or authority by exercise of the right of condemnation or eminent domain or by agreement between Grantee, Grantor and those authorized to exercise such right ("Taking"), Grantor will promptly give written notice thereof to Grantee, generally describing the nature and extent of such Taking. Grantee shall file and prosecute on behalf of Grantee and Grantor any and all claims for Proceeds, and all Proceeds on account of a Taking shall be paid to Grantee.

(ii) In case of a Taking of the whole of the Deed Estate, other than for temporary use ("Total Taking"), or in case of a Taking of less than all of the Deed Estate ("Partial Taking"), the Loan Documents shall remain in full force and effect. In the case of a Partial Taking, Grantor, whether or not the Proceeds, if any, on account of such Partial Taking shall be sufficient for the purpose (but provided they are made available by Grantee for such purpose), at its own cost and expense, will within a reasonable time thereafter commence and complete the Restoration. In case of a Partial Taking, other than a temporary use, of such a substantial part of the Deed Estate as shall result in the Deed Estate remaining after such Partial Taking being unsuitable for use, such Taking shall be deemed a Total Taking.

(iii) In case of a temporary use of the whole or any part of the Deed Estate by a Taking, the Loan Documents shall remain in full force and effect without any reduction of any monetary sum payable under the Loan Documents. In any proceeding for such Taking, Grantee shall have the right to intervene and participate; provided that, if such intervention shall not be permitted, Grantor shall consult with Grantee, its attorneys and experts, and make all reasonable efforts to cooperate with Grantee in the prosecution or defense of such proceeding. At the termination of any such use or occupation of the Deed Estate, Grantor will, at its own cost and expense, promptly commence and complete the Restoration.

(iv) Proceeds on account of a Taking, less the costs, fees and expenses incurred by Grantee and Grantor in connection with the collection thereof, including, without limitation, reasonable attorneys' fees and expenses, shall be applied in the following order:

(x) Proceeds received on account of a Total Taking shall be allocated as follows:

(aa) There shall be paid to the Grantee an amount up to the sum of the outstanding principal, including all sums advanced by Grantee hereunder, and interest under the Note, all as of the date on which such payment is made, such amount shall be applied first against all sums advanced by Grantee under this Deed to Secure Debt, second against the accrued but unpaid interest on the Note, and third to the remaining unpaid principal amount of the Note. If the Proceeds received on account of a Total Taking are not sufficient to satisfy the outstanding principal balance of the Note, all accrued but unpaid interest on the Note, all other sums due under the Note, all sums advanced by Grantee under this Deed to Secure Debt and all other sums due and payable under this Deed to Secure Debt and the other Loan Documents corresponding to the Premises (collectively, the "Outstanding Obligations"), Grantor shall pay to Grantee simultaneously with the payment of such Proceeds to Grantee the difference between the amount of such Proceeds and the amount of the Outstanding Obligations.

(bb) Any remaining balance shall be paid to Grantor.

(y) Proceeds received on account of a Partial Taking shall be held and allocated as follows:

(i) first, toward the cost of the Restoration, such application of net awards and other payments to be made substantially in the manner provided in Section 4.01(a)(iii) of this Deed to Secure Debt; and

(ii) then, all or any portion of the balance of such proceeds shall, in Grantee's sole discretion, either be paid to:

(1) Grantee, as the holder of this Deed to Secure Debt, and applied toward the Outstanding Obligations in such order, priority and proportion, and at such time on or prior to the Maturity Date (as defined in the Note), as Grantee shall determine; or

(2) Grantor; provided, however, in Grantee's sole discretion, such proceeds shall be pledged to Grantee to secure the Outstanding Obligations



pursuant to a security agreement reasonably satisfactory to Grantee, or, with Grantee's consent, Grantor shall provide Grantee with alternative security satisfactory to Grantee in its sole discretion.

Grantee may deposit any funds held by it in accounts insured by any federal or state agency and may commingle such funds with other funds and accounts of Grantee.

(z) Proceeds received on account of a Taking for temporary use shall be held by Grantee and applied to the payment of the monthly installments of combined interest and principal becoming due under the Note, until such Taking for temporary use is terminated and the Restoration, if any, has been completed; provided, however, that, if any portion of any such award or payment is made by reason of any damage to or destruction of the Deed Estate, such portion shall be held and applied as provided in Section 4.01(a)(iii) hereof. The balance, if any, of such awards and payments shall be paid to Grantor.

(v) Notwithstanding the foregoing, if at the time of any Taking or at any time thereafter an Event of Default shall have occurred and be continuing under the Loan Documents, Grantee is hereby authorized and empowered, in the name and on behalf of Grantor and otherwise, to file and prosecute Grantor's claim, if any, for an award on account of any Taking and to collect such award and apply the same, after deducting all costs, fees and expenses incident to the collection thereof (the "Net Award"), toward the Obligations whether or not then due and payable, in such order, priority and proportions as Grantee in its discretion shall deem proper, or to cure such Event of Default, or, in Grantee's discretion, Grantee may pay the Net Award in whole or in part to Grantor to be applied toward the cost of the Restoration. If Grantee shall receive and retain the Net Award, the lien of this Deed to Secure Debt shall be reduced only by the amount received and retained by Grantee and actually applied by Grantee in reduction of the Obligations.

Section 4.02. **Conveyance in Anticipation of Condemnation, Granting of Easements, Etc.** If no Event of Default shall have occurred and be continuing, Grantor may, from time to time with respect to its interest in the Deed Estate, and with Grantee's prior written consent, (i) sell, assign, convey or otherwise transfer any interest therein to any person legally empowered to take such interest under the power of eminent domain, (ii) grant easements and other rights in the nature of easements, (iii) release existing easements or other rights in the nature of easements which are for the benefit of the Deed Estate, (iv) dedicate or transfer unimproved portions of the Deed Estate for road, highway or other public purposes, (v) execute petitions to have the Deed Estate annexed to any municipal corporation or utility district, and (vi) execute and deliver to any person any instrument appropriate to confirm or effect such grants, releases, dedications and transfers.

Section 4.03. **Grantee's Power.** At any time, or from time to time, without liability therefor, Grantee, without affecting the personal liability of any person for payment of the Obligations or the effect of this Deed to Secure Debt upon the remainder of said Deed Estate, may from time to time without notice (i) release any part of said Deed Estate, (ii) consent in writing to the making of any map or plat thereof, (iii) join in granting any easement thereon, (iv) join in any extension agreement or any agreement subordinating the lien or charge hereof, (v) release any person so liable, (vi) extend the maturity or alter any of the terms of any Obligations, (vii) grant other indulgences, (viii) take or release any other or additional security for any Obligations, (ix) make compositions or other arrangements with debtors in relation thereto, or (x) advance additional funds to protect the security hereof or to pay or discharge the Obligations in the event Grantor fails to do so, and all amounts so advanced shall be secured hereby and shall be due and payable upon demand by Grantee.

## ARTICLE V

### SECURITY INTEREST

Section 5.01. **Security Agreement.** With respect to the Personal Property or any portion of the Deed Estate which constitutes fixtures or other property governed by the UCC, this Deed to Secure Debt shall constitute a security agreement between Grantor, as the debtor, and Grantee, as the secured party,

and Grantor hereby grants to Grantee a security interest in such portion of the Deed Estate. Cumulative of all other rights of Grantee hereunder, Grantee shall have all of the rights conferred upon secured parties by the UCC. Grantor authorizes Grantee to file financing statements with respect to the security interest of Grantee, continuation statements with respect thereto, and any amendments to such financing statements which may be necessitated by reason of any of the changes described in Section 6.C of the Loan Agreement. Furthermore, at any time, and from time to time, Grantor will execute and deliver to Grantee all financing statements that may from time to time be required by Grantee to establish and maintain the validity and priority of the security interest of Grantee, or any modification thereof. Grantee may exercise any or all of the remedies of a secured party available to it under the UCC with respect to such property. If, upon the occurrence and during the continuance of an Event of Default, Grantee proceeds to dispose of such property in accordance with the provisions of the UCC, 10 days' notice by Grantee to Grantor shall be deemed to be reasonable notice under any provision of the UCC requiring such notice; provided, however, that Grantee may at its option dispose of such property in accordance with Grantee's rights and remedies with respect to the real property pursuant to the provisions of this Deed to Secure Debt, in lieu of proceeding under the UCC. Grantor represents that its exact legal name and state of formation or organization are as set forth in the first paragraph of this Deed to Secure Debt. Grantor agrees that, notwithstanding any provision in the UCC to the contrary, Grantor shall not file a termination statement of any financing statement filed by Grantee in connection with any security interest granted under this Deed to Secure Debt if Grantee reasonably objects to the filing of such termination statement.

Section 5.02. ***Effective as a Financing Statement and Fixture Filing.*** This Deed to Secure Debt shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Deed Estate and is to be filed for record in the real estate records of each county where any part of the Deed Estate (including said fixtures) is situated. This Deed to Secure Debt shall also be effective as a financing statement covering any other portion of the Deed Estate and may be filed in any other appropriate filing or recording office. The mailing address of Grantor is the address of Grantor set forth in the introductory paragraph of this Deed to Secure Debt, and the address of the Grantee from which information concerning the security interests hereunder may be obtained is the address of Grantee as set forth in the introductory paragraph of this Deed to Secure Debt. A carbon, photographic or other reproduction of this Deed to Secure Debt or of any financing statement relating to this Deed to Secure Debt shall be sufficient as a financing statement for any of the purposes referred to in this Section.

Information concerning the security interest created by this instrument may be obtained from Grantee, as secured party, at the address of Grantee stated in the introductory paragraph of this Deed to Secure Debt. The mailing address of Grantor, as debtor, is as stated in the introductory paragraph of this Deed to Secure Debt.

Grantor and Grantee agree that the filing of any such financing statement or statements in the records normally having to do with personal property shall not in any way affect the agreement of Grantor and Grantee that the Personal Property at all times and for all purposes and in all proceedings, legal or equitable, shall be, regarded as part of the real estate conveyed hereby regardless of whether (1) any such item is physically attached to the improvements, (2) serial numbers are used for the better identification of certain items capable of being thus identified in an exhibit to this Deed to Secure Debt, or (3) any such item is referred to or reflected in any such financing statement or statements so filed at any time. Similarly, the mention in any such financing statement or statements of the rights in and to (A) the proceeds of any insurance policy, or (B) any award in eminent domain proceedings for a taking or for loss of value, or (C) Grantor's interest as lessor in any present or future lease or rights to income growing out of any such leases, shall not in any way alter any of the rights of Grantee as determined by this Deed to Secure Debt or affect the priority of Grantee's security interest granted hereby or by any other recorded document, it being understood and agreed that such mention in such financing statement or statements is solely for the protection of Grantee in the event any court shall at any time hold with respect thereto, that notice of Grantee's priority of interest, to be effective against all persons or against a particular class of persons, must be filed in the Uniform Commercial Code records.

Grantor warrants that Grantor's name, identity or corporate structure and residence or principal place of business are set forth herein. Grantor covenants and agrees that Grantor will promptly execute



any financing statements or other instruments deemed necessary by Grantee to prevent any filed financing statement from becoming misleading or losing its perfected status.

The mailing address of the “Secured Party” from which information concerning the security interest may be obtained, and the mailing address of “Grantor,” are as set forth herein; and a statement indicating the types, or describing the items, of collateral making up the Deed Estate is set forth hereinabove.

## ARTICLE VI

### EVENTS OF DEFAULT AND REMEDIES

Section 6.01. ***Events of Default.*** Each of the following shall be an event of default under this Deed to Secure Debt (each an “Event of Default”):

(a) Subject to the provisions of Section 3.05(b) of this Deed to Secure Debt, if Grantor fails to pay, prior to delinquency, any taxes, assessments or other charges the failure of which to pay will result in the imposition of a lien against the Deed Estate pursuant to Applicable Regulations.

(b) If Grantor shall fail to maintain insurance in accordance with the requirements of Section 3.06 of this Deed to Secure Debt.

(c) If Grantor fails to observe or perform any of the covenants, conditions, or obligations of this Deed to Secure Debt, provided, however, if any such failure does not involve the payment of any principal, interest or other monetary sum due under the Note, is not willful or intentional, does not place any rights or interest in collateral of Grantee in immediate jeopardy, and is within the reasonable power of Grantor to promptly cure after receipt of notice thereof, all as determined by Grantee in its reasonable discretion, then such failure shall not constitute an Event of Default hereunder, unless otherwise expressly provided herein, unless and until Grantee shall have given Grantor notice thereof and a period of 30 days shall have elapsed, during which period Grantor may correct or cure such failure, upon failure of which an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required. If such failure cannot reasonably be cured within such 30-day period, as determined by Grantee in its reasonable discretion, and Grantor is diligently pursuing a cure of such failure, then Grantor shall have a reasonable period to cure such failure beyond such 30-day period, which shall in no event exceed 90 days after receiving notice of the failure from Grantee. If Grantor shall fail to correct or cure such failure within such 90-day period, an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required.

(d) If there is an “Event of Default” under the Loan Agreement.

Section 6.02. ***Remedies.*** Upon the occurrence and during the continuance of an Event of Default subject to the limitations set forth in Section 6.01, Grantee may declare all or any part of the Obligations to be due and payable, and the same shall thereupon become due and payable without any presentment, demand, protest or notice (including notice of intent to accelerate and notice of acceleration) of any kind except as otherwise expressly provided herein. Furthermore, upon the occurrence and during the continuance of an Event of Default, Grantee may:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon and take possession of the Deed Estate or any part thereof and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Deed Estate, or part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Deed Estate, take any action described herein, sue for or otherwise collect the Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection including reasonable attorneys’ fees, upon any Obligations, all in such order as Grantee may determine. The entering upon and taking possession of the

Deed Estate, the taking of any action described herein, the collection of such Rents, and the application thereof as aforesaid, shall not cure or waive any Event of Default or notice of default or invalidate any act done in response to such Event of Default or pursuant to such notice of default and, notwithstanding the continuance in possession of the Deed Estate or the collection, receipt and application of Rents, Grantee shall be entitled to exercise every right provided for in any of the Loan Documents or by law upon any Event of Default, including the right to exercise the power of sale herein conferred;

(b) Commence an action to foreclose this Deed to Secure Debt in a single parcel or in several parcels, appoint a receiver or specifically enforce any of the covenants hereof;

(c) Exercise any or all of the remedies available to a secured party under the Uniform Commercial Code as adopted in the State ("UCC"), including, without limitation:

(i) Either personally or by means of a court appointed receiver, commissioner or other officer, take possession of all or any of the Personal Property and exclude therefrom Grantor and all others claiming under Grantor, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Grantor in respect of the Personal Property or any part thereof. In the event Grantee demands or attempts to take possession of the Personal Property in the exercise of any rights under any of the Loan Documents, Grantor promises and agrees to promptly turn over and deliver complete possession thereof to Grantee;

(ii) Without notice to or demand upon Grantor, make such payments and do such acts as Grantee may deem necessary to protect its security interest in the Personal Property, including, without limitation, paying, purchasing, contesting or compromising any encumbrance, charge or lien which is prior to or superior to the security interest granted hereunder and, in exercising any such powers or authority, to pay all expenses incurred in connection therewith;

(iii) Require Grantor to assemble the Personal Property or any portion thereof, at the Premises, and promptly to deliver such Personal Property to Grantee, or an agent or representative designated by it. Grantee, and its agents and representatives, shall have the right to enter upon the Deed Estate to exercise Grantee's rights hereunder;

(iv) Sell, lease or otherwise dispose of the Personal Property at public sale, with or without having the Personal Property at the place of sale, and upon such terms and in such manner as Grantee may determine. Grantee may be a purchaser at any such sale;

(v) Unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Grantee shall give Grantor at least 10 days' prior written notice of the time and place of any public sale of the Personal Property or other intended disposition thereof. Such notice may be delivered to Grantor at the address set forth at the beginning of this Deed to Secure Debt and shall be deemed to be given as provided herein; and

(vi) Any sale made pursuant to the provisions of this subsection shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the sale of all or a portion of the other Deed Estate under power of sale as provided herein upon giving the same notice with respect to the sale of the Personal Property hereunder as is required for such sale of the other Deed Estate under power of sale, and such sale shall be deemed to be pursuant to a security agreement covering both real and personal property under the UCC.

(d) Exercise all of Grantor's rights and remedies under the Indemnity Agreements, including, without limitation, making demands and claims and receiving payments under the

Indemnity Agreements. Grantor hereby grants Grantee a power of attorney (which grant shall be deemed irrevocable and coupled with an interest) to exercise such rights and remedies;

(e) Apply any sums then deposited in the impound account described in Section 3.07 toward payment of the taxes, assessment and insurance premiums for the Deed Estate and/or as a credit on the Obligations in such priority and proportion as Grantee may determine in its sole discretion;

(f) If held by Grantee, surrender the insurance policies maintained pursuant to Section 3.06, collect the unearned insurance premiums and apply such sums as a credit on the Obligations in such priority and proportion as Grantee in its sole discretion shall deem proper, and in connection therewith, Grantor hereby appoints Grantee as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Grantee to collect such insurance premiums; and

(g) Sell Grantor' s interest in the Deed Estate pursuant to the power of sale herein conferred. If Grantee elects to sell Grantor' s interest in the Deed Estate by exercise of such power of sale, Grantee shall cause such sale to be performed in the manner then required by law.

(i) Grantee, at its option, may sell the Deed Estate or any part of the Deed Estate at one or more public sale or sales before the door of the courthouse of the county in which the Deed Estate or any part of the Deed Estate is situated, to the highest bidder for cash, in order to pay the Obligations, and all expenses of sale and of all proceedings in connection therewith, including reasonable attorneys' fees, after advertising the time, place and terms of sale once a week for four consecutive weeks immediately preceding such sale (but without regard to the number of days) in a newspaper in which Sheriff' s sales are advertised in said county. At any such public sale, Grantee may execute and deliver to the purchaser a conveyance of the Deed Estate or any part of the Deed Estate in fee simple with full warranties of title, and to this end Grantor hereby constitutes and appoints Grantee the agent and attorney-in-fact of Grantor to make such sale and conveyance, and thereby to divest Grantor of all right, title and equity that Grantor may have in and to the Deed Estate and to vest the same in lawful money of the United States payable at the time of sale, or as otherwise may then be required by law. Grantee shall deliver to such purchaser or purchasers at such sale or sales, and all the acts and doings of said agent and attorney-in-fact are hereby ratified and confirmed and any recitals in said conveyance or conveyances as to facts essential to a valid sale shall be binding upon Grantor. The aforesaid power of sale and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise, are granted as cumulative of the other remedies provided hereby or by law for collection of the Obligations and shall not be exhausted by one exercise thereof but may be exercised until full payment of all of the Obligations. In the event of any sale under this Deed to Secure Debt by virtue of the exercise of the powers herein granted, or pursuant to any order in any judicial proceeding or otherwise, the Deed Estate may be sold as an entirety or in separate parcels and in such manner or order as Grantee in its sole discretion may elect, and, if Grantee so elects, Grantee may sell the personal property covered by this Deed to Secure Debt at one or more separate sales in any manner permitted by the Uniform Commercial Code of the State of Georgia, and one or more exercises of the powers herein granted shall not extinguish nor exhaust such powers, until the entire Deed Estate is sold or the Obligations are paid in full. If the Obligations are now or hereafter further secured by any chattel mortgages, pledges, contracts of guaranty, assignments of lease or other security instruments, Grantee may at its option exhaust the remedies granted under any of said security instruments either concurrently or independently and in such order as Grantee may determine.

(ii) If an Event of Default shall have occurred and be continuing, Grantee may, in addition to and not in abrogation of the rights covered under subsection (i) above, either

with or without entry or taking possession as herein provided or otherwise, proceed by a suit or suits in law or in equity or by any other appropriate proceeding or remedy (1) to enforce payment of the indebtedness under the Note or the performance of any term, covenant, condition or agreement of this Deed to Secure Debt or any other right and (2) to pursue any other remedy available to it, all as Grantee at its sole discretion shall elect.

(iii) As may be permitted by law, Grantee shall apply the proceeds of sale (1) first, to payment of all costs, fees and expenses, including reasonable attorneys' fees and expenses incurred by the Grantee in exercising the power of sale or foreclosing this Deed to Secure Debt, and (2) second, as directed by Grantee toward the Obligations or as may be required by law.

(iv) Grantee may in the manner provided by law postpone sale of all or any portion of the Deed Estate.

(v) Upon any foreclosure sale or sales of all or any portion of the Deed Estate under the power herein granted, Grantee may bid for and purchase the Deed Estate and shall be entitled to apply all or any part of the Obligations as a credit to the purchase price.

(vi) Grantor represents and warrants to Grantee that neither the Deed Estate nor any part thereof is to be used as a dwelling place by Grantor at the time this Deed to Secure Debt is entered into, and, accordingly, the notice requirements of O.C.G.A. § 44-14-162.2 shall not be applicable to any exercise of the power of sale contained in this Deed to Secure Debt.

Section 6.03. ***Appointment of Receiver.*** If an Event of Default shall have occurred and be continuing, Grantee, as a matter of right and without notice to Grantor or anyone claiming under Grantor, and without regard to the then value of the Deed Estate or the interest of Grantor therein, or the insolvency of Grantor or the then-owner of the Deed Estate, may seek the appointment of a receiver for the Deed Estate upon *ex parte* application to any court of competent jurisdiction. Grantor waives any right to any hearing or notice of hearing prior to the appointment of a receiver. Such receiver shall be empowered (a) to take possession of the Deed Estate and any businesses conducted by Grantor thereon and any business assets used in connection therewith, (b) to exclude Grantor and Grantor's agents, servants and employees from the Deed Estate, or, at the option of the receiver, in lieu of such exclusion, to collect a fair market rental from any such persons occupying any part of the Deed Estate, (c) to collect the Rents, (d) to complete any construction that may be in progress, (e) to continue the development, marketing and sale of the Deed Estate, (f) to do such maintenance and make such repairs and alterations as the receiver deems necessary, (g) to use all stores of materials, supplies and maintenance equipment on the Deed Estate and replace such items at the expense of the receivership estate, (h) to pay all taxes and assessments against the Deed Estate, all premiums for insurance thereon, all utility and other operating expenses, and all sums due under any prior or subsequent encumbrance, (i) to request that Grantee advance such funds as may reasonably be necessary to the effective exercise of the receiver's powers, on such terms as may be agreed upon by the receiver and Grantee, but not in excess of the Default Rate, and (j) generally to do anything that Grantor could legally do if Grantor were in possession of the Deed Estate. All expenses incurred by the receiver or his agents, including obligations to repay funds borrowed by the receiver, shall constitute a part of the Obligations. Any revenues collected by the receiver shall be applied first to the expenses of the receivership, including reasonable attorneys' fees incurred by the receiver and by Grantee, together with interest thereon at the highest rate of interest applicable in the Note from the date incurred until repaid, and the balance shall be applied toward the Obligations or in such other manner as the court may direct.

Section 6.04. ***Remedies Not Exclusive.*** Grantee shall be entitled to enforce payment and performance of any Obligations and to exercise all rights and powers under this Deed to Secure Debt or under any Loan Documents or Other Agreements or any laws now or hereafter in force, notwithstanding some or all of the Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed to Secure Debt nor its

enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Grantee' s right to realize upon or enforce any other security now or hereafter held by Grantee, it being agreed that Grantee shall be entitled to enforce this Deed to Secure Debt and any other security now or hereafter held by Grantee in such order and manner as it may in its absolute discretion determine. No remedy herein conferred upon or reserved to Grantee is intended to be exclusive of any other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Grantee, or to which Grantee may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Grantee. Grantee may pursue inconsistent remedies.

The acceptance by Grantee of any sum after the same is due shall not constitute a waiver of the right either to require prompt payment, when due, of all other sums hereby secured or to declare a subsequent Event of Default as herein provided. The acceptance by Grantee of any sum in an amount less than the sum then due shall be deemed an acceptance on account only and upon condition that it shall not constitute a waiver of the obligation of Grantor to pay the entire sum then due, and failure of Grantor to pay such entire sum then due shall be an Event of Default, notwithstanding such acceptance of such amount on account, as aforesaid. Grantee shall be, at all times thereafter and until the entire sum then due as contemplated by the Loan Documents shall have been paid, and notwithstanding the acceptance by Grantee thereafter of further sums on account, or otherwise, entitled to exercise all rights in this instrument conferred upon them or either of them, and the right to proceed with a sale under any notice of default, or an election to sell, or the right to exercise any other rights or remedies hereunder, shall in no way be impaired, whether any of such amounts are received prior or subsequent to such proceeding, election or exercise. Consent by Grantee to any action or inaction of Grantor which is subject to consent or approval of Grantee hereunder shall not be deemed a waiver of the right to require such consent or approval to future or successive actions or inactions.

Section 6.05. **Possession of Deed Estate.** In the event of a trustee' s sale or foreclosure sale hereunder and after the time of such sale, Grantor occupies the portion of the Deed Estate so sold, or any part thereof, Grantor shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of either tenant or landlord, at a reasonable rental per day based upon the value of the portion of the Deed Estate so occupied, such rental to be due and payable daily to the purchaser. An action of unlawful detainer shall lie if the tenant holds over after a demand in writing for possession of such Deed Estate; and this Deed to Secure Debt and a trustee' s or sheriff' s deed shall constitute a lease and agreement under which the tenant' s possession arose and continued. Nothing contained in this Deed to Secure Debt shall be construed to constitute Grantee as a "mortgagee in possession" in the absence of its taking actual possession of the Deed Estate pursuant to the powers granted herein.

Section 6.06. **Waiver of Rights.** Grantor waives the benefit of all laws now existing or that hereafter may be enacted (i) providing for any appraisalment before sale of any portion of the Deed Estate, or (ii) in any way extending the time for the enforcement of the collection of the Obligations or creating or extending a period of redemption from any sale made in collecting the Obligations. Grantor agrees that Grantor will not at any time insist upon, plea, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisalment, valuation, stay, extension, redemption or homestead exemption, and Grantor, for Grantor, Grantor' s representatives, successors and assigns, and for any and all persons ever claiming any interest in the Deed Estate, hereby waives and releases all rights of redemption, valuation, appraisalment, stay of execution, homestead exemption, notice of election to mature or declare due the whole of the Obligations and marshaling in the event of foreclosure of the liens hereby created. If any law referred to in this Section and now in force, of which Grantor, Grantor' s heirs, devisees, representatives, successors and assigns or other person might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section. Grantor expressly waives and relinquishes any and all rights, remedies and defenses that Grantor may have or be able to assert by reason of the laws of the State pertaining to the rights, remedies and defenses of sureties.

Section 6.07. **Relief From Stay.** In the event that Grantor commences a case under the Code or

is the subject of an involuntary case that results in an order for relief under the Code, subject to court approval, Grantee shall thereupon be entitled and Grantor irrevocably consents to relief from any stay imposed by Section 362 of the Code on or against the exercise of the rights and remedies otherwise available to Grantee as provided in the Loan Documents and Grantor hereby irrevocably waives its rights to object to such relief. In the event Grantor shall commence a case under the Code or is the subject of an involuntary case that results in an order for relief under the Code, Grantor hereby agrees that no injunctive relief against Grantee shall be sought under Section 105 or other provisions of the Code by Grantor or other person or entity claiming through Grantor, nor shall any extension be sought of the stay provided by Section 362 of the Code.

Section 6.08. **Cash Collateral.** Grantor hereby acknowledges and agrees that in the event that Grantor commences a case under the Code or is the subject of an involuntary case that results in an order for relief under the Code: (i) that all of the Rents are, and shall for purposes be deemed to be, “proceeds, product, offspring, rents, or profits” of the Premises covered by the lien of this Deed to Secure Debt, as such quoted terms are used in Section 552(b) of the Code; (ii) that in no event shall Grantor assert, claim or contend that any portion of the Rents are, or should be deemed to be, “accounts” or “accounts receivable” within the meaning of the Code and/or applicable state law; (iii) that the Rents are and shall be deemed to be in any such bankruptcy proceeding “cash collateral” of Grantee as that term is defined in Section 363 of the Code; and (iv) that Grantee has valid, effective, perfected, enforceable and “choate” rights in and to the Rents without any further action required on the part of Grantee to enforce or perfect its rights in and to such cash collateral, including, without limitation, providing notice to Grantor under Section 546(b) of the Code.

Section 6.09. **Assignment of Rents and Leases.** (a) Grantor hereby assigns, transfers, conveys and sets over to Grantee all of Grantor’s estate, right, title and interest in, to and under the Leases, whether existing on the date hereof or hereafter entered into, together with any changes, extensions, revisions or modifications thereof and all rights, powers, privileges, options and other benefits of Grantor as the lessor under the Leases regarding the current tenants and any future tenants, and all the Rents from the Leases, including those now due, past due or to become due. Grantor irrevocably appoints Grantee its true and lawful attorney-in-fact, at the option of Grantee, at any time and from time to time upon the occurrence and during the continuance of an Event of Default, to take possession and control of the Premises, pursuant to Grantor’s rights under the Leases, to exercise any of Grantor’s rights under the Leases, and to demand, receive and enforce payment, to give receipts, releases and satisfaction and to sue, in the name of Grantor or Grantee, for all of the Rents. The power of attorney granted hereby shall be irrevocable and coupled with an interest and shall terminate only upon the payment of all sums due Grantee for all losses, costs, damages, fees and expenses whatsoever associated with the exercise of this power of attorney, and Grantor hereby releases Grantee from all liability (other than as a result of the gross negligence or willful misconduct of Grantee) whatsoever for the exercise of the foregoing power of attorney and all actions taken pursuant thereto. The consideration received by Grantor to execute and deliver this assignment and the liens and security interests created herein is legally sufficient and will provide a direct economic benefit to Grantor. It is intended by Grantor and Grantee that the assignment set forth herein constitutes an absolute assignment and not merely an assignment for additional security. Notwithstanding the foregoing, this assignment shall not be construed to bind Grantee to the performance of any of the covenants, conditions or provisions of Grantor contained in the Leases or otherwise to impose any obligation upon Grantee, and, so long as no Event of Default shall have occurred and be continuing, Grantor shall have a license, revocable upon an Event of Default, to possess and control the Premises and collect and receive all Rents. Upon an Event of Default, such license shall be automatically revoked.

(b) Upon the occurrence and during the continuance of an Event of Default, Grantee may, at any time without notice (except if required by applicable law), either in person, by agent or by a court-appointed receiver, regardless of the adequacy of Grantee’s security, and at its sole election (without any obligation to do so), enter upon and take possession and control of the Premises, or any part thereof, to perform all acts necessary and appropriate to operate and maintain the Premises, including, but not limited to, execute, cancel or modify the Leases, make repairs to the Premises, execute or terminate contracts providing for the management or maintenance of the Premises, all on such terms as are deemed best to protect the security of this assignment, and in Grantee’s or Grantor’s name, sue for or otherwise collect



such Rents as specified in this Deed to Secure Debt as the same become due and payable, including, but not limited to, Rents then due and unpaid. Grantee may so sue for or otherwise collect such Rents with or without taking possession of the Premises. Grantor agrees that upon the occurrence and during the continuance of an Event of Default, each tenant of the Premises shall make its rent payable to and pay such rent to Grantee (or Grantee's agents) on Grantee's written demand therefor, delivered to such tenant personally, by mail, or by delivering such demand to each rental unit, without any liability on the part of said tenant to inquire further as to the existence of an Event of Default by Grantor.

(c) Rents collected subsequent to any Event of Default shall be applied at the direction of, and in such order as determined by, Grantee to the costs, if any, of taking possession and control of and managing the Premises and collecting such amounts, including, but not limited to, reasonable attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Premises, premiums on insurance policies, taxes, assessments and other charges on the Premises, and the costs of discharging any obligation or liability of Grantor with respect to the Leases and to the sums secured by this Deed to Secure Debt. Grantee or the receiver shall have access to the books and records used in the operation and maintenance of the Premises and shall be liable to account only for those Rents actually received.

(d) Grantee shall not be liable to Grantor, anyone claiming under or through Grantor or anyone having an interest in the Premises by reason of anything done or left undone by Grantee hereunder, except to the extent of Grantee's gross negligence or willful misconduct.

(e) Any entering upon and taking possession and control of the Premises by Grantee or the receiver and any application of Rents as provided herein shall not cure or waive any Event of Default hereunder or invalidate any other right or remedy of Grantee under applicable law or provided therein.

## ARTICLE VII

### MISCELLANEOUS

Section 7.01. ***Satisfaction/Partial Release.*** If and when the Obligations shall have become due and payable (whether by lapse of time or by acceleration or by the exercise of the privilege of prepayment), and Grantor shall pay or cause to be paid (provided such payment is permitted or required by the Note the full amount thereof and shall also pay or cause to be paid all other sums payable by the Grantor Parties to the Grantee Entities with respect to the Obligations, then this Deed to Secure Debt shall be void (otherwise it shall remain in full force and effect in law and equity forever) and Grantee agrees to execute an instrument evidencing the satisfaction of all obligations under this Deed to Secure Debt and releasing this Deed to Secure Debt which shall be prepared and recorded at Grantor's sole expense. In addition and notwithstanding the foregoing, Grantor may request release of a single property (the "Release Site") securing the Obligations ("Partial Release") provided that (i) no Event of Default has occurred or is continuing under the Loan Documents with Grantee or any of its Affiliates, (ii) the Fixed Charge Coverage Ratio (as defined in the Loan Documents) on all remaining properties securing the Obligations exceeds 1.3:1 on an aggregate and individual basis, (iii) the Release Site is being sold by the Grantor in an arms-length transaction, (iv) proceeds from the sale of the Release Site are being used to repay the Obligations assigned to the Release Site, and such payment shall be subject to any applicable prepayment premiums or penalties, (v) Grantor gives at least 30-days prior notice to Grantee, (vi) a minimum of twenty-one (21) hotel real property sites remain in the portfolio (in other words, continue to secure the Obligations), (vii) more than nine (9) months have passed since the date of this Deed to Secure Debt, and (viii) the remaining unexpired term of the Loan exceeds six (6) months.

Section 7.02. ***Limitation of Rights of Others.*** Nothing in this Deed to Secure Debt is intended or shall be construed to give to any person, other than Grantor and the holder of the Note, any legal or equitable right, remedy or claim under or in respect of this Deed to Secure Debt or any covenant, condition or provision herein contained.

Section 7.03. ***Severability.*** In case any one or more of the provisions contained herein or in the Note shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Deed to Secure Debt shall be

construed as if such provision had never been contained herein or therein.

Section 7.04. **Notices; Amendments; Waiver.** All notices, demands, designations, certificates, requests, offers, consents, approvals, appointments and other instruments given pursuant to this Deed to Secure Debt (collectively called "Notices") shall be in writing and given by (a) hand delivery, (b) facsimile, (c) express overnight delivery service or (d) certified or registered mail, return receipt requested and shall be deemed to have been delivered upon (i) receipt, if hand delivered, (ii) transmission, if delivered by facsimile, (iii) the next Business Day, if delivered by express overnight delivery service, or (iv) the third Business Day following the day of deposit of such notice with the United States Postal Service, if sent by certified or registered mail, return receipt requested. Notices shall be provided to the parties and addresses (or facsimile numbers, as applicable) specified below:

If to Grantor:

Supertel Limited Partnership  
309 North 5th Street, PO Box 1448  
Norfolk, Nebraska 68701  
Attn: Donavon Heimes  
Telephone: (402) 371-2520  
Telecopy: (402) 371-4229

If to Grantee:

General Electric Capital Corporation  
8377 East Hartford Drive, Suite 200  
Scottsdale, Arizona 85255  
Attention: Collateral Management  
Telephone: 480-585-4500  
Telecopy: 480-585-2225

or to such other address or such other person as either party may from time to time hereafter specify to the other party in a notice delivered in the manner provided above. Whenever in this Deed to Secure Debt the giving of Notice is required, the giving thereof may be waived in writing at any time by the person or persons entitled to receive such Notice. Except as in this Deed to Secure Debt otherwise expressly provided, (i) this Deed to Secure Debt may not be modified except by an instrument in writing executed by Grantor and Grantee and (ii) no requirement hereof may be waived at any time except by a writing signed by the party against whom such waiver is sought to be enforced, nor shall any waiver be deemed a waiver of any subsequent breach or default.

Section 7.05. **Successors and Assigns.** All of the provisions herein contained shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto, to the same extent as if each such successor and assign were in each case named as a party to this Deed to Secure Debt. Wherever used, the singular shall include the plural, the plural shall include the singular and the use of any gender shall include all genders.

Section 7.06. **Headings.** The headings appearing in this Deed to Secure Debt have been inserted for convenient reference only and shall not modify, define, limit or expand the express provisions of this Deed to Secure Debt.

Section 7.07. **Time of the Essence.** Time is of the essence in the performance of each and every obligation under this Deed to Secure Debt.

Section 7.08. **Forum Selection; Jurisdiction; Venue; Choice of Law.** Grantor acknowledges that this Deed to Secure Debt was substantially negotiated in the State of Arizona, this Deed to Secure Debt was delivered in the State of Arizona, all payments under the Loan Documents will be delivered in the State of Arizona and there are substantial contacts between the parties and the transactions contemplated herein and the State of Arizona. For purposes of any action or proceeding arising out of this Deed to Secure Debt, the parties hereto expressly submit to the jurisdiction of all federal and state courts located in the State of Arizona. Grantor consents that it may be served with any process or paper by registered mail or by personal service within or without the State of Arizona in accordance with applicable law. Furthermore, Grantor waives and agrees not to assert in any such action, suit or proceeding that it is not



personally subject to the jurisdiction of such courts, that the action, suit or proceeding is brought in an inconvenient forum or that venue of the action, suit or proceeding is improper. The creation of this Deed to Secure Debt and the rights and remedies of Grantee with respect to the Deed Estate, as provided herein and by the laws of the State, shall be governed by and construed in accordance with the internal laws of the State without regard to its principles of conflicts of law. With respect to other provisions of this Deed to Secure Debt, this Deed to Secure Debt shall be governed by the internal laws of the State of Arizona, without regard to its principles of conflicts of law. Nothing in this Section shall limit or restrict the right of Grantee to commence any proceeding in the federal or state courts located in the State to the extent Grantee deems such proceeding necessary or advisable to exercise remedies available under the Deed to Secure Debt or the other Loan Documents.

Section 7.09. ***Indemnification.*** Grantor shall indemnify and hold harmless each of the Indemnified Parties for, from and against any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement and damages of whatever kind or nature (including, without limitation, reasonable attorneys' fees, court costs and other costs of defense) (collectively, "Losses") (excluding Losses suffered by an Indemnified Party arising out of such Indemnified Party's gross negligence or willful misconduct; provided, however, that the term "gross negligence" shall not include gross negligence imputed as a matter of law to any of the Indemnified Parties solely by reason of Grantor's interest in the Deed Estate or Grantor's failure to act in respect of matters which are or were the obligation of Grantor under the Loan Documents) caused by, incurred or resulting from Grantor's or Lessee's operations of, or relating in any manner to, the Deed Estate, whether relating to its original design or construction, latent defects, alteration, maintenance, use by Grantor, Lessee or any person thereon, supervision or otherwise, or from any breach of, default under or failure to perform any term or provision of this Deed to Secure Debt by Grantor, its officers, employees, agents or other persons. It is expressly understood and agreed that Grantor's obligations under this Section shall survive the expiration or earlier termination of this Deed to Secure Debt for any reason.

Section 7.10. ***Waiver of Jury Trial and Punitive, Consequential, Special and Indirect Damages.*** GRANTEE, BY ACCEPTING THIS DEED TO SECURE DEBT, AND GRANTOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER OR ITS SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS DEED TO SECURE DEBT, THE RELATIONSHIP OF GRANTEE AND GRANTOR, GRANTOR'S USE OR OCCUPANCY OF THE DEED ESTATE, AND/OR ANY CLAIM FOR INJURY OR DAMAGE, OR ANY EMERGENCY OR STATUTORY REMEDY. THIS WAIVER BY THE PARTIES HERETO OF ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY HAS BEEN NEGOTIATED AND IS AN ESSENTIAL ASPECT OF THEIR BARGAIN. FURTHERMORE, GRANTOR AND GRANTEE HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES FROM THE OTHER AND ANY OF THE OTHER'S AFFILIATES, OFFICERS, DIRECTORS OR EMPLOYEES OR ANY OF THEIR SUCCESSORS WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER OR ANY OF THE OTHER'S AFFILIATES, OFFICERS, DIRECTORS OR EMPLOYEES OR ANY OF THEIR SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS DEED TO SECURE DEBT OR ANY DOCUMENT CONTEMPLATED HEREIN OR RELATED HERETO. THE WAIVER BY GRANTOR AND GRANTEE OF ANY RIGHT THEY MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES HAS BEEN NEGOTIATED BY THE PARTIES HERETO AND IS AN ESSENTIAL ASPECT OF THEIR BARGAIN.

Section 7.11. ***Waiver of Grantor's Rights.*** BY EXECUTION OF THIS DEED TO SECURE DEBT, GRANTOR EXPRESSLY (A) ACKNOWLEDGES THE RIGHT OF GRANTEE TO ACCELERATE THE OBLIGATIONS EVIDENCED BY THE NOTE AND ANY OTHER OBLIGATIONS AND THE POWER OF ATTORNEY GIVEN HEREIN TO GRANTEE TO SELL THE DEED ESTATE BY NONJUDICIAL

FORECLOSURE UPON AN EVENT OF DEFAULT BY GRANTOR WHICH HAS OCCURRED AND IS CONTINUING WITHOUT ANY JUDICIAL HEARING AND WITHOUT ANY NOTICE OTHER THAN SUCH NOTICE (IF ANY) AS IS SPECIFICALLY REQUIRED TO BE GIVEN UNDER THE PROVISIONS OF THIS DEED TO SECURE DEBT; (B) WAIVES ANY AND ALL RIGHTS WHICH GRANTOR MAY HAVE UNDER THE CONSTITUTION OF THE UNITED STATES OF AMERICA (INCLUDING, WITHOUT LIMITATION, THE FIFTH AND FOURTEENTH AMENDMENTS THEREOF), THE VARIOUS PROVISIONS OF THE CONSTITUTIONS FOR THE SEVERAL STATES, OR BY REASON OF ANY OTHER APPLICABLE LAW, (1) TO NOTICE AND TO JUDICIAL HEARING PRIOR TO THE EXERCISE BY GRANTEE OF ANY RIGHT OR REMEDY HEREIN PROVIDED TO GRANTEE, EXCEPT SUCH NOTICE (IF ANY) AS IS SPECIFICALLY REQUIRED TO BE GIVEN UNDER THE PROVISIONS OF THIS DEED TO SECURE DEBT AND (2) CONCERNING THE APPLICATION, RIGHTS OR BENEFITS OF ANY STATUTE OF LIMITATION OR ANY MORATORIUM, REINSTATEMENT, MARSHALLING, FORBEARANCE, APPRAISEMENT, VALUATION, STAY, EXTENSION, HOMESTEAD, EXEMPTION OR REDEMPTION LAWS; (C) ACKNOWLEDGES THAT GRANTOR HAS READ THIS DEED TO SECURE DEBT AND ANY AND ALL QUESTIONS OF GRANTOR REGARDING THE LEGAL EFFECT OF THIS DEED TO SECURE DEBT AND ITS PROVISIONS HAVE BEEN EXPLAINED FULLY TO GRANTOR, AND GRANTOR HAS CONSULTED WITH COUNSEL OF GRANTOR'S CHOICE PRIOR TO EXECUTING THIS DEED TO SECURE DEBT; AND (D) ACKNOWLEDGES THAT ALL WAIVERS OF THE AFORESAID RIGHTS OF GRANTOR HAVE BEEN MADE KNOWINGLY, INTENTIONALLY AND WILLINGLY BY GRANTOR AS PART OF A BARGAINED-FOR LOAN TRANSACTION AND THAT THIS DEED TO SECURE DEBT IS VALID AND ENFORCEABLE BY GRANTEE AGAINST GRANTOR IN ACCORDANCE WITH ALL THE TERMS AND CONDITIONS HEREOF.

INITIALED BY GRANTOR

/s/ DH

By: Donavon A. Heimes

IN WITNESS WHEREOF, Grantor has executed and delivered this Deed to Secure Debt as of the day and year first above written.

GRANTOR:

**SUPERTEL LIMITED PARTNERSHIP,**  
a Virginia limited partnership

By **SUPERTEL HOSPITALITY REIT TRUST,**  
a Maryland real estate investment trust,  
Its General Partner

By /s/ Donavon A. Heimes  
Donavon A. Heimes, Vice President/Treasurer

## UNCONDITIONAL GUARANTY OF PAYMENT AND PERFORMANCE

THIS UNCONDITIONAL GUARANTY OF PAYMENT AND PERFORMANCE (this "Guaranty") is made as of May 16, 2007, by **SUPERTEL HOSPITALITY, INC.**, a Virginia corporation ("Guarantor"), for the benefit of **GENERAL ELECTRIC CAPITAL CORPORATION**, a Delaware corporation ("Lender").

1. For valuable consideration, the receipt of which is hereby acknowledged, Guarantor, unconditionally, absolutely and irrevocably guarantees and promises to pay to Lender, or order, any and all amounts, including, without limitation, principal and interest, taxes, insurance premiums, impounds, reimbursements, late charges, default interest, damages, indemnity obligations and all other amounts, costs, fees, expenses and charges of any kind or type whatsoever, which may or at any time be due to Lender pursuant to the following agreements (collectively, the "Documents"):

A. Loan Agreement (the "Loan Agreement"), dated as of the date hereof, between Lender and Supertel Limited Partnership, a Virginia limited partnership ("Borrower"), pertaining to that certain loan (the "Loan") secured by Borrower's interest in certain land and improvements as described therein (the "Premises").

B. Promissory Note, dated as of the date hereof, executed by Borrower and payable to Lender in the amount of \$27,755,000.00, evidencing the Loan (the "Term Note");

C. Promissory Note, dated as of the date hereof, executed by Borrower and payable to Lender in the amount of \$8,540,000, evidencing the Bridge Loan (the "Bridge Note", collectively with the Term Note, the "Note");

D. Ten Mortgages, Assignment of Rents and Leases, Security Agreement and Fixture Filing and five Deeds to Secure Debt, Assignment of Rents and Leases, Security Agreement and Fixture Filing (collectively, the "Mortgage"), dated as of the date hereof, executed by Borrower for the benefit of Lender, providing a lien upon and security interest in the Premises as security for the Note;

E. Environmental Indemnity Agreement, dated as of the date hereof, executed by Borrower for the benefit of Lender;

F. Any other document, agreement, instrument or certificate contemplated by any of the foregoing agreements, or any other documents, agreements, instruments or certificates now or hereafter entered into between Lender and Borrower with respect to the Loan; and

G. Any amendment of the foregoing documents, agreements, instruments or certificates now or hereafter entered into between Lender and Borrower.

2. The Guarantor also unconditionally guarantees the truthfulness and accuracy of all representations, warranties and certifications of Borrower, the satisfaction of all conditions by Borrower and the full and timely performance of all obligations to be performed by Borrower, under or pursuant to the Documents (the matters which are guaranteed pursuant to Sections 1 and 2 are hereinafter collectively referred to as the "Obligations"). This Guaranty shall terminate and be of no further force and effect (the "Termination"), upon Guarantors' request, at any time following the payment in full of the Bridge Note; provided, however, the Termination shall be conditioned upon no Event of Default (as defined in the Loan Agreement) having occurred, nor any event having occurred which with the delivery of notice or the passage of time, would result in an Event of Default. The obligations of the Guarantor under this Guaranty are primary, joint and several and independent of the obligations of any and every

other Guarantor or of Borrower, and a separate action or actions may be brought and executed against any one or more of the Guarantors, whether or not such action is brought against Borrower or any other Guarantor and whether or not Borrower or any other Guarantor be joined in such action or actions.

3. This is an absolute and unconditional guaranty of payment and performance and not of collection and the Guarantor unconditionally (a) waives any requirement that Lender first make demand upon, or seek to enforce or exhaust remedies against, Borrower or any other person or entity or any of the collateral or property of Borrower or such other person or entity before demanding payment from, or seeking to enforce this Guaranty against, such Guarantor; (b) waives and agrees not to assert any and all rights, benefits and defenses which might otherwise be available under the provisions of Ariz. Rev. Stat. §§ 12-1641 and §§ 12-1642 *et seq.*, 44-141, 44-142 or 47-3605, Arizona Rules of Civil Procedure Rule 17(f), or any other Arizona statutes or rules (including any statutes or rules amending, supplementing or supplanting same) which might operate, contrary to Guarantor's agreements in this Guaranty, to limit Guarantor's liability under, or the enforcement of, this Guaranty; (c) waives the benefits of any statutory provision limiting the right of Lender to recover a deficiency judgment, or to otherwise proceed, against any person or entity obligated for the payment of the Obligations, after any foreclosure or trustee's sale of any collateral securing payment of the Obligations, including without limitation, the benefits, if any, of Ariz. Rev. Stat. §§ 33-814; (d) covenants that this Guaranty will not be discharged, unless otherwise provided herein, until all of the Obligations are fully satisfied; and (e) agrees that this Guaranty shall remain in full effect without regard to, and shall not be affected or impaired by, any invalidity, irregularity or unenforceability in whole or in part of any of the Documents, or any limitation of the liability of Borrower or Guarantor thereunder, or any limitation on the method or terms of payment thereunder which may now or hereafter be caused or imposed in any manner whatsoever.

4. This Guaranty is a continuing guaranty, and the obligations, undertakings and conditions to be performed or observed by the Guarantor under this Guaranty shall not be affected or impaired by reason of the happening from time to time of the following with respect to the Documents, all without notice to, or the further consent of, the Guarantor: (a) the waiver by Lender of the observance or performance by Borrower or Guarantor of any of the obligations, undertakings, conditions or other provisions contained in any of the Documents, except to the extent of such waiver; (b) the extension, in whole or in part, of the time for payment of any amount owing or payable under the Documents; (c) the modification or amendment (whether material or otherwise) of any of the obligations of Borrower under, or any other provisions of, any of the Documents, except to the extent of such modification or amendment; (d) the taking or the omission of any of the actions referred to in any of the Documents (including, without limitation, the giving of any consent referred to therein); (e) any failure, omission, delay or lack on the part of Lender to enforce, assert or exercise any provision of the Documents, including any right, power or remedy conferred on Lender in any of the Documents or any action on the part of Lender granting indulgence or extension in any form; (f) the assignment to or assumption by any third party of any or all of the rights or obligations of Borrower under all or any of the Documents; (g) the release or discharge of Borrower from the performance or observance of any obligation, undertaking or condition to be performed by Borrower under any of the Documents by operation of law, including any rejection or disaffirmance of any of the Documents in any bankruptcy or similar proceedings; (h) the receipt and acceptance by Lender or any other person or entity of notes, checks or other instruments for the payment of money and extensions and renewals thereof; (i) any action, inaction or election of remedies by Lender which results in any impairment or destruction of any subrogation, indemnity, reimbursement or contribution rights of Guarantor, or any rights of Guarantor to proceed against any other person or entity for reimbursement; (j) any setoff, defense, counterclaim, abatement, recoupment, reduction, change in law or any other event or circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor, indemnitor or surety under the laws of the State of Arizona, the state in which the Premises is located or any other jurisdiction; and (k) the termination or renewal of any of the Obligations or any other provision thereof.

5. The Guarantor represents and warrants to Lender that: (a) neither the execution nor delivery of this Guaranty nor fulfillment of nor compliance with the terms and provisions hereof will conflict with, or result in a breach of the terms or conditions of, or constitute a default under, any agreement or instrument to which Guarantor is now a party or by which Guarantor may be bound, or result in the creation of any

lien, charge or encumbrance upon any property or assets of Guarantor, which conflict, breach, default, lien, charge or encumbrance would result in a material adverse change in the financial condition of Guarantor; (b) no further consents, approvals or authorizations are required for the execution and delivery of this Guaranty by Guarantor or for Guarantor's compliance with the terms and provisions of this Guaranty; (c) this Guaranty is the legal, valid and binding agreement of Guarantor and is enforceable against Guarantor in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, liquidation, reorganization and other laws affecting the rights of creditors generally and subject to general principles of equity; (d) Guarantor has the full power, authority, capacity and legal right to execute and deliver this Guaranty, and, to the extent Guarantor is a corporation, partnership, limited liability company or other form of entity, the parties executing this Guaranty on behalf of Guarantor are fully authorized and directed to execute the same to bind Guarantor; (e) Guarantor is not a "foreign individual," "foreign corporation," "foreign partnership," "foreign limited liability company," "foreign trust," or "foreign estate," as those terms are defined in the U.S. Internal Revenue Code and the regulations promulgated thereunder; Guarantor's Social Security Number or Federal Tax Identification Number is accurately set forth herein next to the signature of Guarantor; (f) Guarantor has delivered to Lender either audited financial statements or, if Guarantor does not have audited financial statements, certified financial statements; such financial statements and other information relating to Guarantor heretofore delivered to Lender are true, correct and complete in all material respects as of the date of this Guaranty; Guarantor understands that Lender is relying upon such information, and Guarantor represents that such reliance is reasonable; and the financial statements of Guarantor delivered by Borrower to Lender pursuant to the Loan Agreement have been prepared in accordance with generally accepted accounting principles (except as otherwise noted) consistently applied and accurately reflect, as of the date thereof, the financial condition of Guarantor; (f) during the term of this Guaranty, Guarantor will not transfer or dispose of any material part of its assets except in the ordinary course of business for full and fair consideration and reasonably equivalent value; furthermore, Guarantor will furnish Lender annually, within ninety (90) days after the close of each calendar year, a financial statement consisting of a balance sheet and such other financial information as Lender may reasonably request; and (g) the Documents are conclusively presumed to have been signed in reliance on this Guaranty and the assumption by the Guarantor of its obligations under this Guaranty results in direct financial benefit to Guarantor.

6. This Guaranty shall commence upon execution and delivery of any of the Documents and shall continue in full force and effect until the earlier of Termination and when all of the Obligations are duly, finally and permanently paid, performed and discharged and are not subject to any right of reborrowing or extension by Borrower, and Lender gives Guarantor written notice of the full and final satisfaction of the Obligations. The Obligations shall not be considered fully paid, performed and discharged unless and until all payments by Borrower to Lender are no longer subject to any right on the part of any person whomsoever, including but not limited to Borrower, Borrower as a debtor-in-possession or any trustee in bankruptcy, to disgorge such payments or seek to recoup the amount of such payments or any part thereof. This Guaranty shall remain in full force and effect and continue to be effective in the event that (i) any petition is filed by or against Borrower or Guarantor for liquidation or reorganization, including, without limitation, under Title 11 of the United States Code, 11 U.S.C. Sec. 101 *et seq.* (the "Code"), (ii) Borrower or Guarantor becomes insolvent or makes an assignment for the benefit of creditors or (iii) a receiver or trustee is appointed for all or any significant part of Borrower's or Guarantor's assets. This Guaranty shall continue to be effective or be reinstated, as applicable, if at any time payment and performance of the Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by Lender, whether as a "voidable preference", "fraudulent conveyance" or otherwise, all as though such payment or performance had not been made. In the event that any payment of the Obligations, or any part thereof, is rescinded, reduced, restored or returned, the Obligations shall be reinstated and deemed reduced only by such amount paid to Lender and not so rescinded, reduced, restored or returned.

7. Guarantor shall neither have any right of subrogation, indemnity or reimbursement nor hold any other claim against Borrower, and does hereby release Borrower from any and all claims by such Guarantor now or hereafter arising against Borrower. Furthermore, the Guarantor hereby unconditionally and irrevocably waives (a) any right to participate in any security now or hereafter held by Lender or in

any claim or remedy of Lender or any other person against Borrower with respect to the Obligations, (b) any statute of limitations affecting Guarantor's liability hereunder, (c) all principles and provisions of law which conflict with the terms of this Guaranty and (d) diligence, presentment, protest, demand for performance, notice of nonperformance, notice of intent to accelerate, notice of acceleration, notice of protest, notice of dishonor, notice of execution of any Documents, notice of extension, renewal, alteration or amendment, notice of acceptance of this Guaranty, notice of defaults under any of the Documents and all other notices whatsoever.

8. Notwithstanding the preceding Section 7, in the event that Guarantor shall have any claims against Borrower, any indebtedness of Borrower now or hereafter held by any or all Guarantor is hereby subordinated to the indebtedness of Borrower to Lender. Any such indebtedness of Borrower to Guarantor, if Lender so requests, shall be collected, enforced and received by Guarantor as trustee for Lender and be paid over to Lender on account of the Obligations, but without reducing or affecting in any manner the liability of Guarantor under the other provisions of this Guaranty.

9. It is not necessary for Lender to inquire into the powers of Borrower or its officers, directors, partners or agents acting or purporting to act on its behalf, and Guarantor shall be liable for the Obligations in accordance with their terms notwithstanding any lack of authorization or defect in execution or delivery by Borrower.

10. In addition to the amounts guaranteed under this Guaranty, Guarantor agrees to pay (i) all of Lender's reasonable attorneys' fees and other costs and expenses which may be incurred by Lender in the enforcement of this Guaranty and (ii) interest (including postpetition interest to the extent a petition is filed by or against Borrower under the Code) at the Default Rate (as defined in the Note) on any Obligations not paid when due. Guarantor hereby agrees to indemnify and hold harmless Lender for, from and against any loss, cause of action, claim, cost, expense or fee, including but not limited to reasonable attorney's fees and court costs, suffered or occasioned by (1) the failure of Borrower to satisfy its obligations under the Documents, or (2) any disclosures of information, financial or otherwise, (x) made by Lender or Lender's employees, officers, agents and designees to any third party as contemplated by the Loan Agreement, or (y) obtained from any credit reporting agency with respect to Guarantor, Borrower, any other guarantor of the Loan, any Affiliate (as defined in the Loan Agreement) of Borrower, any of the other Borrower Parties (as defined in the Loan Agreement) or any operator or lessee of the Premises. The agreement to indemnify Lender contained in this paragraph shall be enforceable notwithstanding the invalidity or unenforceability of the Documents or any of them or the invalidity or unenforceability of any other paragraph contained in this Guaranty. All moneys available to Lender for application in payment or reduction of the liabilities of Borrower under the Documents may be applied by Lender to the payment or reduction of such liabilities of Borrower, in such manner, in such amounts and at such time or times as Lender may elect.

11. All notices, demands, requests, consents, approvals or other instruments required or permitted to be given pursuant to this Guaranty shall be in writing and given by (i) hand delivery, (ii) facsimile, (iii) express overnight delivery service or (iv) certified or registered mail, return receipt requested, and shall be deemed to have been delivered upon (a) receipt, if hand delivered, (b) transmission, if delivered by facsimile, (c) the next Business Day (as defined in the Loan Agreement), if delivered by express overnight delivery service, or (d) the third Business Day following the day of deposit of such notice with the United States Postal Service, if sent by certified or registered mail, return receipt requested. Notices shall be provided to the Guarantor at the address (or facsimile number, as applicable) specified on the signature page of this Guaranty and to Lender at the following address (or facsimile number, as applicable): 8377 East Hartford Drive, Suite 200, Scottsdale, AZ 85255, Attention: Collateral Management, Telephone: (480) 585-4500, Facsimile: (480) 585-2225, or to such other address or such other person as either Guarantor or Lender may from time to time hereafter specify to the other party in a notice delivered in the manner provided above.

12. This Guaranty is delivered in the State of Arizona, and it is the intent of Guarantor and Lender that this Guaranty shall be deemed to be a contract made under and governed by the internal laws of the State of Arizona, without regard to its principles of conflicts of law. For purposes of any action



or proceeding involving this Guaranty, Guarantor submits to the jurisdiction of all federal and state courts located in the State of Arizona and consent that they may be served with any process or paper by registered mail or by personal service within or without the State of Arizona in accordance with applicable law. Furthermore, Guarantor waives and agrees not to assert in any such action, suit or proceeding that they are not personally subject to the jurisdiction of such courts, that the action, suit or proceeding is brought in an inconvenient forum or that venue of the action, suit or proceeding is improper. Nothing contained in this section shall limit or restrict the right of Lender to commence any proceeding in the federal or state courts located in the state in which the Premises is located or where Guarantor resides and maintains its chief executive office, as applicable, to the extent Lender deems such proceeding necessary or advisable to exercise remedies available under the Documents.

13. (a) The Guarantor intends that the business relationship created between Borrower and Lender by the Loan Agreement, the Note, the Mortgage and the other Documents is solely that of creditor and Borrower and has been entered into by such parties in reliance upon the economic and legal bargains contained in the Documents. Furthermore, Guarantor shall support the intent of Guarantor, Borrower and Lender that the Loan, the Note and the Mortgage do not create a joint venture, partnership, trust, trust agreement or the like, if, and to the extent that, any challenge occurs, and Guarantor shall not assert that the Loan, the Note or the Mortgage creates a joint venture, partnership, trust, trust agreement or the like. Guarantor acknowledges that Lender did not prepare or assist in the preparation of any of the projected financial figures used by Borrower in analyzing the economic viability and feasibility of the transactions contemplated by the Loan Agreement. Furthermore, Guarantor acknowledges that Borrower has not relied upon, nor may it hereafter rely upon, the analysis undertaken by Lender in determining the amount of the Loan and that such analysis will not be made available to Borrower.

(b) Guarantor shall provide to Lender and its representatives any and all information they may reasonably request from time to time regarding any depository, loan or other credit account of Guarantor and the affairs and financial condition of Guarantor. Guarantor also authorizes Lender and its representatives to obtain business credit reports and asset reports with respect to Guarantor and to answer questions about its credit experience with Guarantor. All of the information which Lender or its representatives obtain from time to time in accordance with the foregoing authorization, together with any and all other information which Lender or its representatives now possess or in the future may acquire with respect to Guarantor is referred to collectively as the “**Guarantor Information**.” Guarantor authorizes Lender to disclose the Guarantor Information to Lender’s Affiliates (as defined in the Loan Agreement) and professional advisors and consultants; and to any proposed transferee, purchaser, assignee, servicer, participant, investor, or ratings agency, with respect to any proposed Lender Transfer (as hereinafter defined). Guarantor will indemnify, defend, and hold Lender and each of the other Indemnified Parties (as defined in the Loan Agreement) harmless for, from and against, any and all Losses (as hereinafter defined), other than Excluded Losses (as hereinafter defined), incurred by Lender in connection with any such disclosures. For the purposes of this section, the following terms shall be defined as indicated:

“**Excluded Losses**” means Losses suffered by an Indemnified Party to the extent directly arising out of the gross negligence or willful misconduct of such Indemnified Party; provided, **however**, that the term “gross negligence” shall not include gross negligence imputed as a matter of law to any of the Indemnified Parties solely by reason of Lender’s interest in the Collateral or Lender’s failure to act in respect of matters which are or were the obligation of Borrower.

“**Lender Transfer**” means all assignments, sales, or transfers in whole or in part of Lender’s interests in the Note, the Loan, or any of its rights under any of the Loan Documents, including servicing rights, whether as part of a securitization transaction or by participation, assignment, sale or other transfer.

“**Losses**” means all claims, suits, liabilities (including strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, fines, penalties, charges, fees, judgments, awards, amounts paid in settlement, and damages of whatever kind or nature (including reasonable attorneys’ fees, court costs and other costs of defense).



14. All of Lender's rights and remedies under the Documents and this Guaranty are intended to be distinct, separate and cumulative and no such right and remedy is intended to be in exclusion of or a waiver of any of the others. If under applicable law, Lender proceeds to realize benefits under any Document granting Lender a lien upon any collateral pledged under such Document, either by judicial foreclosure or by non-judicial sale or enforcement, Lender may, at its sole option, determine which of such remedies or rights it may pursue without affecting any of such rights and remedies under this Guaranty. If, in the exercise of any of its rights and remedies, Lender shall forfeit any of its rights or remedies, including its right to enter a deficiency judgment against Borrower or any pledgor, whether because of any applicable laws pertaining to "election of remedies" or the like, Guarantor hereby consents to such action by Lender and waive any claim upon such action, even if such action by Lender shall result in a full or partial loss of any rights of subrogation which Guarantor might otherwise have had but for such action by Lender. Any election of remedies which results in the denial or impairment of the right of Lender to seek a deficiency judgment against Borrower or any pledgor shall not impair the Guarantor's obligation to pay the full amount of the Obligations. In the event Lender shall bid at any foreclosure or trustee's sale or at any private or public sale permitted by law or under the Document, Lender may bid all or less than the amount of the Obligations and the amount of such bid need not be paid by Lender but shall be credited against the Obligations. The amount of the successful bid at any such sale shall be conclusively deemed to be the fair market value of the collateral and the difference between such bid amount and the remaining balance of the Obligations shall be conclusively deemed to be the amount of the Obligations guaranteed under this Guaranty, notwithstanding that any present or future law or court decision or ruling may have the effect of reducing the amount of any deficiency claim to which Lender might otherwise be entitled but for such bidding at any such sale.

15. This Guaranty is solely for the benefit of Lender, its successors and assigns and is not intended to nor shall it be deemed to be for the benefit of any third party, including, without limitation, Borrower. This Guaranty and all obligations of Guarantor hereunder shall be binding upon the successors and assigns of the Guarantor (including a debtor-in-possession on behalf of such Guarantor) and shall, together with the rights and remedies of Lender, hereunder, inure to the benefit of Lender, all future holders of any instrument evidencing any of the Obligations and its successors and assigns. No sales, participations, assignments, transfers or other dispositions of any agreement governing or instrument evidencing the Obligations or any portion thereof or interest therein shall in any manner affect the rights of Lender or its successors and assigns hereunder. Guarantor may not assign, sell, hypothecate or otherwise transfer any interest in or obligations under this Guaranty.

16. If any provision of this Guaranty is unenforceable, the enforceability of the other provisions shall not be affected and they shall remain in full force and effect. The Guarantor agrees to take such action and to sign such other documents as may be appropriate to carry out the intent of this Guaranty. This Guaranty may be executed in one or more counterparts, each of which shall be deemed an original.

**17. LENDER, BY ACCEPTING THIS GUARANTY, AND THE GUARANTOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT THEY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY LENDER OR THE GUARANTOR AGAINST THE OTHER OR THEIR SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS GUARANTY, THE RELATIONSHIP OF LENDER, BORROWER OR THE GUARANTOR, BORROWER'S USE OR OCCUPANCY OF THE PREMISES, OR ANY CLAIM FOR INJURY OR DAMAGE, OR ANY EMERGENCY OR STATUTORY REMEDY. THIS WAIVER BY LENDER AND THE GUARANTOR OF ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY HAS BEEN NEGOTIATED AND IS A MATERIAL INDUCEMENT FOR LENDER ACCEPTING THIS GUARANTY. FURTHERMORE, THE GUARANTOR AND LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT THEY MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES FROM THE OTHER AND ANY OF THE OTHER'S AFFILIATES, OFFICERS, DIRECTORS OR EMPLOYEES OR ANY OF THEIR SUCCESSORS WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY THE GUARANTOR AGAINST THE OTHER OR ANY OF THEIR AFFILIATES, OFFICERS, DIRECTORS OR EMPLOYEES OR ANY OF**

**THEIR SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS GUARANTY OR ANY DOCUMENTS CONTEMPLATED HEREIN OR RELATED HERETO. THE WAIVER BY THE LENDER AND GUARANTOR OF ANY RIGHT THEY MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES HAS BEEN NEGOTIATED AND IS AN ESSENTIAL ASPECT OF THEIR BARGAIN.**

18. Guarantor shall be liable under this Guaranty for the maximum amount of such liability that can be incurred hereby without rendering this Guaranty, as it relates to the Guarantor, voidable under applicable laws relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount. Guarantor agrees that the Obligations may at any time and from time to time exceed the amount of the liability of Guarantor hereunder without impairing this Guaranty or affecting the rights and remedies of Lender hereunder.

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IN WITNESS WHEREOF, the undersigned Guarantor has executed this Guaranty effective as of the date set forth in the introductory paragraph of this Guaranty.

GUARANTOR:

**Supertel Hospitality, Inc.,**  
a Virginia corporation

By /s/ Donavon A. Heimes

Donavon A. Heimes, Chief Financial Officer, Treasurer and  
Corporate Secretary

Send Notices to Attn: Donavon A. Heimes  
309 North 5th Street, PO Box 1448  
Norfolk, Nebraska 68701  
Facsimile: (402) 371-4229