FORM 8-K

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CNL Hotels & Resorts, Inc.

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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

Date of Report (Date of earliest event reported) April 3, 2006

CNL HOTELS & RESORTS, INC.

(Exact name of registrant as specified in its charter)

Maryland	**0-24097**	**59-3396369**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

420 South Orange Avenue, Suite 700, Orlando, Florida 32801
(Address of principal executive offices) (Zip Code)

Registrant' s telephone number, including area code **(407) 650-1510**

(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:

☐ 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 a Material Definitive Agreement.

Amended and Restated Merger Agreement.

On April 3, 2006, CNL Hotels & Resorts, Inc. (the "Company") entered into an amended and restated agreement and plan of merger with CNL Hospitality Corp., a Florida corporation (the "Advisor"), CNL Real Estate Group, Inc. ("CREG"), Five Arrows Realty Securities II L.L.C. ("Five Arrows"), the other stockholders of the Advisor identified therein, CNL Hotels & Resorts Acquisition, LLC ("Acquisition Sub"), CNL Hospitality Properties Acquisition Corp., and CNL Financial Group, Inc. ("CFG") (the "Amended Merger Agreement"). The Board of Directors of the Company approved the Amended Merger Agreement after receiving the recommendation of a special committee comprised of three of the Company' s independent directors. Pursuant to the Amended Merger Agreement, the Advisor will merge with and into Acquisition Sub, all of the membership interests of which are owned by the Company (the "Amended Merger"), and the separate corporate existence of the Advisor will cease. The Amended Merger Agreement amends and restates the Agreement and Plan of Merger, entered into as of April 29, 2004, as amended as of June 17, 2004, by and among the parties to the Amended Merger Agreement other than Acquisition Sub.

Upon the closing of the Amended Merger (the "Closing"), all of the outstanding shares of capital stock of the Advisor (the "Advisor Shares") will be converted into the right to receive 3.6 million common shares of the Company, which total number of shares was calculated by dividing $72.0 million by the Per Share Price (as defined in the Amended Merger Agreement), and the Advisor Shares shall thereupon cease to be outstanding and shall be canceled, retired and cease to exist. In addition, at the Closing, i) if the closing date is on or before June 30, 2006, the Company will assume and repay a note issued by the Advisor to Five Arrows, which as of March 31, 2006 had an outstanding principal balance of approximately $7.9 million (the "Five Arrows Note"), or ii) if the closing date is after June 30, 2006, the Company will assume and repay a loan in the principal amount of $7.625 million, made by CREG or its affiliate to the Advisor, solely to enable the Advisor to pay the final principal installment under the Five Arrows Note due on June 30, 2006. Upon consummation of the Amended Merger, the surviving company, as the successor to the Advisor, will be a wholly-owned subsidiary of the Company, and the Advisor' s officers and other employees will become employees of the Company. If the Amended Merger is consummated, the existing advisory agreement between the Company and the Advisor will be terminated and the Company will become self-advised.

The Company and the Advisor have made representations, warranties and covenants in the Amended Merger Agreement. In addition, the Company will submit the Amended Merger and the Amended Merger Agreement to its stockholders for approval at a meeting of its stockholders. Consummation of the Amended Merger is subject to a number of closing conditions, including, among others, iii) approval of the Amended Merger by the Company' s stockholders, iv) the approval by the Company' s stockholders and the filing of certain amendments to the Company' s charter, v) receipt of certain consents and approvals, and vi) receipt of certain legal opinions from counsel to the Company and the Advisor.

The Amended Merger Agreement may be terminated at any time prior to the effective time of the Amended Merger, including before or after approval of the Amended Merger and the Amended Merger Agreement by the Company' s stockholders, by mutual consent of the Company and the Advisor or by the Company or the Advisor, in certain circumstances. The Amended Merger Agreement also may be terminated after December 31, 2006 if the Amended Merger Agreement shall not have been consummated by such date.

Certain of the Company' s officers and directors and their respective affiliates collectively own, directly or indirectly, an aggregate of 90% of the outstanding capital stock of the Advisor and will receive, directly or indirectly, an aggregate of 3.24 million of the Company' s common shares in the Amended Merger. James M. Seneff, Jr., the Chairman of the Board and a director of the Company, jointly with his wife has ownership and voting control of CNL Holdings, Inc., the parent company of CFG, which, in turn, wholly owns CREG, the owner of approximately 53.6% of the outstanding shares of common stock of the Advisor. Mr. Seneff also directly owns an additional aproximately 7.5% of the outstanding shares of common stock of the Advisor. As a result of his direct and indirect holdings in the Advisor, Mr. Seneff will be entitled to receive approximately 2.2 million of the Company' s common shares in the Amended Merger. In addition, Robert A. Bourne, the Vice-Chairman of the Board and a director of the Company, owns directly approximately 13.34% of the outstanding shares of common stock of the Advisor, which shares will entitle Mr. Bourne to receive approximately 480,240 shares of the Company' s common shares in the Amended Merger. Messrs. Hutchison, Griswold, Strickland, Verbaas, and Bloom, officers of the Company and the Advisor, own an aggregate of approximately 15.6% of the outstanding shares of common stock of the Advisor, which, in connection with the Amended Merger, will entitle them to receive an aggregate of approximately 559,440 common shares of the Company. As of the date hereof, the Advisor owns 10,000 common shares of the Company, and a company owned and controlled by Messrs. Seneff and Bourne owns 12,500 common shares of the Company. As part of the closing of the Amended Merger, the Company will enter into a registration rights agreement with the stockholders of the Advisor, which will require the Company to register, in certain instances, the Company' s common shares that the Advisor' s stockholders received in the Amended Merger.

The Company has certain other relationships with the Advisor and its affiliates which are more fully described in the Company' s filings with the Securities and Exchange Commission (the "SEC"), including, but not limited to, the Company' s Annual Report on Form 10-K for the year ended December 31, 2005 filed with the SEC on March 31, 2006.

The foregoing description of the Amended Merger and the Amended Merger Agreement does not purport to be complete and is qualified in its entirety by reference to the Amended Merger Agreement, which is filed herewith as Exhibits 10.1 through 10.5 and incorporated herein by reference thereto.

The Amended Merger Agreement contains representations and warranties by the Company and the Advisor. The representations and warranties reflect negotiations between the parties to the Amended Merger Agreement and, in certain cases, merely represent allocation decisions among the parties and may not be statements of fact. As such, the representations and warranties are solely for the benefit of the parties to the Amended Merger Agreement and may be limited or modified by a variety of factors, including, but not limited to, subsequent events, information included in public filings, disclosures made during negotiations, correspondence between the parties and disclosure schedules to the Amended Merger Agreement. Accordingly, the representations and warranties may not describe the actual state of affairs at the date they were made or at any other time and you should not rely on them as statements of fact.

Employment Agreements

On April 3, 2006, the Company also entered into employment agreements with the following officers of the Advisor: Thomas J. Hutchison, III, John A. Griswold, C. Brian Strickland, and Barry A.N. Bloom (the "Employment Agreements"). Each of such persons are currently officers of the Company and each has agreed to continue to serve as an officer of the Company, effective as of the Effective Time (as

defined in the Amended Merger Agreement) of the Amended Merger. These agreements will become effective only if the Amended Merger is consummated.

1. Thomas J. Hutchison III

The employment agreement with Thomas J. Hutchison III (the "Hutchison Employment Agreement) provides for Mr. Hutchison to serve as the Company' s Chief Executive Officer. The Hutchison Employment Agreement' s initial term is from the Effective Time of the Amended Merger through December 31, 2009.

Under the Hutchison Employment Agreement, Mr. Hutchison will receive an annual salary of $900,000, and may receive an annual increase in the sole discretion of the Board. Mr. Hutchison is also eligible to participate in the Company' s bonus plan, which shall set forth various achievement or performance criteria that if achieved shall entitle Mr. Hutchison to receive a specified percentage of his salary. This bonus will be payable at three levels. At the threshold level, Mr. Hutchison will receive 50% of base salary; at the target level, Mr. Hutchison will receive 100% of base salary; at the superior level, Mr. Hutchison will receive 200% of base salary. In addition, Mr. Hutchison will participate in any group life, disability, health and other benefit plans that the Company adopts and will receive additional life insurance benefits.

Mr. Hutchison will be granted 153,090 shares in the form of stock units which will vest in equal installments on December 31, 2006, December 31, 2007, December 31, 2008, and December 31, 2009, if he remains in service with the Company, and he will be granted 697,410 shares in the form of stock units which shall be subject to vesting based on the achievement of certain performance criteria on the last day of each calendar year through December 31, 2009.

The Hutchison Employment Agreement provides that in the event Mr. Hutchison' s employment is terminated by the Company without cause or by Mr. Hutchison for good reason including a change in control (as defined in the agreement), he will be entitled to severance benefits. These benefits include an amount equal to three times the sum of his annual salary and the average bonus earned for the highest two of the last three years. Mr. Hutchison will also be entitled to continuing health benefits. Additionally, all of the outstanding and unvested shares that would have vested if the applicable performance criteria had been achieved in that calendar year employment terminates will be vested, unless a change in control in which case all outstanding awards of shares will be vested. If the Hutchison Employment Agreement is not renewed, Mr. Hutchison will receive severance in an amount equal to one times his annual salary and bonus. Mr. Hutchison will be entitled to a tax gross-up payment if he becomes subject to the excise tax applicable to certain "golden parachute" payments pursuant to Sections 280G and 4999 of the Internal Revenue Code of 1986, as amended.

The Hutchison Employment Agreement includes covenants protecting the confidential information and intellectual property of the Company. The Hutchison Employment Agreement also contains covenants regarding non-solicitation and non-competition. The Hutchison Employment Agreement resulted from an arms-length negotiation between the Company and Mr. Hutchison.

2. John A. Griswold

The employment agreement with John A. Griswold (the "Griswold Employment Agreement") provides for Mr. Griswold to serve as the Company' s President and Chief Operating Officer. The Griswold

Employment Agreement' s initial term is from the Effective Time of the Amended Merger through December 31, 2009.

Under the Griswold Employment Agreement, Mr. Griswold will receive an annual salary of $700,000, and may receive an annual increase in the sole discretion of the Board. Mr. Griswold is also eligible to participate in the Company' s bonus plan, which shall set forth various achievement or performance criteria that if achieved shall entitle Mr. Griswold to receive a specified percentage of his salary. This bonus will be payable at three levels. At the threshold level, Mr. Griswold will receive 50% of base salary; at the target level, Mr. Griswold will receive 125% of base salary; at the superior level, Mr. Griswold will receive 175% of base salary. In addition, Mr. Griswold will participate in any group life, disability, health and other benefit plans that the Company adopts and receive additional life and disability insurance benefits.

Mr. Griswold will be granted 119,322 shares in the form of stock units which will vest in equal installments on December 31, 2006, December 31, 2007, December 31, 2008, and December 31, 2009, if he remains in service with the Company, and he will be granted 543,578 shares in the form of stock units, which shall be subject to vesting based on the achievement of certain performance criteria on the last day of each calendar year through December 31, 2009.

The Griswold Employment Agreement provides that in the event Mr. Griswold' s employment is terminated by the Company without cause or by Mr. Griswold for good reason including a change in control (as defined in the agreement), he will be entitled to severance benefits. These benefits include an amount equal to two times the sum of his annual salary and the average bonus earned for the highest two of the last three years. Mr. Griswold will also be entitled to continuing health benefits. Additionally, all of the outstanding and unvested shares that would have vested if the applicable performance criteria had been achieved in that calendar year employment terminates will be vested, unless a change in control in which case all outstanding awards of shares will be vested. If the Griswold Employment Agreement is not renewed, Mr. Griswold will receive severance in an amount equal to one times his annual salary and bonus. Mr. Griswold will be entitled to a tax gross-up payment if he becomes subject to the excise tax applicable to certain "golden parachute" payments pursuant to Sections 280G and 4999 of the Internal Revenue Code of 1986, as amended.

The Griswold Employment Agreement includes covenants protecting the confidential information and intellectual property of the Company. The Griswold Employment Agreement also contains covenants regarding non-solicitation and non-competition. The Griswold Employment Agreement resulted from an arms-length negotiation between the Company and Mr. Griswold.

3. C. Brian Strickland

The employment agreement with C. Brian Strickland (the "Strickland Employment Agreement") provides for Mr. Strickland to serve as the Company' s Executive Vice President and Chief Financial Officer. The Strickland Employment Agreement' s initial term is from the Effective Time of the Amended Merger through December 31, 2009.

Under the Strickland Employment Agreement, Mr. Strickland will receive an annual salary of $526,000, and may receive an annual increase in the sole discretion of the Board. Mr. Strickland is also eligible to participate in the Company' s bonus plan, which shall set forth various achievement or performance criteria that if achieved shall entitle Mr. Strickland to receive a specified percentage of his salary. This bonus will be payable at three levels. At the threshold level, Mr. Strickland will receive 50%

of base salary; at the target level, Mr. Strickland will receive 125% of base salary; at the superior level, Mr. Strickland will receive 175% of base salary. In addition, Mr. Strickland will participate in any group life, disability, health and other benefit plans that the Company adopts and receive additional disability insurance benefits.

Mr. Strickland will be granted 83,700 shares in the form of stock units which will vest in equal installments on December 31, 2006, December 31, 2007, December 31, 2008, and December 31, 2009, if he remains in service with the Company, and he will be granted 381,300 shares in the form of stock units which shall be subject to vesting based on the achievement of certain performance criteria on the last day of each calendar year through December 31, 2009.

The Strickland Employment Agreement provides that in the event Mr. Strickland' s employment is terminated by the Company without cause or by Mr. Strickland for good reason including a change in control (as defined in the agreement), he will be entitled to severance benefits. These benefits include an amount equal to two times the sum of his annual salary and the average bonus earned for the highest two of the last three years. Mr. Strickland will also be entitled to continuing health benefits. Additionally, all of the outstanding and unvested shares that would have vested if the applicable performance criteria had been achieved in that calendar year employment terminates will be vested, unless a change in control in which case all outstanding awards of shares will be vested. If the Strickland Employment Agreement is not renewed by the Company, Mr. Strickland will receive severance in an amount equal to one times his annual salary and bonus. Mr. Strickland will be entitled to a tax gross-up payment if he becomes subject to the excise tax applicable to certain "golden parachute" payments pursuant to Sections 280G and 4999 of the Internal Revenue Code of 1986, as amended.

The Strickland Employment Agreement includes covenants protecting the confidential information and intellectual property of the Company. The Strickland Employment Agreement also contains covenants regarding non-solicitation and non-competition. The Strickland Employment Agreement resulted from an arms-length negotiation between the Company and Mr. Strickland.

4. Barry A. N. Bloom

The employment agreement with Barry A. N. Bloom (the "Bloom Employment Agreement") provides for Mr. Bloom to serve as the Company' s Executive Vice President of Portfolio Management and Administration. The Bloom Employment Agreement' s initial term is from the Effective Time of the Amended Merger through December 31, 2009.

Under the Bloom Employment Agreement, Mr. Bloom will receive an annual salary of $385,000, and may receive an annual increase in the sole discretion of the Board. Mr. Bloom is also eligible to participate in the Company' s bonus plan, which shall set forth various achievement or performance criteria that if achieved shall entitle Mr. Bloom to receive a specified percentage of his salary. This bonus will be payable at three levels. At the threshold level, Mr. Bloom will receive 50% of base salary; at the target level, Mr. Bloom will receive 100% of base salary; at the superior level, Mr. Bloom will receive 125% of base salary. In addition, Mr. Bloom will participate in any group life, disability, health and other benefit plans that the Company adopts and receive additional disability insurance benefits.

Mr. Bloom will be granted 31,500 shares in the form of stock units which will vest in equal installments on December 31, 2006, December 31, 2007, December 31, 2008, and December 31, 2009, if he remains in service with the Company, and he will be granted 143,500 shares in the form of stock units

which shall be subject to vesting based on the achievement of certain performance criteria on the last day of each calendar year through December 31, 2009.

The Bloom Employment Agreement provides that in the event Mr. Bloom' s employment is terminated by the Company without cause or by Mr. Bloom for good reason including a change in control (as defined in the agreement), he will be entitled to severance benefits. These benefits include an amount equal to two times the sum of his annual salary and the average bonus earned for the highest two of the last three years. Mr. Bloom will also be entitled to continuing health benefits. Additionally, all of the outstanding and unvested shares that would have vested if the applicable performance criteria had been achieved in that calendar year employment terminates will be vested, unless a change in control in which case all outstanding awards of shares will be vested. If the Bloom Employment Agreement is not renewed by the Company, Mr. Bloom will receive severance in an amount equal to one times his annual salary and bonus. Mr. Bloom will be entitled to a tax gross-up payment if he becomes subject to the excise tax applicable to certain "golden parachute" payments pursuant to Sections 280G and 4999 of the Internal Revenue Code of 1986, as amended.

The Bloom Employment Agreement includes covenants protecting the confidential information and intellectual property of the Company. The Bloom Employment Agreement also contains covenants regarding non-solicitation and non-competition. The Bloom Employment Agreement resulted from an arms-length negotiation between the Company and Mr. Bloom.

On April 3, 2006, counsel for the Company, the Advisor, CNL Securities Corp., and certain of the Company' s current and former directors and officers, including James M. Seneff, Jr., Robert A. Bourne, Thomas J. Hutchison III, John A. Griswold, Craig M. McAllaster, Robert E. Parsons, Jr., Charles E. Adams and Lawrence A. Dustin, and the plaintiffs in the action styled In re CNL Hotels & Resorts, Inc. Securities Litigation, in the United States District Court for the Middle District of Florida, executed a Stipulation of Settlement (the "Stipulation"), which is subject to Court approval. The material terms of the Stipulation are those contained in the Memorandum of Understanding among the parties that became binding on March 17, 2006, the contents of which are described in the Company' s Current Report on Form 8-K filed with the SEC on March 22, 2006.

Certain items in this Current Report on Form 8-K may constitute forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995, including, but not limited to, the closing of the Amended Merger, Court approval of the settlement, vote of the Company' s stockholders, and other statements that are not historical facts, and/or statements containing words such as "anticipate(s)," "expect(s)," "intend(s)," "plan(s)," "could", "target(s)," "project(s)," "will," "believe(s)," "seek(s)," "estimate(s)" and similar expressions. These statements are based on management' s current expectations, beliefs and assumptions and are subject to a number of known and unknown risks, uncertainties and other factors, including those outside of our control that could lead to actual results materially different from those described in the forward-looking statements. The Company can give no assurance that its expectations will be attained. Factors that could cause actual results to differ materially from the Company' s expectations include, but are not limited to: the failure of closing conditions to be satisfied; a change in the national economy; failure to secure certain third-party consents, the occurrence of terrorist activities or other disruptions to the travel and leisure industries; natural disasters; changes in construction costs; and such other risk factors as may be discussed in our annual report on Form 10-K and other filings with the Securities and Exchange Commission. Such forward-looking statements speak only as of the date of this Current Report on Form 8-K. The Company expressly disclaims any obligation to release publicly any updates or revisions to any forward-looking statements contained herein to reflect any change in the Company' s expectations with regard thereto or any change in events, conditions or circumstances on which any statement is based.

Item 9.01. Financial Statements and Exhibits.

(c) Exhibits.

10.1	Amended and Restated Agreement and Plan of Merger dated April 3, 2006 (filed herewith).
10.2	Form of Majority Vote Charter Amendment (filed herewith).
10.3	Form of Charter Amendments (filed herewith).
10.4	Form of Registration Rights Agreement (filed herewith).
10.5	Form of Pledge and Security Agreement (filed herewith).

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.

CNL HOTELS & RESORTS, INC.

Date: April 7, 2006

By: /s/ Mark E. Patten
Name: Mark E. Patten
Title: Senior Vice President and Chief Accounting Officer

Exhibit Index

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10.3	Form of Charter Amendments (filed herewith).
10.4	Form of Registration Rights Agreement (filed herewith).
10.5	Form of Pledge and Security Agreement (filed herewith).

Exhibit 10.1

AMENDED AND RESTATED AGREEMENT AND PLAN OF MERGER

This Amended and Restated Agreement and Plan of Merger (the "Agreement") is entered into as of April 3, 2006, by and among CNL HOTELS & RESORTS, INC., a Maryland corporation ("CHP"), CNL HOTELS & RESORTS ACQUISITION, LLC, a Florida limited liability company all of the membership interests of which are owned by CHP ("CHPAC"), CNL HOSPITALITY CORP., a Florida corporation (the "Advisor"), and CNL REAL ESTATE GROUP, INC., a Florida corporation ("CREG"), FIVE ARROWS REALTY SECURITIES II L.L.C., a Delaware limited liability company ("FARS"), James M. Seneff, Jr. ("Seneff"), Robert A. Bourne ("Bourne"), the other stockholders of the Advisor listed on the signature page hereto under the heading "Stockholders" (collectively, the "Other Stockholders") and by this reference made a party hereof (CREG, FARS, Seneff, Bourne, and the Other Stockholders, are each referred to herein as a "Stockholder" and collectively referred to as the "Stockholders"), CNL FINANCIAL GROUP, INC., a Florida corporation ("Guarantor") and an Affiliate (as defined below) of CREG and of Seneff, and CNL HOSPITALITY PROPERTIES ACQUISITION CORP., a Florida corporation ("Former Merger Sub"). CHP, CHPAC, the Advisor, the Stockholders and Guarantor are referred to collectively herein as the "Parties" and individually as a "Party."

RECITALS:

WHEREAS, CHP has been considering a possible acquisition of the Advisor, and the Board of Directors of CHP formed a special committee comprised of certain of the independent directors of CHP (the "Special Committee"), among other things, to consider and evaluate the terms of a possible acquisition of the Advisor;

WHEREAS, the Special Committee previously recommended and the Board of Directors of CHP and the stockholders of CHP (at the 2004 annual meeting of the stockholders of CHP) previously approved the proposed acquisition of the Advisor pursuant to that certain Agreement and Plan of Merger entered into as of April 29, 2004, as amended by that certain First Amendment to Agreement and Plan of Merger entered into as of June 17, 2004 (as amended, the "Initial Merger Agreement");

WHEREAS, certain conditions to the obligations of the parties to consummate the transactions contemplated by the Initial Merger Agreement have not occurred and have not been waived, but the Initial Merger Agreement has not been terminated by the parties thereto, and the Special Committee, on behalf of CHP, and the Advisor have re-engaged in discussions and negotiations to pursue a possible acquisition of the Advisor by CHP on mutually acceptable terms and conditions;

WHEREAS, the Special Committee continues to believe that an acquisition by CHP of the Advisor is in the best interests of CHP and its stockholders, but in light of changes in market conditions and other factors, the Special Committee

has sought to modify various terms and conditions of the Initial Merger Agreement, and the parties to the Initial Merger Agreement (other than Paul H. Williams, who no longer owns Advisor Common Shares (as defined below) and who is no longer an employee of the Advisor), including Former Merger Sub (which is only a party to this Agreement because it is a party to the Initial Merger Agreement, which is being

amended and restated by this Agreement) have agreed to amend and restate the Initial Merger Agreement on the revised terms and conditions set forth in this Agreement;

WHEREAS, after due deliberation and consideration of various relevant factors, the Special Committee, having received a written fairness opinion from Lehman Brothers, Inc. (the "Fairness Opinion") to the effect that as of the date of this Agreement, subject to the assumptions, qualifications and limitations stated therein, the consideration to be paid by CHP in the Merger (as defined below) is fair, from a financial point of view, to CHP, has determined that it is advisable and in the best interests of CHP and its stockholders to consummate a merger whereby the Advisor would be merged with and into CHPAC and CHPAC would be the surviving company in the merger (such merger, upon the terms and conditions of this Agreement and in accordance with the Florida Business Corporation Act, as amended from time to time (the "Florida BCA"), and the Florida Limited Liability Company Act, as amended from time to time (the "Florida LLCA"), is hereinafter referred to as the "Merger") and accordingly has recommended that the Board of Directors of CHP approve the Merger;

WHEREAS, the Board of Directors of CHP (the "CHP Board of Directors") (excluding any member of the CHP Board of Directors who is a Stockholder or an Affiliate of any Stockholder or the Advisor), based on the recommendation of the Special Committee, has determined that the Merger is advisable and in the best interests of CHP and its stockholders and, accordingly, has approved the Merger and has directed that the Merger be submitted to the stockholders of CHP for consideration at an annual or at a special meeting of stockholders of CHP (the "CHP Stockholder Meeting");

WHEREAS, CHP, the sole member of CHPAC, has determined that the Merger is advisable and has approved the Merger;

WHEREAS, the Board of Directors of the Advisor has unanimously determined that the Merger is advisable and in the best interests of the Advisor and the Stockholders and, accordingly, has unanimously approved the Merger, and the Stockholders have by unanimous written consent approved this Agreement and the Merger;

WHEREAS, as an inducement to CHP and CHPAC to enter into this Agreement and to consummate the Merger, (i) Guarantor has agreed to provide a guarantee of

certain of the obligations of the Stockholders on the terms and subject to the conditions set forth in this Agreement, (ii) each member of the CNL Group (as defined below) has agreed to enter into and to honor the terms and conditions of the covenants contained in Section 9.5 of this Agreement, which covenants, including the duration thereof, CHP and CHPAC have deemed to be necessary to protect and enhance the long term financing and business strategy of CHP and the Surviving Company (as defined herein), and (iii) each of Thomas J. Hutchison, III, John A. Griswold, C. Brian Strickland and Barry A. N. Bloom have simultaneously with the execution and delivery of this Agreement entered into employment agreements with CHP effective as of the Effective Time (as defined below) in form and substance satisfactory to the Compensation Committee of the Board of Directors of CHP, on behalf of CHP (collectively, the "Employment Agreements"); and

WHEREAS, for federal income tax purposes, the Parties intend that the Merger shall qualify as a reorganization under Section 368(a) of the Code (as defined below).

NOW, THEREFORE, in consideration of the premises and the mutual promises herein made, and in consideration of the representations, warranties, and covenants herein contained, the Parties agree as follows:

ARTICLE 1

DEFINITIONS

1.1 Terms Defined in this Agreement. As used in this Agreement, the following terms shall have the respective meanings set forth below:

"Actual Knowledge" means an awareness and perception of the facts asserted or stated.

"Advisor" has the meaning set forth in the preface above.

"Advisor Actions" has the meaning set forth in Section 8.21 below.

"Advisor Amendment" has the meaning set forth in Section 8.19 below.

"Advisor Common Shares" means the shares of the Class A common stock, $1.00 par value per share, and the shares of the Class B common stock, $1.00 par value per share, of the Advisor.

"Advisor Common Share Certificates" has the meaning set forth in Section 4.1 below.

"Advisory Agreements" means that certain Advisory Agreement dated as of

April 1, 2003, that certain Advisory Agreement dated as of April 1, 2004, that certain Renewal Agreement dated as of March 31, 2005 by and between CHP and the Advisor, and any amendment, modification or extension of the terms of any of the foregoing.

"Affiliate" has the meaning set forth in Rule 12b-2 of the regulations promulgated under the Securities Exchange Act.

"Affiliated Group" means any affiliated group within the meaning of Code Section 1504, or any similar group defined under a similar provision of state, local or foreign law.

"Agreement" has the meaning set forth in the preface above.

"Articles/Certificate of Merger" has the meaning set forth in Section 2.2 below.

"Assumed Advisor Liabilities" has the meaning set forth in Section 9.10(a) below.

"Basis" means any past or present fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act, or transaction that forms the basis for any specified consequence.

"Bourne" has the meaning set forth in the preface above.

"Cash Reserve" has the meaning set forth in Section 8.15 below.

"CHP" has the meaning set forth in the preface above.

"CHP Board of Directors" has the meaning set forth in the sixth paragraph of the Recitals above.

"CHP Charter Amendments" has the meaning set forth in Section 8.6 below.

"CHP Common Shares" means the common shares, par value $0.01 per share, of CHP.

"CHP Indemnity Claim" has the meaning set forth in Section 12.1 below.

"CHP Note" means that certain Promissory Note dated as of December 30, 2005, in the principal amount of $27 million issued by CHP to and for the benefit of the Advisor.

"CHP SEC Documents" has the meaning set forth in Section 6.8 below.

"CHP Stockholder Approval" has the meaning set forth in Section 6.4 below.

"CHP Stockholder Meeting" has the meaning set forth in the sixth paragraph of the Recitals above.

"CHPAC" has the meaning set forth in the preface above.

"Claims" has the meaning set forth in Section 12.6 below.

"Class Action Lawsuit" means the lawsuit styled: In re CNL Hotels & Resorts, Inc. Securities Litigation, case number 6:04-cv-1231-Orl-31 KRS (consolidated with case number 6:09-cv-1341-Orl-19JGG), United States District Court, Middle District of Florida, Orlando Division.

"Closing" has the meaning set forth in Section 2.3 below.

"Closing Date" has the meaning set forth in Section 2.3 below.

"CNL Group" has the meaning set forth in Section 9.5(a) below.

"CNL Group Party" has the meaning set forth in Section 9.5(a)(ii) below.

"Code" means the Internal Revenue Code of 1986, as amended.

"commercially reasonable efforts" means as to a Party, an undertaking by such Party to perform or satisfy an obligation or duty or otherwise act in a manner reasonably calculated to obtain the intended result by action or expenditure not disproportionate or unduly burdensome in the circumstances, which means, among other things, that such Party shall not be required to (i) expend funds other than for the payment of the reasonable and customary costs and expenses of

employees, counsel, consultants, representatives or agents of such Party in connection with the performance or satisfaction of such obligation or duty or other action, (ii) institute litigation or arbitration as a part of its commercially reasonable efforts or (iii) amend, waive or modify a term or condition of, or grant any concessions under or with respect to, or pay or commit to pay any amount under or with respect to, any contract or relationship with respect to which an approval, consent or waiver is sought or any other agreement or relationship with such person (other than nominal filing and application fees and reasonable and customary consent fees).

"Confidential Information" means any information concerning the businesses and affairs of the Advisor or CHP, if any, that is not already generally available to the public.

"CREG" has the meaning set forth in the preface above.

"Deficiency Dividend" means either (a) any deficiency dividend within the meaning of Section 860(f) of the Code, or (b) any distribution pursuant to Section 852(e) of the Code or the application of principles similar thereto pursuant to the regulations promulgated under Section 857(a)(2) of the Code in connection with the distribution of earnings and profits (within the meaning of the Code) that have been accumulated in, or are attributable to, any taxable period of the Advisor through and including the Effective Time.

"Determination" has the meaning set forth in Section 12.1 below.

"Development Company" has the meaning set forth in the Section 7.6 below.

"Disclosure Schedule" has the meaning set forth in the first paragraph of Article 7 below.

"Effective Time" has the meaning set forth in Section 2.2 below.

"Employee Benefit Plan" means any (a) nonqualified deferred compensation or retirement plan or arrangement which is an Employee Pension Benefit Plan, (b) tax-qualified defined contribution retirement plan or arrangement which is an Employee Pension Benefit Plan, (c) tax-qualified defined benefit retirement plan or arrangement which is an Employee Pension Benefit Plan (including any Multiemployer Plan), or (d) Employee Welfare Benefit Plan or material fringe benefit plan or program.

"Employee Pension Benefit Plan" has the meaning set forth in ERISA Section 3(2).

"Employee Stock Purchase Agreement" means each of the CNL Hospitality Corp. Employee Stock Purchase Agreements dated March 23, 2004, by and among the Advisor, CREG and each of James M. Seneff, Jr., Robert A. Bourne, Thomas J. Hutchison, III, C. Brian Strickland, John A. Griswold, and Barry A.N. Bloom, as amended (except as to James M. Seneff, Jr. and Robert A. Bourne) by that certain First Amendment to CNL Hospitality Corp. Employee Stock Purchase Agreement dated as of June 17, 2004, and that certain Second Amendment to CNL Hospitality Corp. Employee Stock Purchase Agreement dated as of July 28, 2004.

"Employee Welfare Benefit Plan" has the meaning set forth in ERISA Section 3(1).

"Employment Agreements" has the meaning set forth in the ninth paragraph of the Recitals above.

"Environmental, Health, and Safety Laws" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act of 1976, and the Occupational Safety and Health Act of 1970, each as amended, together with all other laws (including rules, regulations, codes, plans, injunctions, judgments, orders, decrees, rulings, and charges thereunder) of federal, state, local, and foreign governments (and all agencies thereof) concerning pollution or protection of the environment, public health and safety, or employee health and safety, including laws relating to emissions, discharges, releases, or threatened releases of pollutants, contaminants, or chemical, industrial, hazardous, or toxic materials or wastes into ambient air, surface water, ground water, or lands or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of pollutants, contaminants, or chemical, industrial, hazardous, or toxic materials or wastes.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Excluded Person" has the meaning set forth in Section 9.5(a)(i)(4) below.

"Extremely Hazardous Substance" has the meaning set forth in Section 302 of the Emergency Planning and Community Right-to-Know Act of 1986, as amended.

"Fairness Opinion" has the meaning set forth in the fifth paragraph of the Recitals above.

"FARS" has the meaning set forth in the preface above.

"FARS Note" has the meaning set forth in Section 7.30 below.

"Fiduciary" has the meaning set forth in ERISA Section 3(21).

"Financial Statements" has the meaning set forth in Section 7.7 below.

"Florida BCA" has the meaning set forth in the fifth paragraph of the Recitals above.

"Florida LLCA" has the meaning set forth in the fifth paragraph of the Recitals above.

"Former Merger Sub" has the meaning set forth in the preface above.

"GAAP" means United States generally accepted accounting principles as in effect from time to time.

"Guarantor" has the meaning set forth in the preface above.

"Hospitality Asset" has the meaning set forth in Section 9.5(a)(ii) below.

"Hospitality Asset Agreement" has the meaning set forth in Section 9.5(a)(ii) below.

"Indemnifying Stockholders" has the meaning set forth in Section 12.1 below.

"Initial Merger Agreement" has the meaning set forth in the second paragraph of the Recitals above.

"Intellectual Property" means (a) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all patents, patent applications, and patent disclosures, together with all reissuances, continuations, continuations-in-part, revisions, extensions, and reexaminations thereof, (b) all trademarks, service marks, trade dress, logos, trade names, and corporate names, together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith, (c) all copyrightable works, all copyrights, and all applications, registrations, and renewals in connection therewith, (d) all mask works and all applications, registrations, and renewals in connection therewith, (e) all trade secrets and confidential business information (including ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information, and business and marketing plans and proposals), (f) all computer software (including data and related documentation) and domain name registrations, (g) all other proprietary rights, and (h) all copies and tangible embodiments thereof (in whatever form or medium).

"Inter-Company FARS Final Payment Funding Note" means a promissory note in the principal amount of $7,625,000.00 issued by the Advisor to CREG or its Affiliate to evidence a loan made by CREG or its Affiliate to the Advisor that is solely to enable the Advisor to pay the final principal installment under the FARS Note due on June 30, 2006 and that has such terms that were approved in writing by the Special Committee, on behalf of CHP, prior to the making of such loan.

"IRS" means the Internal Revenue Service.

"Knowledge" means, (i) in the case of the Advisor, CHP and Guarantor, (A) the Actual Knowledge of the directors and executive officers of such corporation and (B) the knowledge the directors and executive officers of such corporation would have following a reasonable investigation and, (ii) in the case of the Stockholders, (A) the collective Actual Knowledge of all of the Stockholders (which, in the case of any Stockholder that is a corporation or other entity, shall mean the Actual Knowledge of the directors and executive officers of such Stockholder following a reasonable investigation) and (B) the collective knowledge the Stockholders would have following a reasonable investigation

(which, in the case of any Stockholder that is a corporation or other entity, shall mean the knowledge the directors and executive officers of such Stockholder would have following a reasonable investigation). For the purposes of this Agreement, the knowledge of one Stockholder shall be attributed to the other Stockholders.

"Known" and "Knowingly" mean that the Advisor, the Stockholders or CHP, as applicable, had Knowledge of the particular matter or took the action described with prior Knowledge.

"Liability" means, with respect to any Person, any liability or obligation of such Person of any kind, character or description (whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, joint or several, due or

to become due, executory, determined, determinable or otherwise, whether or not the same is required to be accrued on the financial statements of such Person), including any liability or obligation for or with respect to Taxes or any other Losses (as defined below).

"Listing" means the actual listing of CHP Common Shares on the NYSE or any other national securities exchange or U.S. inter-dealer quotation system.

"Losses" has the meaning set forth in Section 12.1 below.

"Luxury Hotel Industry Sector" has the meaning set forth in Section 9.5(a)(i) below.

"Management Stockholders" means all the Stockholders other than CREG, Seneff, Bourne and FARS.

"Majority Vote Charter Amendment" has the meaning set forth in Section 8.6 below.

"Material Adverse Effect" means, as to any Party, a material adverse effect on the business, properties, operations, results of operations, condition (financial or otherwise) or future prospects of such Party; provided, however, that an adverse change in general business or economic conditions or an adverse change generally applicable to the industry in which such Party or any of its subsidiaries operate, and not specifically relating to such Party or any of its subsidiaries, so long as such adverse change does not have a materially greater adverse effect on such Party and its subsidiaries, taken as a whole, than on other participants in the industry in which such Party and its subsidiaries operate (other than as a result solely of such Party's size relative to other participants in the industry) shall not be deemed to constitute or shall not be taken into account in determining the occurrence of a material adverse effect.

"Merger" has the meaning set forth in the fifth paragraph of the Recitals above.

"Merger Consideration" has the meaning set forth in Section 4.1(a) below.

"Most Recent Balance Sheet" means the balance sheet contained within the Most Recent Financial Statements.

"Most Recent Financial Statements" has the meaning set forth in Section 7.7 below.

"Most Recent Fiscal Quarter End" has the meaning set forth in Section 7.7 below.

"Multiemployer Plan" has the meaning set forth in ERISA Section 3(37).

"New Brand License Agreement" has the meaning set forth in Section 8.17 below.

"NYSE" means The New York Stock Exchange, Inc.

"Ordinary Course of Business" means the ordinary course of business consistent with past practice (including with respect to quantity and frequency).

"Party" or "Parties" has the meaning set forth in the preface above.

"PBGC" means the Pension Benefit Guaranty Corporation.

"Per Share Price" has the meaning set forth in Section 4.1(c) below.

"Person" means an individual, a partnership, a corporation, an association, a joint stock company, a trust, a joint venture, a limited liability company, an unincorporated organization, governmental entity (or any department, agency, or political subdivision thereof) or other entity.

"Pledge and Security Agreement" has the meaning set forth in Section 8.20 below.

"Post-Closing Straddle Period" has the meaning set forth in Section 9.8(f) below.

"Post-Closing Straddle Period Taxes" has the meaning set forth in Section 9.8(f) below.

"Pre-Closing Straddle Period" has the meaning set forth in Section 9.8(f) below.

"Pre-Closing Straddle Period Taxes" has the meaning set forth in Section 9.8(f) below.

"Prohibited Transaction" has the meaning set forth in ERISA Section 406 and Code Section 4975.

"Proposed Indemnity Action" has the meaning set forth in Section 12.9 below.

"Pro Rata Percentage" has the meaning set forth in Section 4.2 below.

"Proxy Statement" has the meaning set forth in Section 8.6 below.

"Recreational Properties and Facilities" has the meaning set forth in Section 9.5(a)(i) below.

"REIT" has the meaning set forth in Section 8.18 below.

"Registration Rights Agreement" has the meaning set forth in Section 8.14 below.

"Reportable Event" has the meaning set forth in ERISA Section 4043.

"Representative" has the meaning set forth in Section 12.3 below.

"Right of First Refusal" has the meaning set forth in Section 9.5(a)(ii) below.

"ROFR Notice" has the meaning set forth in Section 9.5(a)(ii) below.

"SEC" means the Securities and Exchange Commission.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Securities Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Security Interest" means any mortgage, pledge, lien, encumbrance, charge, or other security interest, other than (a) mechanic's, materialmen's, and similar liens, (b) liens for Taxes not yet due and payable or for Taxes that the taxpayer is contesting in good faith through appropriate proceedings, (c) purchase money liens and liens securing rental payments under capital lease

arrangements, and (d) other liens arising in the Ordinary Course of Business and not incurred in connection with the borrowing of money.

"Seneff" has the meaning set forth in the preface above.

"Seneff Family" means Seneff, Seneff's spouse, and Seneff's lineal descendants (including any adopted children) and their spouses.

"Seneff Family Company" means a limited liability company, limited liability partnership, limited liability limited partnership or limited partnership of which (a) all of the members or partners, as the case may be, consist only of Seneff, members of the Seneff Family, one or more Seneff Family Trusts, or another Seneff Family Company, (b) Seneff is the controlling manager (in the case of a limited liability company), the controlling managing partner (in the case of a limited liability partnership) or the controlling general partner in the case of a limited partnership or limited liability limited partnership, and (c) its operating agreement (in the case of a limited liability company) or partnership agreement (in the case of a limited liability partnership, limited partnership, or limited liability limited partnership) prohibits the sale, assignment, transfer or gift of any member interest or partnership interest, as the case may be, to any Person other than (x) a member of the Seneff Family, (y) a Seneff Family Trust, or (z) another Seneff Family Company.

"Seneff Family Trust" means a trust (x) as to which the only current beneficiaries are members of the Seneff Family and (y) whose trust agreement prohibits the transfer, assignment or distribution of any Advisor Common Stock owned by or on behalf of such trust to any Person other than Seneff prior to the Closing.

"Special Committee" has the meaning set forth in the first paragraph of the Recitals above.

"Stockholder Consideration" has the meaning set forth in Section 12.6 below.

"Stockholder Indemnity Claim" has the meaning set forth in Section 12.2 below.

"Stockholders" has the meaning set forth in the preface above.

"Stockholders' Obligations" has the meaning set forth in Section 13.2 below.

"Straddle Year" has the meaning set forth in Section 9.8(f) below.

"Straddle Year Jurisdiction" has the meaning set forth in Section 9.8(f) below.

"Subsidiary" means any corporation, partnership, joint venture, limited liability company or other entity with respect to which a specified Person (or a

Subsidiary thereof) owns a majority of the common stock or other voting interests or has the power to vote or direct the voting of

sufficient securities or interests to elect a majority of the directors or otherwise control the management.

"Surviving Company" has the meaning set forth in Section 2.1 below.

"Takeover Statute" has the meaning set forth in Section 8.11 below.

"Tax" means any federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Code Section 59A), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not.

"Tax Return" means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

"Tax Sharing Agreement" has the meaning set forth in Section 10.2(s) below.

"Third Party Claim" has the meaning set forth in Section 12.4 below.

"Tower II Lease" means that certain Lease Agreement between CNL Plaza II, Ltd., a Florida limited partnership, as the landlord, and the Advisor, as the tenant, dated as of November 23, 2005, for the "Premises" (as defined therein).

"Tower II Office Space" means the "Premises" as defined in the Tower II Lease.

"Transition Services Agreement" has the meaning set forth in Section 8.16 below.

"Two-Thirds Vote Charter Amendment" has the meaning set forth in Section 8.6 below.

"Working Capital Schedule" has the meaning set forth in Section 8.15 below.

ARTICLE 2

MERGER; EFFECTIVE TIME; CLOSING

2.1 Merger. Upon the terms and subject to the conditions set forth in this Agreement and in accordance with the Florida BCA and the Florida LLCA, at the Effective Time, CHPAC and the Advisor shall consummate the Merger in which (i) the Advisor shall be merged with and into CHPAC and the separate corporate existence of the Advisor shall thereupon cease, (ii) CHPAC shall be the successor or surviving company in the Merger and shall continue to be governed by the laws of the State of Florida and (iii) the separate existence of CHPAC as a limited liability company, with all its rights, privileges, immunities, powers and franchises, shall continue unaffected by the Merger. The legal entity surviving the Merger is sometimes

hereinafter referred to as the "Surviving Company." The Merger shall have the effects set forth in Section 607.11101 of the Florida BCA and Section 608.4383 of the Florida LLCA.

2.2 Effective Time. On the Closing Date, subject to the terms and conditions of this Agreement, CHPAC and the Advisor shall (i) cause to be executed Articles of Merger in the form required by Section 607.1109 of the Florida BCA, which shall also constitute a Certificate of Merger in the form required by Section 608.4382 of the Florida LLCA (the "Articles/Certificate of Merger"), (ii) cause the Articles/Certificate of Merger to be filed with the Florida Department of State as provided in Section 607.1109 of the Florida BCA and Section 608.4382 of the Florida LLCA and (iii) make all other filings or recordings required under the Florida BCA and the Florida LLCA to consummate the Merger. The Merger shall become effective upon the later of (i) such time as the Articles/Certificate of Merger is duly filed with the Florida Secretary of State or (ii) such other time as is agreed upon by the Representative and CHP and specified in the Articles/Certificate of Merger. Such time is hereinafter referred to as the "Effective Time."

2.3 The Closing. The closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of Greenberg Traurig, LLP, 450 South Orange Avenue, Suite 650, Orlando, Florida 32801, commencing at 9:00 a.m., Eastern Time, on the fifth (5th) business day following the fulfillment or waiver (to the extent permitted by applicable law) of the conditions set forth in Article 10 (other than conditions which by their nature are intended to be fulfilled at the Closing) or such other place or time or on such other date, time or place as CHP and the Representative may agree or as may be necessary to permit the fulfillment or waiver of the conditions set forth in Article 10 (the "Closing Date").

ARTICLE 3

ARTICLES OF ORGANIZATION; OPERATING AGREEMENT; AND MANAGING MEMBER OF SURVIVING COMPANY

3.1 Articles of Organization. The articles of organization of CHPAC, as in effect immediately prior to the Effective Time, shall be the articles of organization of the Surviving Company until thereafter amended as provided therein or under applicable law.

3.2 Operating Agreement. The operating agreement of CHPAC, as in effect immediately prior to the Effective Time, shall be the operating agreement of the Surviving Company until thereafter changed or amended as provided therein or under applicable law.

3.3 Managing Member. The managing member of CHPAC immediately prior to the Effective Time shall be the managing member of the Surviving Company from and after the Effective Time until its successor has been duly elected, appointed or qualified or until its earlier removal in accordance with the articles of organization and operating agreement of the Surviving Company.

ARTICLE 4

MERGER CONSIDERATION

4.1 Merger Consideration; Conversion or Cancellation of Advisor Common Shares in Merger; Repayment of FARS Note or Inter-Company FARS Final Payment Funding Note. (a) At the Effective Time, by virtue of the Merger and without any action by the Parties, all of the outstanding Advisor Common Shares shall be converted into the right to receive a total of 3,600,000 CHP Common Shares (subject to adjustment pursuant to the terms of Section 4.1(c) below), which total number of shares was calculated by dividing $72.0 million by the Per Share Price (such CHP Common Shares, the "Merger Consideration") pursuant to the terms of Section 4.2 below. As of the Effective Time, all Advisor Common Shares shall cease to be outstanding, and shall be canceled and retired and shall cease to exist, and each Stockholder, as the holder of certificates representing any of such Advisor Common Shares (the "Advisor Common Share Certificates"), shall cease to have any rights with respect thereto, except the right to receive the Merger Consideration. As of the Effective Time, all of the membership interests of CHPAC issued and outstanding immediately prior to the Effective Time shall remain issued and outstanding membership interests of the Surviving Company and shall be unchanged and remain solely owned by CHP.

(b) In addition to the Merger Consideration payable to the Stockholders pursuant to this Agreement, at the Closing, (i) if the Closing Date is on or before June 30, 2006, CHP shall assume and repay, or cause to be repaid, in full the outstanding principal and accrued and unpaid interest on the FARS Note otherwise due and payable up to and including the Closing Date and the FARS Note shall be cancelled, or (ii) if the Closing Date is after June 30, 2006, CHP shall assume and repay, or cause to be repaid, in full the outstanding principal and accrued and unpaid interest on the Inter-Company FARS Final

Payment Funding Note otherwise due and payable up to and including the Closing Date and the Inter-Company FARS Final Payment Funding Note shall be cancelled.

(c) For purposes of adjustments to the number of CHP Common Shares issuable as part of the Merger Consideration and other provisions of this Agreement that require or call for a price per CHP Common Share, such price shall be deemed to be $20.00 per CHP Common Share (the "Per Share Price"); provided, however, that the Per Share Price and the number of CHP Common Shares issuable as part of the Merger Consideration shall be proportionately and appropriately adjusted in the event the number of outstanding CHP Common Shares is increased or decreased after the date of this Agreement and before the Effective Time on account of any recapitalization, reclassification, stock split, reverse stock split, combination of shares, exchange of shares, stock dividend or other pro rata distribution payable in capital stock of CHP, but excluding any CHP Common Shares issued under any dividend reinvestment plan of CHP.

4.2 Exchange of Certificates; Payment of Merger Consideration. At the Closing, upon surrender to CHP of the Advisor Common Share Certificates by the Stockholders for cancellation, properly endorsed for transfer, together with any other required documents, each of the Stockholders shall receive the Merger Consideration pro rata based on their relative equity interests in the Advisor as of the Closing Date, as set forth opposite such Stockholder's name on

Schedule I to the Agreement (which Schedule I will be amended to reflect any transfer of any Advisor Common Shares between the date of the Agreement and the Closing Date as contemplated in Section 4.4 below) (each such Stockholder's equity percentage set forth on Schedule I, its "Pro Rata Percentage"), and each of the Advisor Common Share Certificates so surrendered shall forthwith be canceled. Prior to the Closing, Schedule I shall be amended by CHP and the Advisor to reflect any adjustments that may be necessary in accordance with this Agreement to the number of CHP Common Shares to be delivered to each of the Stockholders pursuant to this Section 4.2 based on their Pro Rata Percentage of the Merger Consideration. The Stockholders shall also receive cash in lieu of fractional CHP Common Shares as contemplated by Section 4.3 below. If any Advisor Common Share Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Stockholder claiming such Advisor Common Share Certificate to be lost, stolen or destroyed, and, if requested by CHP, the posting by such Stockholder of a bond in such reasonable amount as CHP reasonably may direct as indemnity against any claim that may be made against them with respect to such Advisor Common Share Certificate, CHP will issue in exchange for such lost, stolen or destroyed Advisor Common Share Certificate the CHP Common Shares to which the holder thereof is entitled pursuant to this Section 4.2.

4.3 Fractional CHP Common Shares. No certificates representing fractional

CHP Common Shares shall be issued upon surrender of any Advisor Common Share Certificates in payment of any Merger Consideration. In connection with the payment of the Merger Consideration, in lieu of any fractional CHP Common Shares, there shall be paid to each holder of Advisor Common Shares who otherwise would be entitled to receive a fractional CHP Common Share an amount of cash (without interest) determined by multiplying such fraction by the Per Share Price.

4.4 Transfer of Advisor Common Shares. (a) No transfers of Advisor Common Shares that are not expressly permitted by this Section 4.4 shall be made on the stock transfer books of the Advisor after the date of this Agreement, and (b) each Stockholder agrees not to transfer any Advisor Common Shares after the date of this Agreement and before the Closing Date to any Person that is not a Stockholder; provided, however, that, in the event of any transfer by a Stockholder to another Stockholder, the transferring Stockholder provides to CHP at least ten (10) business days' prior written notice of such intended transfer, which notice shall include a reasonably detailed summary of the terms and conditions of such intended transfer, including the consideration to be received by the transferring Stockholder for such Advisor Common Shares. Notwithstanding the foregoing, Seneff may transfer or gift all or some of his Advisor Common Shares to a Seneff Family Trust or to a Seneff Family Company; provided, however, that, (i) prior to such transfer, such Seneff Family Trust or Seneff Family Company execute and deliver an undertaking to become a Party to this Agreement and, except as provided in the last sentence of this Section 4.4, to have all the rights and obligations of a Stockholder hereunder and to approve this Agreement, the Merger and the other transactions contemplated in this Agreement and (ii) the Seneff Family Trust or a Seneff Family Company, as the case may be, qualifies as an "accredited investor" within the meaning of the Securities Act or the transfer to the Seneff Family Trust or Seneff Family Company is exempt from registration under the Securities Act and will be registered or exempt from registration under all applicable state securities laws. In the case of any transfer of Advisor Common Shares made in accordance with this Section 4.4, CHP shall have the absolute right to amend this Agreement for the sole purpose of adding such

transferee (to the extent such transferee is not already a Party to this Agreement) and to add such transferee's name and Pro Rata Percentage on Schedule I (or otherwise amend Schedule I to reflect such transfers). Seneff hereby agrees to assume and be responsible for (and the Seneff Family Trust or Seneff Family Company shall not be responsible for) the pro rata portion of any reimbursement, payment, indemnity or other obligation of the Seneff Family Trust or Seneff Family Company as a Stockholder that may or would otherwise be or have been attributable to the Seneff Family Trust or a Seneff Family Company pursuant to this Agreement and is owed or payable to CHP or CHPAC.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES OF THE STOCKHOLDERS

Each of the Stockholders, severally, but not jointly, represents and warrants to CHP and CHPAC that the statements contained in this Article 5 are correct and complete as of the date hereof (and will be correct and complete as of the Closing Date as if made on and as of the Closing Date) with respect to itself or himself:

5.1 Organization and Qualification. CREG is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Florida. FARS is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware.

5.2 Authorization of Transaction. Each of the Stockholders has full power and authority to execute and deliver this Agreement and to perform its or his obligations hereunder. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by the Board of Directors of CREG and the Board of Managers of FARS. No other corporate proceedings on the part of CREG or FARS are necessary to authorize the consummation of the transactions contemplated hereby on behalf of CREG or FARS. This Agreement has been duly and validly executed and delivered by each of the Stockholders and constitutes the valid and legally binding obligation of each of the Stockholders, enforceable against such Stockholders in accordance with its terms and conditions. No consents, approvals, orders or authorizations of, or registration, declaration or filing with, any government or governmental agency is required by or with respect to the Stockholders in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby, other than (i) the filing with the SEC of any reports and filings under the Securities Act and the Securities Exchange Act as may be required in connection with this Agreement and the Merger, (ii) the filing of the Articles/Certificate of Merger with the Florida Department of State, and (iii) such other consents, approvals, orders, authorizations, registrations, declarations and filings as (A) are set forth on Section 5.2 of the Disclosure Schedule (as defined below) or (B) may be required under the "blue sky" laws of various states, to the extent applicable.

5.3 Noncontravention. Except as set forth in Section 5.3 of the Disclosure Schedule, neither the execution and the delivery of this Agreement, nor the consummation of the transactions contemplated hereby, by the Stockholders, will (A) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any

government, governmental agency, or court to which any Stockholder is subject or any provision of its articles of incorporation, certificate of formation, by-laws, limited liability company agreement or other organizational documents, as applicable, or (B) result in a breach of, constitute a default under, result

in the acceleration of, create in any Person the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which any Stockholder is a party or by which it or he is bound or to which any of its or his assets is subject, except for any breaches or violations that would not, individually or in the aggregate, have a Material Adverse Effect on the Advisor or substantially impair or delay the consummation of the transactions contemplated hereby.

5.4 Investment. (a) Each of the Stockholders who acquires CHP Common Shares in the Merger: (i) understands that the CHP Common Shares acquired by such Stockholder pursuant to this Agreement have not been registered under the Securities Act, or under any state securities laws, and are being exchanged in reliance upon federal and state exemptions for transactions not involving a public offering and may not be offered or sold unless (A) such offer or sale has been registered under the Securities Act, (B) such offer or sale is made in conformity with the applicable holding period, volume and other limitations of Rule 144 promulgated by the SEC under the Securities Act, or (C) in the written opinion of counsel reasonably acceptable to CHP, some other exemption from registration is available with respect to any proposed sale, transfer or other disposition of such CHP Common Shares; (ii) is acquiring the CHP Common Shares solely for its or his own account for investment purposes, and not with a view towards the distribution thereof; (iii) is an "accredited investor" (as such term is defined in Regulation D under the Securities Act) and is a sophisticated investor with knowledge and experience in business and financial matters; (iv) has received certain information concerning CHP, including, without limitation, (A) the most recent annual report on Form 10-K, (B) any quarterly reports on Form 10-Q since the most recent annual report on Form 10-K, (C) any current reports on Form 8-K since December 31, 2004, in each case as filed by CHP under the Securities Exchange Act, and (D) the most recent annual report to stockholders of CHP, and has had the opportunity to obtain additional information as desired in order to evaluate the merits and the risks inherent in holding CHP Common Shares; and (v) is able to bear the economic risk and lack of liquidity inherent in holding CHP Common Shares which have not been registered under the Securities Act.

(b) Each of the Stockholders who acquires CHP Common Shares in the Merger represents that it or he has been advised and understands that, subject to applicable federal and state securities laws, stop transfer instructions will be given to CHP's transfer agent with respect to such CHP Common Shares and that a legend setting forth the following restrictions on transfer will be set forth on the certificates for such CHP Common Shares or any substitutions therefor:

"THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "1933 ACT"), IN RELIANCE UPON THE EXEMPTION FROM REGISTRATION CONTAINED IN SECTION 4(2) OF THE 1933 ACT AND REGULATION D OF THE RULES AND REGULATIONS PROMULGATED UNDER THE 1933 ACT, AND IN RELIANCE UPON THE REPRESENTATION BY THE HOLDER THAT THEY HAVE BEEN ACQUIRED FOR INVESTMENT PURPOSES ONLY AND NOT WITH A VIEW TO RESALE OR FURTHER

DISTRIBUTION. SUCH SHARES MAY NOT BE OFFERED FOR SALE, SOLD, DELIVERED AFTER SALE, HYPOTHECATED, NOR WILL ANY ASSIGNEE OR ENDORSEE HEREOF BE RECOGNIZED AS AN OWNER HEREOF BY THE ISSUER FOR ANY PURPOSE, UNLESS A REGISTRATION STATEMENT FILED WITH THE SECURITIES AND EXCHANGE COMMISSION WITH RESPECT TO SUCH SHARES SHALL THEN BE IN EFFECT OR UNLESS THE AVAILABILITY OF AN EXEMPTION FROM REGISTRATION SHALL BE ESTABLISHED TO THE REASONABLE SATISFACTION OF COUNSEL OF THE ISSUER."

5.5 Advisor Common Shares. Except as set forth in Section 7.2 of the Disclosure Schedule, each of the Stockholders holds of record and owns beneficially the number and class of the Advisor Common Shares set forth next to its or his name in Section 7.2 of the Disclosure Schedule, free and clear of any restrictions on transfer (other than any restrictions under the Securities Act and state securities laws), Taxes, Security Interests, options, warrants, purchase rights, contracts, commitments, equities, claims, and demands. Except for the agreements set forth on Section 5.5 of the Disclosure Schedule, none of the Stockholders is a party to any option, warrant, purchase right, or other contract or commitment that could require one or more Stockholders to sell, transfer, or otherwise dispose of any the Advisor Common Shares (other than pursuant to this Agreement) or is a party to any voting trust, proxy, or other agreement or understanding with respect to the voting of any of the Advisor Common Shares.

ARTICLE 6

REPRESENTATIONS AND WARRANTIES OF CHP AND CHPAC

CHP and CHPAC jointly and severally represent and warrant to the Stockholders and the Advisor that the statements contained in this Article 6 are correct and complete as of the date hereof (and will be correct and complete as of the Closing Date as if made on and as of the Closing Date):

6.1 Organization of CHP and CHPAC. CHP is a corporation, and CHPAC is a limited liability company, duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation or organization, as the case may be.

6.2 Capital Stock and Membership Interests. The authorized capital stock of CHP consists of 3,675,000,000 equity shares, 3,000,000,000 of which are CHP Common Shares, 75,000,000 of which are preferred shares, par value $.01 per share, and 600,000,000 of which are excess shares, par value $.01 per share. As of March 1, 2006, 152,883,062 CHP Common Shares, no preferred shares and no excess shares were issued and outstanding. Since December 31, 2005, CHP has not issued any shares of capital stock except pursuant to the exercise of options outstanding on such date to purchase CHP Common Shares or pursuant to CHP's dividend reinvestment plan. All outstanding CHP Common Shares are, and all CHP Common Shares issuable under stock option plans of CHP or pursuant to CHP's

dividend reinvestment plan will be when issued in accordance with the terms thereof duly authorized, validly issued, fully paid and nonassessable. Except for the CHP Common Shares reserved for issuance pursuant to stock option plans of CHP or CHP's dividend reinvestment plan, there are outstanding on the date hereof no options, warrants, calls, rights, commitments or any other

agreements of any character to which CHP is a party or by which it may be bound, requiring it to issue, transfer, sell, purchase, register, redeem or acquire any shares of capital stock or any securities or rights convertible into, exchangeable for or evidencing the right to subscribe for or acquire any shares of its capital stock. CHP is the sole member of CHPAC, and CHPAC has no other issued and outstanding equity or similar interests.

6.3 Authorization for CHP Common Shares. The CHP Common Shares issued as Merger Consideration will, when issued, be duly authorized, validly issued, fully paid and nonassessable, and no stockholder of CHP will have any preemptive right or similar rights of subscription or purchase in respect thereof. The CHP Common Shares issued as Merger Consideration will, subject to the accuracy of the Stockholders' representations contained in Section 5.4 hereof, be exempt from registration under the Securities Act and will be registered or exempt from registration under all applicable state securities laws.

6.4 Authorization of Transaction. Each of CHP and CHPAC has full corporate or lawful power and authority to execute and deliver this Agreement and to perform its respective obligations hereunder, subject to the approval of the Merger at the CHP Stockholder Meeting by the affirmative vote of at least a majority of the votes cast on the Merger by holders of CHP Common Shares entitled to vote thereon (other than CHP Common Shares owned of record or beneficially by interested directors or their Affiliates), provided that the total votes cast represent over 50% of the CHP Common Shares entitled to vote on the Merger (the "CHP Stockholder Approval"), as required pursuant to this Agreement. The execution and delivery of this Agreement and the consummation of the Merger have been duly and validly authorized by the Board of Directors of CHP and by CHP, as the sole member of CHPAC. Other than the CHP Stockholder Approval that is required pursuant to this Agreement, no other corporate or legal proceedings on the part of CHP and CHPAC are necessary to authorize the consummation of the Merger on behalf of CHP and CHPAC. This Agreement constitutes the valid and legally binding obligation of each of CHP and CHPAC, enforceable in accordance with its terms and conditions. No consents, approvals, orders or authorizations of, or registration, declaration or filing with, any government or governmental agency is required by or with respect to CHP or CHPAC in connection with the execution and delivery of this Agreement or the consummation of the Merger, other than (i) the filing with the SEC of any reports and filings under the Securities Act and the Securities Exchange Act as may be required in connection with this Agreement and the Merger, (ii) the filing of the Articles/Certificate of Merger with the Florida Department of

State, and (iii) such other consents, approvals, orders, authorizations, registrations, declarations and filings as may be required under the "blue sky" laws of various states, to the extent applicable.

6.5 Noncontravention. Neither the execution and the delivery of this Agreement, nor the consummation of the transactions contemplated hereby by CHP or CHPAC, will (A) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental agency, or court to which either CHP or CHPAC is subject or any provision of CHP's articles of incorporation or by-laws or CHPAC's articles of organization or operating agreement, as the case may be, or (B) result in a breach of, constitute a default under, result in the acceleration of, create in any Person the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which either CHP or CHPAC is a party or by which it is bound or to which any of its assets is subject, except for any breaches or violations

that would not, individually or in the aggregate, have a Material Adverse Effect on CHP or CHPAC or substantially impair or delay the consummation of the transactions contemplated hereby.

6.6 Brokers' Fees. Except for the fees and expenses paid or payable to Lehman Brothers, Inc. with respect to the delivery of the Fairness Opinion to the Special Committee, including any updates thereto, and in connection with the Initial Merger Agreement and related advisory services in connection with the Initial Merger Agreement and this Agreement, neither CHP nor CHPAC has any Liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to the Merger.

6.7 Proxy Statement. The Proxy Statement will not at the time filed with the SEC, at the time of mailing the Proxy Statement to the stockholders of CHP or at the time of the CHP Stockholder Meeting contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading, except that no representation is made by CHP with respect to statements made therein based on information supplied by or on behalf of the Stockholders or the Advisor for inclusion in the Proxy Statement. The Proxy Statement will comply as to form in all material respects with the provisions of the Securities Exchange Act.

6.8 SEC Documents. Since January 1, 2005, CHP has filed with the SEC all reports and other documents required to be filed by it during such period under the Securities Exchange Act (the "CHP SEC Documents"). At the respective times they were filed, none of the CHP SEC Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated

therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading except to the extent corrected in a subsequently filed CHP SEC Document. The consolidated financial statements (including in each case any notes thereto) of CHP included in the CHP SEC Documents were prepared in conformity with GAAP consistently applied throughout the periods covered thereby (except in each case as described in the notes thereto) and fairly presented in all material respects the consolidated financial position, results of operations and cash flows of CHP and its consolidated subsidiaries as at the respective dates thereof and for the periods then ended (subject, in the case of unaudited statements to normal year-end adjustments and to any other adjustments described therein), except to the extent corrected in a subsequently filed CHP SEC Document.

ARTICLE 7

REPRESENTATIONS AND WARRANTIES CONCERNING THE ADVISOR

The Stockholders (other than FARS and, in the case of Sections 7.11(a) and 7.11(e), other than the Management Stockholders) and the Advisor represent and warrant to CHP and CHPAC that the statements contained in this Article 7 are correct and complete as of the date hereof (and will be correct and complete as of the Closing Date as if made on and as of the Closing Date), except as set forth in the disclosure schedule delivered by the Stockholders (other than FARS) and the Advisor to CHP and CHPAC immediately prior to the execution and delivery of this Agreement (the "Disclosure Schedule"); it being understood that with respect to any matter

included in Sections 7.9, 7.10, 7.11(a), 7.11(c), 7.15(f), 7.19, 7.21 or 7.23 of the Disclosure Schedule, for purposes of the indemnification provided in Article 12, such matter shall be treated as if such matter was not included in the Disclosure Schedule and shall continue to be the subject of and covered by the indemnification provisions of Article 12 of this Agreement notwithstanding its inclusion therein. Nothing in the Disclosure Schedule shall be deemed adequate to disclose an exception to a representation or warranty made herein, however, unless the Disclosure Schedule identifies the exception with particularity and describes the relevant facts in reasonable detail. Without limiting the generality of the foregoing, the mere listing (or inclusion of a copy) of a document or other item shall not be deemed adequate to disclose an exception to a representation or warranty made herein (unless the representation or warranty relates to the existence of the document or other item itself). The Disclosure Schedule will be arranged in paragraphs corresponding to the lettered and numbered paragraphs contained in this Article 7.

7.1 Organization, Qualification, and Corporate Power. Each of the Advisor and the Development Company (as defined below) is a corporation duly organized, validly existing, and in good standing under the laws of the State of Florida.

Each of the Advisor and the Development Company is duly authorized to conduct business and is in good standing under the laws of each jurisdiction where such qualification is required, except where the failure to so qualify or obtain authorization would not have a Material Adverse Effect on the Advisor or on the ability of the Advisor to consummate the Merger. Except as set forth in Section 7.1 of the Disclosure Schedule, each of the Advisor and the Development Company has full corporate power and authority and all licenses, permits, and authorizations necessary to carry on the businesses in which it is engaged and to own and use the properties owned and used by it except where the failure to be so licensed, permitted or authorized would not have a Material Adverse Effect on the Advisor. The Stockholders (other than FARS) have delivered to CHP correct and complete copies of the articles of incorporation and by-laws of the Advisor and the Development Company (in each case, as amended to date). The minute books (containing the records of meetings of the stockholders, the board of directors, and any committees of the board of directors), the stock certificate books, and the stock record books of each of the Advisor and the Development Company are correct and complete in all material respects. Each of the Advisor and the Development Company is not in default under or in violation of any provision of its articles of incorporation or by-laws. All corporate actions taken by the Advisor and the Development Company have been taken in compliance with all applicable provisions of the Florida BCA.

7.2 Capitalization. The entire authorized capital stock of the Advisor consists of (i) 10,000 shares of Class A common stock, $1.00 par value per share, of which 2,000 shares are issued and outstanding, and (ii) 5,000 shares of Class B common stock, $1.00 par value per share, of which 1,377.11 shares are issued and outstanding. No Advisor Common Shares are held in treasury. All of the issued and outstanding Advisor Common Shares have been duly authorized, are validly issued, fully paid, and nonassessable, and are held of record and beneficially by the respective Stockholders as set forth in Section 7.2 of the Disclosure Schedule. The entire authorized capital stock of the Development Company (as defined below) consists of 1,000 shares of common stock, $1.00 par value per share, of which 1,000 shares are issued and outstanding. All of the issued and outstanding shares of capital stock of the Development Company have been duly authorized, are validly issued, fully paid and non-assessable, and are

held of record and beneficially by the Advisor. There are no outstanding or authorized options, warrants, purchase rights, subscription rights, conversion rights, exchange rights, or other contracts or commitments that could require the Advisor or the Development Company to issue, sell, or otherwise cause to become outstanding any of its capital stock. There are no outstanding or authorized stock appreciation, phantom stock, profit participation, or similar rights with respect to the Advisor or the Development Company. Except as set forth in Section 7.2 of the Disclosure Schedule, there are no voting trusts, proxies, or other agreements or understandings with respect to the voting of the Advisor Common Shares or any shares of capital stock of the Development Company.

7.3 Authorization of Transaction. The Advisor has full corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by the Board of Directors of the Advisor. No other corporate proceedings on the part of the Advisor are necessary to authorize the consummation of the transactions contemplated hereby on behalf of the Advisor. This Agreement constitutes the valid and legally binding obligation of the Advisor, enforceable in accordance with its terms and conditions. No consents, approvals, orders or authorizations of, or registration, declaration or filing with, any government or governmental agency is required by or with respect to the Advisor or any subsidiary of the Advisor in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby, other than (i) the filing with the SEC of any reports and filings under the Securities Act and the Securities Exchange Act as may be required in connection with this Agreement and the Merger, (ii) the filing of the Articles/Certificate of Merger with the Florida Department of State, and (iii) such other consents, approvals, orders, authorizations, registrations, declarations and filings as (A) are set forth on Section 7.3 of the Disclosure Schedule or (B) may be required under the "blue sky" laws of various states, to the extent applicable.

7.4 Noncontravention. Except as set forth in Section 7.4 of the Disclosure Schedule, neither the execution and the delivery of this Agreement, nor the consummation of the transactions contemplated hereby by the Advisor, will (i) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental agency, or court to which the Advisor or the Development Company is subject or any provision of the articles of incorporation or bylaws of the Advisor or the Development Company or (ii) result in a breach of, constitute a default under, result in the acceleration of, create in any Person the right to accelerate, terminate, modify, or cancel, or require any notice, consent or approval under any agreement, contract, lease, license, instrument, or other arrangement to which the Advisor or the Development Company is a party or by which it is bound or to which any of its assets is subject (or result in the imposition of any Security Interest upon any of its assets).

7.5 Title to Assets. Except as set forth on Section 7.5 of the Disclosure Schedule, each of the Advisor and the Development Company has good and marketable title to, or a valid leasehold interest in, the properties and assets used by it, located on its premises, or shown on the Most Recent Balance Sheet or the Most Recent Pro Forma Balance Sheet or acquired after the date thereof, free and clear of all Security Interests (other than those disclosed in the Most Recent Balance Sheet), except for properties and assets disposed of in the Ordinary Course of

Business since the date of the Most Recent Balance Sheet or the Most Recent Pro Forma Balance Sheet.

7.6 Subsidiaries. The Advisor's business is conducted entirely by and through the Advisor and its wholly owned subsidiary, CNL Hotel Development Company, a Florida corporation (the "Development Company"). The Advisor has no direct or indirect Subsidiaries, operating or otherwise, other than the Development Company, nor are there any other entities that the Advisor otherwise directly or indirectly controls or in which it has any ownership or other interest, and the Advisor does not have the right or obligation to acquire any shares of stock or other interest in any other Person. The Stockholders (other than FARS) or any other Affiliates have not taken or omitted to take any action which has resulted in, or will result in, the Advisor being or becoming a party to or bound by, any agreement, arrangement or understanding to which the Advisor will remain obligated or bound following the Closing, relating to the acquisition by the Advisor of any entity or all or substantially all of the assets of any Person.

7.7 Financial Statements. The Advisor has delivered to CHP its (i) audited balance sheets and statements of income, changes in stockholders' equity, and cash flow as of and for the fiscal years ended December 31, 2002, December 31, 2003, and December 31, 2004 and (ii) preliminary unaudited balance sheets and statements of income (the "Most Recent Financial Statements") as of and for the three- and twelve-months ended December 31, 2005 (the "Most Recent Fiscal Quarter End") (the financial statements described in clauses (i) and (ii) of this Section 7.7 are hereinafter referred to as the "Financial Statements"). The Financial Statements (including the notes thereto) have been prepared in accordance with GAAP applied on a consistent basis throughout the periods covered thereby, present fairly the financial condition of the Advisor as of such dates and the results of operations of the Advisor for such periods, and are consistent with the books and records of the Advisor (which books and records are correct and complete in all material respects); provided that, the Most Recent Financial Statements do not contain any notes.

7.8 Events Subsequent to December 31, 2003. Since December 31, 2003, there has not been any Material Adverse Effect on the Advisor or on the ability of the Advisor to consummate the transactions contemplated in this Agreement. Without limiting the generality of the foregoing, except as set forth on Section 7.8 of the Disclosure Schedule, since that date:

(a) each of the Advisor and the Development Company has not sold, leased, transferred, or assigned any of its assets, tangible or intangible, other than for a fair consideration in the Ordinary Course of Business;

(b) each of the Advisor and the Development Company has not entered into any agreement, contract, lease, or license (or series of related agreements, contracts, leases, and licenses) either involving more than $25,000 or outside the Ordinary Course of Business, other than contracts or subcontracts entered into in the Ordinary Course of Business by the Development Company involving less than $100,000;

(c) no Person (including the Advisor and the Development Company) has accelerated, terminated, modified, or canceled any material agreement, contract, lease, or license

(or series of related agreements, contracts, leases, and licenses) to which the Advisor or the Development Company is a party or by which it is bound;

(d) each of the Advisor and the Development Company has not imposed any Security Interest upon any of its assets, tangible or intangible other than in the Ordinary Course of Business;

(e) each of the Advisor and the Development Company has not made any capital expenditure (or series of related capital expenditures) either involving more than $50,000 or outside the Ordinary Course of Business;

(f) each of the Advisor and the Development Company has not made any capital investment in, any loan to, or any acquisition of the securities or assets of, any other Person (or series of related capital investments, loans, and acquisitions);

(g) each of the Advisor and the Development Company has not issued any note, bond, or other debt security or created, incurred, assumed, or guaranteed any indebtedness for borrowed money or capitalized lease obligation;

(h) each of the Advisor and the Development Company has not delayed or postponed the payment of accounts payable and other Liabilities outside the Ordinary Course of Business;

(i) each of the Advisor and the Development Company has not canceled, compromised, waived, or released any right or claim (or series of related rights and claims) outside the Ordinary Course of Business;

(j) each of the Advisor and the Development Company has not granted any license or sublicense of any rights under or with respect to any Intellectual Property;

(k) there has been no change made or authorized in the articles of incorporation or by-laws of the Advisor or the Development Company;

(l) each of the Advisor and the Development Company has not issued, sold, or otherwise disposed of any of its capital stock, or granted any options, warrants, or other rights to purchase or obtain (including upon conversion, exchange, or exercise) any of its capital stock;

(m) each of the Advisor and the Development Company has not declared,

set aside, or paid any dividend or made any distribution with respect to its capital stock (whether in cash or in kind) or redeemed, purchased, or otherwise acquired any of its capital stock;

(n) each of the Advisor and the Development Company has not experienced any material damage, destruction, or loss (whether or not covered by insurance) to its property;

(o) each of the Advisor and the Development Company has not made any loan to, or entered into any other transaction with, any of its directors, officers, and employees outside the Ordinary Course of Business;

(p) each of the Advisor and the Development Company has not entered into any employment contract or collective bargaining agreement, written or oral, or modified the terms of any such existing contract or agreement;

(q) each of the Advisor and the Development Company has not granted any increase in the base compensation of any of its directors, officers, and employees outside the Ordinary Course of Business;

(r) each of the Advisor and the Development Company has not adopted, amended, modified, or terminated any bonus, profit-sharing, incentive, severance, or other plan, contract, or commitment for the benefit of any of its directors, officers, and employees (or taken any such action with respect to any other Employee Benefit Plan);

(s) each of the Advisor and the Development Company has not made any other change in employment terms for any of its directors, officers, and employees outside the Ordinary Course of Business or in the terms of its agreements with any independent contractors;

(t) each of the Advisor and the Development Company has not made or pledged to make any charitable or other capital contribution outside the Ordinary Course of Business;

(u) to the Knowledge of the Stockholders and the Advisor, there has not been any other material occurrence, event, incident, action, failure to act, or transaction outside the Ordinary Course of Business involving the Advisor or the Development Company; and

(v) to the Knowledge of the Stockholders and the Advisor, each of the Advisor and the Development Company is not under any legal obligation, whether written or oral, to do any of the foregoing.

7.9 Undisclosed Liabilities. Neither the Advisor nor the Development Company has any Liability (and to the Knowledge of the Advisor and the

Stockholders, there is no Basis for any present or future action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand against it giving rise to any Liability), except for (i) Liabilities which are reflected in, reserved against or otherwise described in the Most Recent Balance Sheet (including the notes thereto), and (ii) Liabilities which have arisen after the Most Recent Fiscal Quarter End in the Ordinary Course of Business (none of which results from, arises out of, relates to, is in the nature of, or was caused by any breach of contract, breach of warranty, tort, infringement, or violation of law) and which are not material, individually or in the aggregate. As of the Closing, the Advisor will not have any Liabilities other than as set forth on Section 7.9 of the Disclosure Schedule.

7.10 Legal Compliance. Each of the Advisor and the Development Company has complied in all material respects with all applicable laws (including rules, regulations, codes, plans, injunctions, judgments, orders, decrees, rulings, and charges thereunder) of federal, state, local, and foreign governments (and all agencies thereof), the violation of which could have a Material Adverse Effect on the Advisor or on the ability of the Advisor to consummate the transactions contemplated in this Agreement, and no action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand, or notice has been filed or commenced against

it alleging any failure so to comply, except as disclosed in Section 7.10 of the Disclosure Schedule.

7.11 Tax Matters.

(a) Except as disclosed in Section 7.11(a) of the Disclosure Schedule, all Tax Returns required to have been filed with any taxing authority by or on behalf of the Advisor or the Development Company, including, without limitation, any Tax Returns required to be filed with any state, have been timely filed (taking into account any extensions). All such Tax Returns were correct and complete in all material respects. All Taxes owed by the Advisor or the Development Company (whether or not shown on any filed Tax Return and whether or not yet due) have been paid, or, if such Taxes are not yet due, the obligation to pay such Taxes is set forth on the Most Recent Financial Statements. Without limiting the foregoing, neither the Advisor nor the Development Company will have any Liability for Taxes, whether or not yet payable, for the taxable period of the Advisor and the Development Company that includes the Effective Time, other than Taxes payable solely by reason of the Merger failing to qualify as a reorganization under Section 368(a) of the Code (if such Taxes would not have been imposed in such taxable period had the Merger qualified as a reorganization under Section 368(a) of the Code), in excess of the amounts actually paid by or on behalf of the Advisor or the Development Company at or prior to the Effective Time to the applicable taxing authority or to be paid timely after the Effective Time by the Guarantor, on behalf of the Advisor, in connection with any

consolidated, combined or unitary Tax Returns including the Advisor or the Development Company and the Guarantor. Except as disclosed in Section 7.11(a) of the Disclosure Schedule, neither the Advisor nor the Development Company is currently the beneficiary of any extension of time within which to file any Tax Return. No claim has ever been made by an authority in a jurisdiction where the Advisor and the Development Company does not file Tax Returns that it is or may be subject to taxation by that jurisdiction. There are no Security Interests on any of the assets of the Advisor or the Development Company that arose in connection with any failure (or alleged failure) to pay any Tax.

(b) Each of the Advisor and the Development Company has withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder, or other third party.

(c) To the Knowledge of the Advisor and each Stockholder, no Basis exists for any authority to assess any additional Taxes for any period for which Tax Returns have been filed. There is no dispute or claim concerning any Tax Liability of the Advisor or the Development Company either (A) claimed or raised by any authority in writing or (B) as to which the Advisor or any of the Stockholders has Knowledge. Section 7.11(c) of the Disclosure Schedule lists all federal, state, local, and foreign income Tax Returns filed with respect to the Advisor and the Development Company for taxable periods ended on or after December 31, 1999, indicates those Tax Returns that have been audited, and indicates those Tax Returns that currently are the subject of audit.

(d) Neither the Advisor nor the Development Company has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency.

(e) The Advisor has not filed a consent under Code Section 341(f) concerning collapsible corporations. The Advisor has not made any payments, is not obligated to make any payments, and is not a party to any agreement that under any circumstances could obligate it to make any payments (whether in connection with the Merger or otherwise) that would not be deductible under Code Section 280G. The Advisor is not and has not been a United States real property holding corporation within the meaning of Code Section 897(c)(2) during the applicable period specified in Code Section 897(c)(1)(A)(ii). Each of the Advisor and the Development Company has disclosed on its federal income Tax Returns all positions taken therein that could give rise to a substantial understatement of federal income Tax within the meaning of Code Section 6662. Neither the Advisor nor the Development Company is a party to any Tax allocation or sharing agreement, except as disclosed in Section 7.11(e) of the Disclosure Schedule. Neither the Advisor nor the Development Company (a) has, or as of the Effective Time will have, incurred any Liability with respect to (i) any deferred intercompany gain within the meaning of Treas. Reg. Section 1.1502-13

or (ii) any excess loss account (within the meaning of Treas. Reg. Section 1.1502-19) with respect to any subsidiary of the Advisor, or (b) has any Liability for the Taxes of any Person (other than the Advisor or the Development Company, as applicable) under Treas. Reg. Section 1.1502-6 (or any similar provision of state, local, or foreign law), as a transferee or successor, by contract, or otherwise.

(f) Except as set forth on Section 7.11(f) of the Disclosure Schedule, each of the Advisor and the Development Company does not, and will not as of the Effective Time, (i) own directly any "securities" of any issuer (within the meaning of Section 856(c)(4) of the Code, other than assets described in Section 856(c)(4)(A) of the Code); or (ii) own directly an interest in any entity treated as a partnership or a disregarded entity for federal income tax purposes.

(g) Neither the Advisor nor the Development Company will have as of the Effective Time, any current or accumulated earnings and profits (as calculated for federal income tax purposes).

7.12 Real Property.

(a) Section 7.12 of the Disclosure Schedule lists and describes briefly all real property owned, leased or subleased to the Advisor and the Development Company and sets forth a list of all leases and subleases to which the Advisor or the Development Company is a party. The Stockholders (other than FARS) have delivered to CHP correct and complete copies of the leases and subleases listed in Section 7.12 of the Disclosure Schedule (as amended to date). With respect to each lease and sublease listed in Section 7.12 of the Disclosure Schedule:

(i) the lease or sublease is legal, valid, binding, enforceable, and in full force and effect;

(ii) no consent is required with respect to the lease or sublease as a result of this Agreement, and the actions contemplated by this Agreement will not result in the change of any terms of the lease or sublease or otherwise affect the ongoing validity of the lease or sublease;

(iii) no party to the lease or sublease is in breach or default, and no event has occurred which, with notice or lapse of time, would constitute a breach or default or permit termination, modification, or acceleration thereunder;

(iv) no party to the lease or sublease has repudiated any provision thereof;

(v) there are no disputes, oral agreements, or forbearance programs in effect as to the lease or sublease;

(vi) the Advisor has not assigned, transferred, conveyed, mortgaged, deeded in trust, or encumbered any interest in the leasehold or subleasehold;

(vii) all facilities leased or subleased thereunder have received and maintained all approvals of governmental authorities (including licenses and permits) required in connection with the operation thereof and have been operated and maintained by the Advisor or the Development Company, as applicable, in accordance with applicable laws, rules, and regulations; and (viii) all facilities leased or subleased thereunder are supplied with all utilities and other services necessary for the operation of said facilities.

7.13 Intellectual Property.

(a) Except as set forth on Section 7.13 of the Disclosure Schedule, each of the Advisor and the Development Company owns or has the right to use pursuant to license, sublicense, agreement, or permission all Intellectual Property used in the operation of the businesses of the Advisor and the Development Company as presently conducted. Each item of Intellectual Property owned or used by the Advisor and the Development Company immediately prior to the Closing hereunder will be owned or available for use by the Surviving Company on similar terms and conditions immediately subsequent to the Closing hereunder, subject to the execution and delivery of the New Brand License Agreement and the receipt of third party consents and/or other arrangements described in Section 7.13 of the Disclosure Schedule. Each of the Advisor and the Development Company has taken all necessary action to maintain and protect each item of Intellectual Property that it owns or uses. There is no pending dispute with any current or former officer, employee or consultant of the Advisor or the Development Company regarding ownership of Intellectual Property used in the operation of the businesses of the Advisor or the Development Company as presently conducted. There is no Intellectual Property that is material to the business of the Advisor or the Development Company other than as set forth on Section 7.13 of the Disclosure Schedule.

(b) Neither the Advisor nor the Development Company has Knowingly interfered with, infringed upon, misappropriated, or otherwise come into conflict with any Intellectual Property rights of third parties, and each of the Stockholders (other than FARS) and the directors and officers (and employees with responsibility for Intellectual Property matters) of the Advisor and the Development Company has not ever received any charge, complaint, claim, demand, or notice alleging any such interference, infringement, misappropriation, or violation (including any claim that the Advisor or the Development Company must license or refrain from

using any Intellectual Property rights of any third party). To the Knowledge of the Advisor and the Stockholders, no third party has interfered with, infringed upon, misappropriated, or otherwise come into conflict with any Intellectual Property rights of the Advisor or the Development Company.

(c) No patent, trademark or copyright registrations have been issued to or assigned to the Advisor or the Development Company with respect to any Intellectual Property.

(d) Section 7.13(d) of the Disclosure Schedule identifies each item of Intellectual Property that any third party, including employees and consultants of the Advisor or the Development Company, owns and that the Advisor or the Development Company uses, identifying whether the use is pursuant to license, sublicense, agreement, or other permission. The Stockholders (other than FARS) have delivered to CHP correct and complete copies of all such licenses, sublicenses, agreements, and permissions (as amended to date).

(e) To the Knowledge of the Advisor and the Stockholders, nothing will interfere with, infringe upon, misappropriate, or otherwise come into conflict with, any Intellectual Property rights of third parties as a result of the continued operation of the Advisor's and the Development Company's business as presently conducted.

7.14 Tangible Assets. Except as set forth on Section 7.14 of the Disclosure Schedule, each of the Advisor and the Development Company owns or leases all buildings, machinery, equipment, and other tangible assets used in the conduct of its business as presently conducted and as presently proposed to be conducted. Except as set forth on Section 7.14 of the Disclosure Schedule, each such tangible asset is free from all material defects (patent and latent), has been maintained in accordance with normal industry practice, is in good operating condition and repair (subject to normal wear and tear), and is suitable for the purposes for which it presently is used. The Most Recent Balance Sheet sets forth all of the assets necessary to conduct the Advisor's and the Development Company's business as it is currently being conducted and as it is contemplated to be conducted in the future.

7.15 Contracts. Section 7.15 of the Disclosure Schedule lists the following contracts and other agreements to which the Advisor or the Development Company is a party:

(a) any agreement (or group of related agreements) for the lease of personal property to or from any Person providing for lease payments in excess of $50,000 per annum;

(b) any agreement or arrangement concerning a partnership or joint venture;

(c) any agreement (or group of related agreements) under which it has created, incurred, assumed, or guaranteed any indebtedness for borrowed money, or any capitalized lease obligation or under which it has imposed a Security

Interest on any of its assets, tangible or intangible;

(d) any agreement concerning confidentiality or noncompetition;

(e) any agreement or arrangement between the Advisor or the Development Company, on the one hand, and any of the Stockholders or their Affiliates, on the other hand;

(f) any profit sharing, stock option, stock purchase, stock appreciation, deferred compensation, severance, or other material plan or arrangement for the benefit of its current or former directors, officers, and employees;

(g) any agreement or arrangement for the employment of any individual on a full-time, part-time, consulting, or other basis providing annual compensation in excess of $100,000 or providing severance benefits;

(h) any agreement or arrangement under which it has advanced or loaned any amount to any of its directors, officers, and employees outside the Ordinary Course of Business; or

(i) any agreement under which the consequences of a default or termination could have a Material Adverse Effect on the Advisor or on the ability of the Advisor to consummate the transactions contemplated in this Agreement.

The Stockholders (other than FARS) have delivered to CHP a correct and complete copy of each written agreement listed in Section 7.15 of the Disclosure Schedule (as amended to date) and a written summary setting forth the terms and conditions of each oral agreement or arrangement referred to in Section 7.15 of the Disclosure Schedule. With respect to each such agreement: (A) the agreement is legal, valid, binding, enforceable, and in full force and effect; (B) the agreement will continue to be legal, valid, binding, enforceable, and in full force and effect on identical terms following the consummation of the transactions contemplated hereby; (C) the Advisor is not, and to the Knowledge of the Advisor and the Stockholders, no other party is in breach or default, and no event has occurred which with notice or lapse of time would constitute a breach or default, or permit termination, modification, or acceleration, under the agreement; and (D) no party has repudiated any provision of the agreement.

7.16 Notes and Accounts Receivable. All notes and accounts receivable of the Advisor and the Development Company are reflected properly on its books and records, are valid receivables subject to no setoffs or counterclaims and are current and collectible in accordance with their terms at their recorded amounts, subject only to the reserve for bad debts set forth on the face of the Most Recent Balance Sheet (rather than in any notes thereto) as adjusted for the

passage of time through the Closing Date in accordance with the past practice of the Advisor.

7.17 Powers of Attorney. There are no outstanding powers of attorney executed on behalf of the Advisor or the Development Company except as disclosed in Section 7.17 of the Disclosure Schedule.

7.18 Insurance. Section 7.18 of the Disclosure Schedule sets forth the following information with respect to each insurance policy (including policies providing property, casualty, liability, and workers' compensation coverage and bond and surety arrangements) to which the Advisor or the Development Company has been a party, a named insured, or otherwise the beneficiary of coverage at any time within the past two years: (i) the name, address, and telephone number of the agent; (ii) the name of the insurer and the name of the policyholder; (iii) the policy number and the period of coverage; and (iv) the amount of coverage. Except as set forth on Section 7.18 of the Disclosure Schedule, with respect to each such insurance policy to

the Knowledge of the Stockholders and the Advisor: (A) the policy is legal, valid, binding, enforceable, and in full force and effect; (B) the policy will continue to be legal, valid, binding, enforceable, and in full force and effect on identical terms following the consummation of the transactions contemplated hereby; (C) neither the Advisor, the Development Company nor any other party to the policy is in breach or default (including with respect to the payment of premiums or the giving of notices), and no event has occurred which, with notice or the lapse of time, would constitute such a breach or default, or permit termination, modification, or acceleration, under the policy; and (D) no party to the policy has repudiated any provision thereof. Each of the Advisor and the Development Company has been covered during the past five years by insurance in scope and amount customary and reasonable for the businesses in which it has engaged during the aforementioned period. Section 7.18 of the Disclosure Schedule describes any self-insurance arrangements affecting the Advisor and the Development Company and any claims pending under any insurance policies currently in effect.

7.19 Litigation. Section 7.19 of the Disclosure Schedule sets forth each instance in which the Advisor or the Development Company (i) is subject to any outstanding injunction, judgment, order, decree or ruling or (ii) is a party to, or to the Knowledge of the Advisor is threatened to be made a party to, any action, suit, proceeding, hearing, or investigation of, in, or before any court or quasi-judicial or administrative agency of any federal, state, local, or foreign jurisdiction or before any arbitrator. Except as otherwise described in Section 7.19 of the Disclosure Schedule, none of the actions, suits, proceedings, hearings, and investigations set forth in Section 7.19 of the Disclosure Schedule could result in any Material Adverse Effect on the Advisor or on the ability of the Advisor to consummate the transactions contemplated in

this Agreement. None of the Stockholders has any specific reason to believe that any such action, suit, proceeding, hearing, or investigation may be brought or threatened against the Advisor.

7.20 Employees. To the Knowledge of the Stockholders and the Advisor, no executive, key employee, or group of employees currently has any plans to terminate employment with the Advisor or the Development Company, as applicable, as a result of this Agreement. Neither the Advisor nor the Development Company has committed any unfair labor practice. Neither the Advisor nor the Development Company is or has been a party to any collective bargaining (or other similar) agreement, nor is any such agreement presently being negotiated. None of the Stockholders or the Advisor has any Knowledge of any organizational effort presently being made or threatened by or on behalf of any labor union with respect to employees of the Advisor or the Development Company. Section 7.20 of the Disclosure Schedule sets forth the names of all employees of the Advisor and the Development Company and the annual salary and bonuses paid or accrued for the year ended December 31, 2004, and for the period from January 1, 2005 through September 30, 2005, and any commitments by the Advisor or the Development Company entered into on or prior to the date hereof to pay any further bonuses for or increase in the salary of each such person set forth in Section 7.20 of the Disclosure Schedule. The employees of the Advisor and the Development Company set forth on Section 7.20 of the Disclosure Schedule constitute all employees necessary in order to conduct the Advisor's business as it is currently being conducted.

7.21 Employee Benefits.

(a) Section 7.21 of the Disclosure Schedule lists each Employee Benefit Plan that the Advisor and the Development Company maintains or has maintained or to which the Advisor or the Development Company contributes or has contributed or to which the employees of the Advisor or the Development Company are subject or have been subject.

(b) Each such Employee Benefit Plan (and each related trust, insurance contract, or fund) complies in form and in operation in all respects with the applicable requirements of ERISA, the Code, and other applicable laws.

(c) Except as set forth on Section 7.21 of the Disclosure Schedule, all required reports and descriptions (including Form 5500 Annual Reports, Summary Annual Reports and Summary Plan Descriptions) have been filed or distributed appropriately with respect to each such Employee Benefit Plan. The requirements of Part 6 of Subtitle B of Title 1 of ERISA and of Code Section 4980B have been met with respect to each such Employee Benefit Plan which is an Employee Welfare Benefit Plan.

(d) All contributions (including all employer contributions and employee salary reduction contributions) which are due have been paid to each

such Employee Benefit Plan which is an Employee Pension Benefit Plan and all contributions for any period ending on or before the Closing Date which are not yet due have been paid to each such Employee Pension Benefit Plan or accrued in accordance with the past custom and practice of the Advisor. All premiums or other payments for all periods ending on or before the Closing Date have been paid with respect to each such Employee Benefit Plan which is an Employee Welfare Benefit Plan.

(e) Each such Employee Benefit Plan which is an Employee Pension Benefit Plan meets the requirements of a "qualified plan" under Code 401(a) and has received, within the last two years, a favorable determination letter from the IRS.

(f) The market value of assets under each such Employee Benefit Plan which is an Employee Pension Benefit Plan (other than any Multiemployer Plan), subject to Title IV of ERISA, equals or exceeds the present value of all vested and nonvested Liabilities thereunder determined in accordance with PBGC methods, factors, and assumptions applicable to an Employee Pension Benefit Plan terminating on the date for determination.

(g) The Stockholders (other than FARS) have delivered to CHP correct and complete copies of the plan documents and summary plan descriptions, the most recent determination letter received from the IRS, the most recent Form 5500 Annual Report, and all related trust agreements, insurance contracts, and other funding agreements which implement each such Employee Benefit Plan.

(h) Except as set forth in Section 7.21(h) of the Disclosure Schedule, with respect to each Employee Benefit Plan that the Advisor or the Development Company maintains or ever has maintained or to which it contributes, ever has contributed, or ever has been required to contribute:

(i) No such Employee Benefit Plan which is an Employee Pension Benefit Plan (other than any Multiemployer Plan), subject to Title IV of ERISA, has been completely or partially terminated or been the subject of a Reportable Event as to which notices would be required to be filed with the PBGC. No proceeding by the PBGC to terminate any such Employee Pension Benefit Plan (other than any Multiemployer Plan) has been instituted or threatened.

(ii) There have been no Prohibited Transactions with respect to any such Employee Benefit Plan. No Fiduciary has any Liability for breach of fiduciary duty or any other failure to act or comply in connection with the administration or investment of the assets of any such Employee Benefit Plan. No action, suit, proceeding, hearing, or investigation with respect to the administration or the investment of the assets of any such Employee Benefit Plan (other than routine claims for benefits) is pending or threatened. None of the Stockholders has any Knowledge of any Basis for any such action, suit,

proceeding, hearing, or investigation.

(iii) Neither the Advisor nor the Development Company has incurred, and none of the Stockholders and the directors and officers (and employees with responsibility for employee benefits matters) of the Advisor or the Development Company has any reason to expect that the Advisor or the Development Company will incur, any Liability to the PBGC (other than PBGC premium payments) or otherwise under Title IV of ERISA (including any withdrawal Liability) or under the Code with respect to any such Employee Benefit Plan which is an Employee Pension Benefit Plan.

(i) Neither the Advisor nor the Development Company contributes to, has ever contributed to, or has ever been required to contribute to, any Multiemployer Plan or has ever had any Liability (including withdrawal Liability) under any Multiemployer Plan.

(j) Neither the Advisor nor the Development Company maintains or contributes to, or has ever maintained or contributed to, or has ever been required to contribute to, any Employee Welfare Benefit Plan providing medical, health, or life insurance or other welfare-type benefits for current or future retired or terminated employees, their spouses, or their dependents (other than in accordance with Code Section 4980B).

7.22 Guaranties. Except as described in Section 7.22 of the Disclosure Schedule, neither the Advisor nor the Development Company is a guarantor of or is otherwise liable for, any Liability or obligation (including indebtedness) of any other Person.

7.23 Environment, Health, and Safety.

(a) Each of the Advisor and the Development Company has complied with all Environmental, Health, and Safety Laws, and no action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand, or notice has been filed or commenced against it alleging any failure so to comply. Without limiting the generality of the preceding sentence, each of the Advisor and the Development Company has obtained and been in compliance with all of the terms and conditions of all permits, licenses, and other authorizations which are required under, and has complied with all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules, and timetables which are contained in, all Environmental,

Health, and Safety Laws. A list of all permits, licenses and other authorizations required by Environmental, Health and Safety Laws is listed on Section 7.23 of the Disclosure Schedule and none of such permits, licenses and authorizations require notice or consent or any other action to remain in full force and effect following consummation of the transactions contemplated by this

Agreement.

(b) Neither the Advisor nor the Development Company has any material Liability, and there are no Known facts, circumstances or conditions that could result in material Liability, and neither the Advisor nor the Development Company has handled or disposed of any substance, arranged for the treatment or disposal of any substance, exposed any employee or other individual to any substance or condition, or owned or operated any property or facility in any manner that could form the Basis for any present or future action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand against the Advisor or the Development Company giving rise to any Liability with respect to any site, location, or body of water (surface or subsurface), for any illness of or personal injury to any employee or other individual, or for any reason under any Environmental, Health, and Safety Law.

(c) Except as set forth on Section 7.23(c) of the Disclosure Schedule, all properties and equipment owned or leased by the Advisor and the Development Company have been free of friable asbestos in concentrations greater than one percent (1%), PCBs, toxic mold, underground storage tanks, methylene chloride, trichloroethylene, 1,2-trans-dichloroethylene, dioxins, dibenzofurans, and Extremely Hazardous Substances.

(d) The Advisor has furnished to CHP copies of all environmental assessments, reports, audits, and other documents in its possession or under its control that relate to the environmental condition of any real property currently or formerly owned or operated by the Advisor or the Development Company and the Advisor's and the Development Company's compliance with Environmental Health and Safety Laws. All such information and documents are accurate and complete.

7.24 Proxy Statement. To the Knowledge of the Stockholders and the Advisor, none of the information supplied or to be supplied by any of the Stockholders or the Advisor for inclusion in the Proxy Statement will, at the time of filing the Proxy Statement with the SEC, at the time of mailing the Proxy Statement to the stockholders of CHP or at the time of the CHP Stockholder Meeting, contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements contained in such information, in light of the circumstances under which they are made, not misleading.

7.25 Relationships with Tenants and Managers. The Advisor's and the Development Company's respective relationships with CHP's existing tenants and managers are sound, and there is no Basis to believe that any of CHP's primary tenants and managers will materially and adversely change the manner in which they currently conduct business with CHP.

7.26 Brokers' Fees. Except for the fees and expenses paid to Stifel, Nicolaus & Co., Inc., successor by acquisition to Legg Mason Wood Walker, Incorporated, with respect to the Merger or in connection with the Initial Merger Agreement as previously disclosed in writing by the Advisor to CHP, which fees and expenses are to be paid by the Advisor at or prior to the

Closing (consistent with Section 8.15), the Advisor has no Liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated by this Agreement or in connection with the Initial Merger Agreement. The Advisor has delivered to CHP a copy of any engagement letter or similar agreement between the Advisor and Stifel, Nicolaus & Co., Inc., successor by acquisition to Legg Mason Wood Walker, Incorporated.

7.27 Transactions with Related Parties. There is no (i) loan outstanding from or to the Advisor or the Development Company from or to any employee, officer, director or Affiliate of the Advisor or the Development Company, (ii) agreement between the Advisor or the Development Company, on the one hand, and any employee, officer, director or Affiliate, on the other hand, that is not reflected in Section 7.15 of the Disclosure Schedule, (iii) agreement requiring payments to be made on a direct or indirect change of control of the Advisor or the Development Company or otherwise as a result of the consummation of the Merger or any of the other transactions contemplated by this Agreement with respect to any employee, officer or director of the Advisor or the Development Company or (iv) agreement between the Advisor or the Development Company and any Person giving any Person the right to appoint or nominate any person as a director of the Advisor or the Surviving Company or the Development Company.

7.28 Books and Records. The books and records of each of the Advisor and the Development Company are complete and correct and have been maintained in accordance with good business practices and applicable legal requirements, and contain a true and complete record of all meetings or proceedings of the Board of Directors and stockholders of the Advisor and the Development Company. The stock ledger of each of the Advisor and the Development Company is complete and reflects all issuances, transfers, repurchases and cancellations of shares of capital stock of the Advisor and the Development Company, respectively.

7.29 Disclosure. The representations and warranties contained in this Article 7 do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements and information contained in this Article 7 not misleading.

7.30 FARS Note. The aggregate amount of principal and accrued and unpaid interest outstanding as of the date hereof on that certain promissory note dated as of June __, 2001 issued by the Advisor to and for the benefit of FARS (the "FARS Note") is $7,875,000 and the amortization and payment schedule for the FARS Note is described on Section 7.30 of the Disclosure Schedule.

7.31 Net Working Capital. The working capital (i.e., current assets minus current liabilities) of the Advisor as of the Closing Date will not be less than zero, after giving effect to the Cash Reserve and not taking into account the FARS Note or the Inter-Company FARS Final Payment Funding Note, as applicable. Section 7.31 of the Disclosure Schedule sets forth all Known Liabilities of the

Advisor other than current liabilities, including the amounts thereof, outstanding as of the date of this Agreement and expected to be outstanding as of the Closing Date.

7.32 Expenses. Section 7.32(a) of the Disclosure Schedule sets forth a complete list, listed by type and by estimated amount, of all anticipated fees and expenses, that the Advisor has Knowledge could accrue or be payable by CHP to the Advisor, any member of the CNL Group,

the CNL Group or any of their respective Affiliates between the date of this Agreement and the Closing Date pursuant to the applicable Advisory Agreement or pursuant to any other agreements or arrangements between CHP and the Advisor, any member of the CNL Group, the CNL Group or any of their respective Affiliates in effect as of the date of this Agreement. From and after the Closing Date, to the Knowledge of the Advisor, except as set forth on Section 7.32(b) of the Disclosure Schedule, no additional fees or expenses are contemplated to be required to be paid by CHP or the Surviving Company to any member of the CNL Group, the CNL Group or any of their respective Affiliates in order to enable the Surviving Company to conduct its businesses following the Merger in substantially the same manner as the business of the Advisor was conducted prior to the Merger.

7.33 Knowledge of Certain Transactions. Except as described in Section 7.33 of the Disclosure Schedule, neither the Advisor nor any Stockholder has Knowledge of (a) any arrangements or understandings within the past twelve (12) months with third parties relating to a sale of all or substantially all of CHP's assets or a merger, business combination, direct or indirect change of control transaction or any similar transaction involving CHP (other than the Merger), and there are no discussions or negotiations regarding any such arrangements or understandings with third parties regarding any such transactions, or (b) any facts or circumstances that would make any representation or warranty of CHP or CHPAC which is contained in this Agreement or in any schedule, exhibit or certificate delivered pursuant hereto not true or correct.

7.34 Transition Services Agreement and New Brand License Agreement. CHP will receive under the Transition Services Agreement and the New Brand License Agreement all of the administrative services (except for those administrative services provided directly by the Advisor or otherwise provided to CHP by one or more third parties) and other rights from the applicable Affiliate(s) of Guarantor reasonably necessary to operate the Advisor's business in the same manner as conducted by the Advisor immediately prior to the Closing Date.

ARTICLE 8

ADDITIONAL COVENANTS

8.1 General.

(a) Notwithstanding anything in this Article 8 to the contrary, FARS shall not be subject to any obligation or liabilities under any of the provisions of this Article 8 other than Section 8.14.

(b) During the period from the date of this Agreement until the Effective Time, each of the Parties will use commercially reasonable efforts to take all action and to do all things necessary, proper, or advisable in order to consummate and make effective the Merger (including satisfaction, but not waiver, of the closing conditions set forth in Article 10 below).

8.2 Notices and Consents. During the period from the date of this Agreement until the Effective Time, (i) the Advisor shall give any notices to third parties and shall use commercially reasonable efforts to obtain any third party consents that CHP may reasonably

request in connection with the matters listed on Section 7.4 of the Disclosure Schedule or referred to in Section 7.4 above, and (ii) each of the Parties shall give any notices to, make any filings with, and use its commercially reasonable efforts to obtain any authorizations, consents, and approvals of governments and governmental agencies listed on Section 5.2 or 7.3 of the Disclosure Schedule and in connection with the matters referred to in Section 5.2, Section 6.4, and Section 7.3 above.

8.3 Maintenance of Business; Prohibited Acts. During the period from the date of this Agreement until the Effective Time, the Advisor will, and the Advisor and the Stockholders will not take any action and the Stockholders will not cause or permit the Advisor to take any action that adversely affects the ability of the Advisor to, (i) pursue its business in the Ordinary Course of Business, (ii) seek to preserve intact its current business organizations, (iii) keep available the service of its current officers and employees, (iv) preserve its relationships with customers, suppliers and others having business dealings with it and (v) consummate the Merger and the transactions contemplated thereby (including the satisfaction but not the waiver of any of the conditions set forth in Article 10 of this Agreement); and the Advisor will not and the Stockholders will not cause or permit the Advisor or the Development Company to, without the approval of the Special Committee on behalf of CHP in its sole discretion:

(a) issue, deliver, sell, dispose of, pledge or otherwise encumber, or authorize or propose the issuance, delivery, sale, disposition or pledge or other encumbrances of (i) any additional shares of its capital stock of any class (including the Advisor Common Shares), or any securities or rights convertible into, exchangeable for or evidencing the right to subscribe for any

shares of its capital stock, or any rights, warrants, options, calls, commitments or any other agreements of any character to purchase or acquire any shares of its capital stock or any other securities or rights convertible into, exchangeable for or evidencing the right to subscribe for any shares of its capital stock, or (ii) any other securities in respect of, in lieu of or in substitution for the Advisor Common Shares outstanding on the date hereof; provided, however, the restrictions on transfer of the Advisor Common Shares contained in this Section 8.3(a) shall not apply to any transfers made in accordance with Section 4.4 of this Agreement;

(b) redeem, purchase or otherwise acquire, or propose to redeem, purchase or otherwise acquire, any of its outstanding securities (including the Advisor Common Shares);

(c) split, combine, subdivide or reclassify any shares of its capital stock or otherwise make any payments to the Stockholders in their capacities as stockholders of the Advisor; provided, however, that nothing shall prohibit: (i) the payment of any ordinary distribution or dividend in respect of its capital stock at such times and in such manner and amount as may be consistent with the Advisor's past practice (which in any event shall include any and all compensation paid or payable or expenses reimbursed or reimbursable for the period from April 1, 2004 through the Effective Time, to the extent not otherwise paid or distributed to the Stockholders), (ii) the payment of any dividend as shall be required to be paid by the Advisor in order to permit PricewaterhouseCoopers LLP to issue the letter required by Section 10.2(h), (iii) any distribution of property necessary for the representation and warranty set forth in Section 7.11(g) to be true and correct, (iv) distributions to reduce to zero the Advisor's accumulated and current earnings and profits, (v) distributions of cash by the Advisor to the Stockholders immediately prior to the Closing, provided that the Advisor shall have provided to

CHP the Working Capital Schedule and otherwise complied with the terms and conditions of Section 8.15 of this Agreement and provided further that such distributions shall not result in a breach of any of the representations and warranties in Section 7.31 of this Agreement, or (vi) the dividend contemplated by Section 10.2(d) of this Agreement;

(d) (i) grant any increases in the compensation of any of its directors, officers or executives (except as approved by the Special Committee on behalf of CHP in its sole discretion) or grant any increases in compensation to any of its employees outside the Ordinary Course of Business (except as approved by the Special Committee on behalf of CHP in its sole discretion), (ii) pay or agree to pay any pension retirement allowance or other employee benefit not required or contemplated by any Employee Benefit Plan as in effect on the date hereof to any such director, officer or employee, whether, past or present, (iii) enter into any new or amend any existing employment or severance agreement

with any such director, officer or employee, except as approved by the Special Committee on behalf of CHP in its sole discretion, (iv) pay or agree to pay any bonus to any director, officer or employee (whether in the form of cash, capital stock or otherwise) except as approved by the Special Committee on behalf of CHP in its sole discretion, or (v) except as may be required to comply with applicable law, amend any existing, or become obligated under any new, Employee Benefit Plan, except in the case of (i) through (v) inclusive, under and pursuant to the Employment Agreements;

(e) adopt a plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization (other than the Merger);

(f) make any acquisition, by means of merger, consolidation or otherwise, of any direct or indirect ownership interest in or assets comprising any business enterprise or operation;

(g) adopt any amendments to its articles of incorporation or by-laws, except as contemplated in Section 8.19 of this Agreement;

(h) incur any indebtedness for borrowed money or guarantee such indebtedness or agree to become contingently liable, by guaranty or otherwise, for the obligations or indebtedness of any other person or make any loans, advances or capital contributions to, or investments in, any other corporation, any partnership or other legal entity or to any other persons, except for bank deposits and other investments in marketable securities and cash equivalents made in the Ordinary Course of Business;

(i) engage in the conduct of any business the nature of which is different from the business in which the Advisor or the Development Company, as applicable, is currently engaged;

(j) enter into any agreement providing for acceleration of payment or performance or other consequence as a result of a direct or indirect change of control of the Advisor or the Development Company;

(k) forgive any indebtedness owed to the Advisor or the Development Company or convert or contribute by way of capital contribution any such indebtedness owed;

(l) authorize or enter into any agreement providing for management services to be provided by the Advisor or the Development Company to any third party or an increase in management fees paid by any third party under existing management agreements;

(m) except as set forth in Section 7.22 of the Disclosure Schedule,

mortgage, pledge, encumber, sell, lease or transfer any assets of the Advisor or the Development Company except as approved by the Special Committee on behalf of CHP in its sole discretion or as contemplated by this Agreement;

(n) take any of the actions that would otherwise be prohibited under Section 9.5 of this Agreement if such Section 9.5 were in effect at such time;

(o) authorize or announce an intention to do any of the foregoing, or enter into any contract, agreement, commitment or arrangement to do any of the foregoing; or

(p) perform any act or omit to take any action that would make any of the representations made above inaccurate or materially misleading as of the Effective Time.

8.4 Full Access. During the period from the date of this Agreement until the Effective Time, the Advisor shall permit representatives of CHP and CHPAC to have full access at all reasonable times, and in a manner so as not to interfere with the normal business operations of the Advisor to all premises, properties, personnel, books, records (including Tax records), contracts, and documents of or pertaining to the Advisor and the Development Company.

8.5 Meeting of Stockholders. During the period from the date of this Agreement until the Effective Time, CHP will take all action necessary in accordance with applicable law and CHP's charter and by-laws to arrange for its stockholders to consider and vote upon the approval of the Merger at the CHP Stockholder Meeting to be held in connection with, among other things, the transactions contemplated by this Agreement. Subject to the fiduciary duties of CHP's Board of Directors under applicable law and after consultation with counsel, the Board of Directors of CHP shall recommend that the CHP stockholders approve the Merger. In connection with such recommendation, CHP shall use its commercially reasonable efforts to obtain such approval.

8.6 Proxy Materials. As promptly as practicable after the execution and delivery of this Agreement, CHP shall prepare, and the Advisor and the Stockholders shall cooperate in the preparation of, a proxy statement and a form of proxy to be used in connection with the vote of CHP's stockholders with respect to the Merger on the terms and conditions of this Agreement (such proxy statement, together with any amendments thereof or supplements thereto, in each case in the form or forms mailed to CHP's stockholders, is herein called the "Proxy Statement"). CHP shall include in the Proxy Statement proposals with respect to amendments to the charter of CHP to reflect that CHP will have become self-advised and to conform more closely to the articles of incorporation of companies that are Listed, it being understood that certain of such amendments may require only the affirmative vote of holders of a majority of CHP's outstanding CHP Common Shares entitled to vote thereon (the "Majority Vote Charter Amendment") in substantially the form attached to this Agreement as Exhibit A or in such other form as CHP and the Advisor shall mutually agree in writing, and that certain of such amendments may require the

affirmative vote of holders of two-thirds of CHP's outstanding CHP Common Shares entitled to vote thereon (the "Two-Thirds Vote Charter Amendment" and together with the Majority Vote Charter Amendment, the "CHP Charter Amendments"), with Exhibit B attached hereto reflecting both CHP Charter Amendments. CHP shall file the Proxy Statement with the SEC as soon as reasonably practicable after the date hereof, shall use its commercially reasonable efforts to cause the Proxy Statement to be mailed to stockholders of CHP at the earliest practicable date as permitted by the SEC and shall take all such action as may be reasonably necessary to qualify any CHP Common Shares to be received as Merger Consideration for offering and sale under applicable state securities or "blue sky" laws. If at any time prior to the Effective Time any event relating to or affecting the Advisor, the Stockholders or CHP shall occur as a result of which it is necessary, in the opinion of counsel for the Advisor and the Stockholders or of counsel for CHP to supplement or amend the Proxy Statement in order to make such document not misleading in light of the circumstances existing at the time the CHP Stockholder Approval is sought, the Advisor, the Stockholders and CHP, respectively, will promptly notify the others thereof and, in the case of the Advisor or the Stockholders, will cooperate with CHP in the preparation of, and, in the case of CHP, will prepare and file, an amendment or supplement with the SEC and, if required, applicable state securities authorities, such that the Proxy Statement, as so supplemented or amended, will not at such time contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in light of the circumstances existing at such time, not misleading, and CHP will, as required by law, disseminate to its stockholders such amendment or supplement.

8.7 Notice of Developments. During the period from the date of this Agreement until the Effective Time, each Party will give prompt written notice to the others of any material adverse development Known to such Party which results in, or is reasonably likely to result in, any of its or his own representations and warranties set forth in this Agreement above becoming untrue. No disclosure by any Party pursuant to this Section 8.7, however, shall be deemed to amend or supplement the Disclosure Schedule or to prevent or cure any misrepresentation, breach of warranty, or breach of covenant.

8.8 Tax Matters. Each of the Stockholders, the Advisor, CHP and CHPAC agrees to report the Merger on all Tax Returns and, if applicable, other filings as a reorganization under Section 368(a) of the Code to the extent permitted by law.

8.9 Reorganization. During the period from the date of this Agreement until the Effective Time, none of the Advisor, the Stockholders, CHP or CHPAC shall take or cause to be taken an action, or fail to take an action, that could reasonably be expected to disqualify the Merger as a reorganization under Section 368(a) of the Code.

8.10 Delivery of Certain Financial Statements. Promptly after they become

available, and in any event not later than the tenth business day prior to the Closing Date, the Advisor shall provide CHP with true and correct copies of its unaudited consolidated balance sheet as of September 30, 2005 and true and correct copies of its unaudited balance sheet as of the last day of each month occurring after the date thereof and prior to the Closing Date and the related unaudited statements of income and cash flows for the year to date ending on the last day of each such month. In addition, promptly after they become available and in any event not later than the tenth business day prior to the Closing Date (if the Closing Date is subsequent to March 31,

2006), the Advisor shall provide CHP with true and correct copies of its audited consolidated balance sheet as of December 31, 2005 and the related audited statements of income and cash flows for the year ended December 31, 2005. Delivery of such financial statements shall be deemed to be a representation by the Advisor and the Stockholders (other than FARS) that such balance sheet (including the related notes, if any) presents fairly, in all material respects, the financial position of the Advisor as of the specified date, and the other related statements (including the related notes, if any) included therein present fairly, in all material respects, the results of its operations and cash flows for the respective periods or as of the respective dates set forth therein, all in conformity with GAAP consistently applied during the periods involved, except as otherwise stated in the notes thereto, subject to normal year-end audit adjustments, as applicable.

8.11 State Takeover Statutes. Each of CHP, CHPAC, the Advisor, the Stockholders (other than FARS) and the members of their respective Boards of Directors shall (i) take all action necessary so that no "fair price," "business combination," "moratorium," "control share acquisition" or any other anti-takeover statute or similar statute enacted under state or federal laws of the United States or similar statute or regulation (each, a "Takeover Statute") is or becomes applicable to the Merger, this Agreement or any of the other transactions contemplated by this Agreement and (ii) if any Takeover Statute becomes applicable to the Merger, this Agreement or any other transaction contemplated by this Agreement, take all action necessary to minimize the effect of such Takeover Statute on the Merger and the other transactions contemplated by this Agreement.

8.12 Exclusivity. During the period from the date of this Agreement until the Effective Time or the earlier termination of this Agreement, none of the Stockholders or the Advisor shall (i) solicit, initiate, or encourage the submission of any proposal or offer from any Person relating to the acquisition of any capital stock or other voting securities or any portion of the assets of the Advisor (including any acquisition structured as a merger, consolidation, or share exchange) or (ii) participate in any discussions or negotiations regarding, furnish any information with respect to, assist or participate in, or facilitate in any other manner any effort or attempt by any Person to do or seek

any of the foregoing. Each of the Stockholders agrees that it shall not vote any Advisor Common Shares in favor of any such acquisition, including any such acquisition structured as a merger, consolidation, or share exchange (other than the Merger). The Stockholders and the Advisor shall notify CHP immediately if any Person makes any proposal, offer, inquiry, or contact with respect to any of the foregoing.

8.13 Payment of FARS Note or Inter-Company FARS Final Payment Funding Note. During the period from the date of this Agreement through the earlier to occur of (x) the Closing Date or (y) June 30, 2006, the Advisor shall pay any principal and interest as it becomes due under the FARS Note. If the Closing has not occurred on or before June 30, 2006, during the period from June 30, 2006 through the Closing Date, the Advisor shall pay any interest as it becomes due under the Inter-Company FARS Final Payment Funding Note.

8.14 Registration Rights Agreement. At the Closing, CHP and the Stockholders shall enter into a registration rights agreement in substantially the form attached hereto as Exhibit C, except for such changes therein as may be agreed upon by the Representative and the Special Committee, on behalf of CHP, in their sole discretion, and provided that any change thereto that

adversely affects the rights and obligations of FARS thereunder must also be approved in writing by FARS, which approval shall not be unreasonably withheld or delayed, it being acknowledged and agreed by the Parties that FARS would not be unreasonably withholding approval if FARS reasonably determines that such withholding is necessary in relation to its own interests (the "Registration Rights Agreement").

8.15 Payment of Expenses/Cash Reserve. Prior to the Closing, the Advisor shall have satisfied or shall have set aside a cash reserve of the Advisor in an amount sufficient to satisfy (i) the payment of all Liabilities of the Advisor and the Stockholders in connection with the negotiation, execution and delivery of this Agreement, including the payment of any expenses due to any counsel of the Advisor or the Stockholders and to any brokers, finders or other agents of such Parties described in Section 7.26; it being understood and agreed that neither the Surviving Company nor CHP shall have any liability for the payment of such expenses or other liabilities except to the extent such amounts are included in the Cash Reserve), (ii) any Tax obligations of the Advisor with respect to any periods ending on or before the Closing Date (excluding amounts due for any Taxes with respect to the Advisor's participation in Guarantor's consolidated federal and state Tax Returns, all of which Taxes are and shall continue to be after the Effective Time a Liability of Guarantor), and (iii) any other Liabilities of the Advisor other than the FARS Note and any other Liabilities set forth on Section 8.15 of the Disclosure Schedule (collective, the "Cash Reserve"). At least two business days prior to the Closing, the Advisor shall provide CHP with a schedule showing the amount of the Cash Reserve

and the amount of the estimated working capital of the Advisor as of the Closing before and after giving effect to such Cash Reserve (the "Working Capital Schedule"). No part of the Cash Reserve shall be distributed to the Stockholders at any time.

8.16 Transition Services Agreement. At the Closing, CHP shall enter into a transition services agreement with Guarantor or its Affiliate in substantially the form agreed upon by CHP and Guarantor immediately prior to execution and delivery of this Agreement by the Parties (the "Transition Services Agreement").

8.17 New Brand License Agreement. At the Closing, CHP shall enter into a licensing agreement with Guarantor or its Affiliate in substantially the form agreed upon by CHP and Guarantor immediately prior to execution and delivery of this Agreement by the Parties (the "New Brand License Agreement").

8.18 Cooperation with Auditors. Prior to the Closing, the Stockholders shall provide to PricewaterhouseCoopers LLP all information reasonably available to the Stockholders that is necessary to calculate the accumulated and current earnings and profits of the Advisor as of the Effective Time, including, but not limited to, all necessary federal income Tax information relating to the Advisor, working papers created with respect to such Advisor Tax information, and information with respect to any federal income Tax controversy, either pending or resolved, with respect to such returns. Any information shall be treated as strictly confidential by PricewaterhouseCoopers LLP and every employee of, and advisor to, CHP and PricewaterhouseCoopers LLP; provided, however, that the foregoing shall not preclude CHP from sharing such information (i) with its tax counsel for purposes of permitting such counsel to render opinions from and after the time of the Merger with respect to the qualification of CHP as a real estate investment trust as defined within Section 856 of the Code ("REIT") or (ii) with any

third party, including investment banks and their counsel, performing due diligence with respect to CHP's continued qualification as a REIT following the Merger. The aforesaid confidentiality provisions shall not apply to the Surviving Company, as the successor to the Advisor in the Merger, or to CHP, as the parent of the Surviving Company, following the Merger.

8.19 Amendment to the Articles of Incorporation of the Advisor. Prior to the Closing, the Advisor shall adopt and make effective any and all amendments to the articles of incorporation of the Advisor that are reasonably requested by the Special Committee on behalf of CHP to facilitate the Merger, subject to approval of the Advisor, which approval shall not be unreasonably withheld or delayed (the "Advisor Amendment").

8.20 Pledge and Security Agreement. At the Closing, the Indemnifying Stockholders and CHP shall enter into a pledge and security agreement in

substantially the form attached hereto as Exhibit D, except for such changes therein as may be agreed upon by the Representative and the Special Committee on behalf of CHP in its sole discretion (the "Pledge and Security Agreement").

8.21 Additional Advisor Actions. The Advisor shall take all actions reasonably necessary to effect the transactions described on Section 8.21 of the Disclosure Schedule (the "Advisor Actions").

8.22 CHP Note. At the Closing, the Advisor shall assign the CHP Note to the Stockholders in such manner as determined by the Stockholders and described in Section 8.22 of the Disclosure Schedule.

8.23 Tower II Lease. At the Closing, the Advisor shall assign the Tower II Lease and all of its rights and obligations as tenant thereunder to CHP, and CHP shall (i) assume all of the Advisor's rights and obligations as tenant under the Tower II Lease and (ii) reimburse Guarantor for its reasonably documented out-of-pocket costs and expenses incurred or paid as of the Closing Date in connection with (A) the purchase, on behalf of the Advisor, of the Advisor's furniture, fixtures and equipment for the Tower II Office Space, and (B) amounts paid by the Guarantor, on behalf of the Advisor, to the landlord under the Tower II Lease for the cost of improvements to the Tower II Office Space that are in excess of the tenant improvement allowance under said lease. Section 8.23 of the Disclosure Schedule includes a reasonably detailed description of the out-of-pocket costs and expenses and other amounts referred to in the immediately preceding clause (ii) incurred or paid by the Guarantor without any mark-up or profit by Guarantor, on behalf of the Advisor, as of the date of this Agreement and reasonably expected to be incurred or paid by the Guarantor, on behalf of the Advisor, prior to or as of the Closing Date.

ARTICLE 9

POST-CLOSING COVENANTS

The Parties agree as follows with respect to the period following the Closing:

9.1 General. In the event that at any time after the Closing any further action is necessary or desirable to carry out the purposes of this Agreement, each of the Parties will take

such further action (including the execution and delivery of such further instruments and documents) as any other Party reasonably may request, all at the sole cost and expense of the requesting Party (unless the requesting Party is entitled to indemnification therefor under Article 12 below). The Stockholders acknowledge and agree that from and after the Closing, the Surviving Company and CHP will be entitled to possession of all documents, books, records (including

Tax records), agreements, and financial data of any sort relating to the Advisor.

9.2 Litigation Support. Without limiting Section 9.10, in the event and for so long as any Party actively is contesting or defending against any third party action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand in connection with (i) any transaction contemplated under this Agreement or (ii) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act, or transaction on or prior to the Closing Date involving the Advisor, each of the other Parties will reasonably cooperate with such Party and its counsel in the contest or defense, make available their personnel, and provide such testimony and access to their books and records as shall be reasonably necessary in connection with the contest or defense, all at the sole cost and expense of the contesting or defending Party (unless the contesting or defending Party is entitled to indemnification therefor under Article 12 below).

9.3 Transition. None of the Stockholders will take any action that is designed or intended to have the effect of discouraging any lessor, licensor, customer, supplier, or other business associate of the Advisor or the Development Company from maintaining the same business relationships with the Surviving Company after the Closing as it maintained with the Advisor and the Development Company prior to the Closing.

9.4 Confidentiality. Each of the Stockholders will treat and hold as confidential all of the Confidential Information, refrain from using any of the Confidential Information except in connection with this Agreement, and deliver promptly to CHP or destroy, at the request and option of CHP, all tangible embodiments (and all copies) of the Confidential Information which are in his or its possession. In the event that any of the Stockholders is requested or required (by oral question or request for information or documents in any legal proceeding, interrogatory, subpoena, civil investigative demand, or similar process) to disclose any Confidential Information, the Stockholders will notify CHP promptly of the request or requirement so that CHP may seek an appropriate protective order or waive compliance with the provisions of this Section 9.4. If, in the absence of a protective order or the receipt of a waiver hereunder, any of the Stockholders is, on the advice of counsel, compelled to disclose any Confidential Information to any tribunal or else stand liable for contempt, then such Stockholder may disclose the Confidential Information to such tribunal; provided, however, that the disclosing Stockholder shall use his or its commercially reasonable efforts to obtain, at the request of CHP, an order or other assurance that confidential treatment will be accorded to such portion of the Confidential Information required to be disclosed as CHP shall designate. The foregoing provisions shall not apply to any Confidential Information which is generally available to the public immediately prior to the time of disclosure.

9.5 Covenant Not to Compete; Right of First Refusal; Non-Solicitation.

(a) In consideration of CHP, CHPAC's and the Advisor's entering into this Agreement pursuant to which, among other things, the Advisor Common Shares owned by each of CREG, James M. Seneff, Jr. and Robert A. Bourne will be converted into the right to receive such Party's respective Pro Rata Percentage of the Merger Consideration as contemplated herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and acknowledging hereby that each of CHP, CHPAC and the Advisor would not have agreed to enter into this Agreement and CHP would not have agreed to cause the payment of any portion of the Merger Consideration to such Party, in each case without such Party agreeing to enter into, and to honor the terms and conditions of this Section 9.5(a), each of Guarantor, CREG, James M. Seneff, Jr. and Robert A. Bourne (collectively, the "CNL Group") hereby acknowledges that such Party shall be subject to, and hereby covenants and agrees to honor and comply with, the terms and conditions of this Section 9.5 following the Closing as follows:

(i) During the period commencing on the Closing Date and terminating on the seventh (7th) anniversary of the Closing Date, each member of the CNL Group shall not, and shall cause each of their respective Affiliates not to, directly or indirectly engage in any activities within the United States of America, Canada and Europe relating to the ownership, acquisition, development or management of luxury and upper upscale hotels and luxury resorts, each as classified by Smith Travel Research (the "Luxury Hotel Industry Sector"), including, but not limited to, (A) sponsoring or organizing, or assisting any other Person in sponsoring or organizing, an investment vehicle investing in the Luxury Hotel Industry Sector or (B) providing asset management or other advisory services to, or directly assisting another Person in providing asset management or advisory services to, any investment vehicle investing in the Luxury Hotel Industry Sector; provided, however, that (1) except as otherwise provided in clause (5) below, activities taken by any member of the CNL Group, the CNL Group or any of their respective Affiliates with respect to the investment in recreational facilities or recreational properties, including golf courses, ski resorts, campgrounds, recreational vehicle parks and marinas (the "Recreational Properties and Facilities"), in which activities relating to the Luxury Hotel Industry Sector is only incidental to the primary purpose of such facility or property, shall not be deemed to violate this Section 9.5(a)(i), (2) activities taken by any member of the CNL Group, the CNL Group or any of their respective Affiliates with respect to facilities, such as condominiums and time share properties, in which 50% or more of the ownership interests of such facility exist on a fractional basis, shall not be deemed to violate this Section 9.5(a)(i), (3) the investment by any member of the CNL Group or any of their respective Affiliates in the properties listed on Section 9.5 of the Disclosure Schedule in which such Persons have interests as of the date of this Agreement, shall not be deemed to violate this Section 9.5(a)(i), (4) activities taken by a Person that has issued securities that are registered under Sections 12(b) or 12(g) of the Securities Exchange Act and that is a member of the CNL Group or an Affiliate of a member of the CNL Group shall not be deemed to violate this Section 9.5(a)(i) if, at the time such Person becomes actively involved in

pursuing plans to engage, and has knowingly taken affirmative steps to engage in such activities and for twelve (12) consecutive calendar months thereafter, no member of the CNL Group or Affiliate of a member of the CNL Group (A) serves as a director, officer or employee of or consultant to such Person or holds a similar position with such Person or its Subsidiary or direct or indirect parent corporation or entity (which may, for example, require a member of the CNL Group to resign from such positions with such Person or its Subsidiary or direct or indirect parent corporation or entity) or (B) beneficially owns more

than five percent (5%) of the issued and outstanding securities of such Person (which may, for example, require a member of the CNL Group to dispose or disclaim beneficial ownership of certain securities of such Person or its Subsidiary or direct or indirect parent corporation or entity), as applicable (such Person or Affiliate referred to in the immediately preceding clause (A) or (B), an "Excluded Person"), (5) activities taken by CNL Income Properties, Inc. with respect to the investment in recreational facilities or recreational properties, including golf courses, ski resorts, campgrounds, recreational vehicle parks and marinas, in which activities relating to the Luxury Hotel Industry Sector generated fifty percent (50%) or more of the revenues of such recreational facility or recreational property during the most recently completed fiscal year or is reasonably expected to generate fifty percent (50%) or more of the revenue of such recreational facility or recreational property in the fiscal year following the stabilization of operations of such recreational facility or recreational property, shall not be deemed to violate this Section 9.5(a)(i) if and to the extent the applicable members of the CNL Group and its or their applicable Affiliates comply or cause compliance with the Right of First Refusal in Section 9.5(a)(ii) as if and to the same extent such recreational facility or recreational property was a Hospitality Asset for purposes of Section 9.5(a)(ii), in any case without regard to whether CNL Income Properties, Inc. is an Excluded Person, and (6) the covenant not to compete in this Section 9.5(a)(i) may be waived by prior written consent of CHP acting with and based upon the approval in their sole discretion of at least a majority of all of CHP's disinterested directors who are non-employee directors, it being understood that, for purposes of this Agreement, a director of CHP will be deemed not to be disinterested if such director is a member of the CNL Group or an Affiliate of any member of the CNL Group.

(ii) During the period commencing on the Closing Date and terminating on the third (3rd) anniversary of the Closing Date, in the event that a member of the CNL Group or any of their respective Affiliates (other than an Excluded Person) (such member of the CNL Group or Affiliate thereof, the "CNL Group Party") enters into or executes and delivers any binding agreement, contract, letter agreement or other binding arrangement (a "Hospitality Asset Agreement") relating to the ownership or acquisition of any hotel, or other lodging asset in the United States of America, Canada or Europe outside of the Luxury Hotel Industry Sector (such hotel, resort, motel or other lodging asset,

the "Hospitality Asset"), such CNL Group Party shall offer to CHP the right of first refusal to assume and perform (or cause one of its Subsidiaries to assume and perform) such Hospitality Asset Agreement (the "Right of First Refusal") in accordance with this Section 9.5(a)(ii), it being acknowledged and agreed by the Parties that (A) a Hospitality Asset Agreement would for purposes of this Section 9.5(a)(ii) be deemed to be binding even if the only obligation of any party thereto is an obligation to negotiate definitive documentation in good faith and (B) such CNL Group Party(ies) shall not enter into or execute and deliver such Hospitality Asset Agreement unless and until such Hospitality Asset Agreement includes (1) an assignment provision that would enable such Hospitality Asset Agreement to be assigned by the CNL Group Party(ies) to CHP or one of its reasonably qualified Subsidiaries without the consent of the proposed counterparty(ies) thereto if CHP exercises its Right of First Refusal and (2) a requirement that if CHP exercises its Right of First Refusal the proposed counterparty(ies) to the Hospitality Asset Agreement produce or make available to CHP such financial information concerning the Hospitality Asset so as to enable CHP to produce the financial statements and information required under the federal securities laws to be filed by CHP in connection with the ownership or acquisition of such Hospitality Asset(s); provided, however, that the Right of First Refusal shall not apply to a Hospitality Asset

Agreement entered into by any member of the CNL Group or any of their respective Affiliates relating to the ownership or acquisition of (Y) any Recreational Properties and Facilities in which activities relating to any Hospitality Asset is only incidental to the primary purpose of such Recreational Property or Facility, or (Z) facilities, such as condominiums and time share properties in which 50% or more of the ownership interests of such facility exists on a fractional basis. Promptly following the execution and delivery of the Hospitality Asset Agreement, which in no event shall be later than the tenth (10th) day following the execution and delivery of the Hospitality Asset Agreement by all parties thereto, the applicable CNL Group Party shall deliver to CHP written notice of the proposed Hospitality Asset Agreement, which notice (the "ROFR Notice") shall include (A) a complete and correct copy of the Hospitality Asset Agreement, (B) a detailed description of the Hospitality Asset(s) subject to such Hospitality Asset Agreement and (C) copies of all written information provided to any member of the CNL Group Party and/or its financial and other advisors (other than legal counsel) by the counterparty(ies) to the Hospitality Asset Agreement concerning the Hospitality Asset Agreement and the Hospitality Asset(s), including, if so provided, photographs of the Hospitality Asset(s), environmental reports and title surveys of and concerning the Hospitality Asset and financial information of the operating history of the Hospitality Asset. In addition, upon delivery to CHP of the ROFR Notice, such CNL Group Party shall provide or cause to be provided to CHP and to CHP's authorized representatives reasonable access upon reasonable notice during normal business hours to the properties, books, records, contracts, commitments, facilities, premises and equipment that may be the subject of the Hospitality Asset Agreement and that may otherwise comprise the Hospitality Asset, subject

to an appropriate confidentiality agreement not more restrictive on CHP than any confidentiality agreement entered into by the CNL Group Party(ies) with such counterparty(ies). Within forty-five (45) days after CHP's receipt of the ROFR Notice, CHP shall notify the CNL Group Party whether CHP exercises its Right of First Refusal. If CHP elects to exercise its Right of First Refusal, then such CNL Group Party shall assign, and CHP shall assume or shall cause a reasonably qualified Subsidiary to assume, all of the CNL Group Party(ies) rights and obligations to and under the Hospitality Asset Agreement. If CHP elects not to exercise its Right of First Refusal or does not inform such CNL Group Party that it has elected to exercise its Right of First Refusal within such forty-five day period, then such CNL Group Party may consummate the transactions contemplated by the Hospitality Asset Agreement for the price and on terms materially no more favorable to such CNL Group Party than were described in the ROFR Notice; provided, however, that if CHP elects not to exercise its Right of First Refusal or does not inform such CNL Group Party that it has elected to exercise its Right of First Refusal within such forty-five (45) day period and such CNL Group Party does not consummate the transactions contemplated by the Hospitality Asset Agreement within one hundred eighty (180) days after CHP's receipt of the ROFR Notice, then such CNL Group Party may not consummate the transactions contemplated by the Hospitality Asset Agreement without again complying with the restrictions contained in this Section 9.5(a)(ii). Notwithstanding anything to the contrary contained herein, any CNL Group Party shall inform, and shall cause each of his or its respective Affiliates to inform, each prospective counterparty to a Hospitality Asset Agreement of CHP's Right of Refusal with respect to such Hospitality Asset at the same time such CNL Group Party or any of his or its respective Affiliates commences discussions with a prospective counterparty(ies) to a Hospitality Asset Agreement relating to the ownership or acquisition, of a Hospitality Asset.

(iii) During the period commencing on the Closing Date and continuing through the seventh (7th) anniversary of the Closing Date, each of Guarantor, CREG, James M. Seneff, Jr. and Robert A. Bourne shall not, without CHP's prior written consent, and shall cause each of their respective Affiliates (other than an Excluded Person) not to, directly or indirectly, Knowingly solicit for employment or encourage to leave the employment or other service of CHP or any of its Subsidiaries, any employee thereof or hire (on his or its behalf or on behalf of any other Person) any employee who has left the employment or other service of CHP or any of its Subsidiaries (or any predecessor of either) within one (1) year of the termination of such employee's employment with CHP or any of its Subsidiaries.

(b) If the final judgment of a court of competent jurisdiction declares that any term or provision of this Section 9.5 is invalid or unenforceable, the Parties agree that the court making the determination of invalidity or unenforceability shall have the power to reduce the scope, duration, or area of the term or provision, to delete specific words or phrases,

or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified after the expiration of the time within which the judgment may be appealed.

9.6 CHP Common Shares. Each certificate issued to the Stockholders who are acquiring CHP Common Shares in the Merger representing such CHP Common Shares will be imprinted with a legend substantially in the following form:

> "THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "1933 ACT"), IN RELIANCE UPON THE EXEMPTION FROM REGISTRATION CONTAINED IN SECTION 4(2) OF THE 1933 ACT AND REGULATION D OF THE RULES AND REGULATIONS PROMULGATED UNDER THE 1933 ACT, AND IN RELIANCE UPON THE REPRESENTATION BY THE HOLDER THAT THEY HAVE BEEN ACQUIRED FOR INVESTMENT PURPOSES ONLY AND NOT WITH A VIEW TO RESALE OR FURTHER DISTRIBUTION. SUCH SHARES MAY NOT BE OFFERED FOR SALE, SOLD, DELIVERED AFTER SALE, HYPOTHECATED, NOR WILL ANY ASSIGNEE OR ENDORSEE HEREOF BE RECOGNIZED AS AN OWNER HEREOF BY THE ISSUER FOR ANY PURPOSE, UNLESS A REGISTRATION STATEMENT FILED WITH THE SECURITIES AND EXCHANGE COMMISSION WITH RESPECT TO SUCH SHARES SHALL THEN BE IN EFFECT OR UNLESS THE AVAILABILITY OF AN EXEMPTION FROM REGISTRATION SHALL BE ESTABLISHED TO THE REASONABLE SATISFACTION OF COUNSEL OF THE ISSUER."

Each such Stockholder desiring to transfer any of the CHP Common Shares received in connection with the Merger, other than in a registered offering or pursuant to a sale which counsel for CHP confirms is in compliance with Rule 144 of the Securities Act, must first furnish CHP with (i) a written opinion satisfactory to CHP in form and substance from counsel reasonably satisfactory to CHP to the effect that such Stockholder may transfer the CHP Common Shares as desired without registration under the Securities Act and (ii) a written undertaking executed by the desired transferee reasonably satisfactory to CHP in form and substance agreeing to be bound by the restrictions on transfer contained herein. Each of the Stockholders who hold Class B Advisor Common Shares subject to an Employee Stock Purchase Agreement shall hold any CHP Common Shares received as the Merger Consideration subject to the restrictions of the applicable Employee Stock Purchase Agreement.

9.7 Merger Consideration. Each Stockholder who acquires CHP Common Shares in the Merger hereby agrees to be bound by the provisions of the lock-up letter contemplated by the Registration Rights Agreement.

9.8 Tax Matters.

(a) The Stockholders (other than FARS and other than the Management

Stockholders) shall prepare or cause to be prepared and file or cause to be filed all Tax Returns for the Advisor and the Development Company for all periods ending on or prior to the Closing Date which are to be filed after the Closing Date as part of the Guarantor's consolidated federal and state Tax Returns or otherwise. The Stockholders (other than FARS and other than the Management Stockholders) shall permit CHP to review and comment on each Tax Return described in the preceding sentence (or, if any such Tax Return is to be filed on a consolidated basis, the pro forma Tax Return of the Advisor and the Development Company to be used in such consolidation) for such periods prior to filing. The Stockholders (other than FARS) shall be responsible for the timely payment of any Taxes of the Advisor or the Development Company with respect to such periods.

(b) Any refund or credit of Taxes (including any statutory interest thereon) received by CHP, CHPAC or any of their Subsidiaries with respect to the Advisor or the Development Company that are attributable to periods ending on or prior to or including the Closing Date shall reduce any CHP Indemnity Claim that the Stockholders (other than FARS) owe CHP pursuant to Article 12 below by an amount equal to the amount of such refund or credit; provided, however, that to the extent any such refund or credit exceeds the aggregate amount of any and all CHP Indemnity Claims that the Stockholders owed CHP pursuant to this Agreement, the excess amount of such refund or credit shall be paid to the Representative for distribution to the Stockholders on a pro rata basis upon the expiration, in accordance with Section 12.5 of this Agreement, of all rights of CHP to seek indemnification pursuant to Article 12, but in any event not later than the end of the eighteen (18) month period following the Closing Date.

(c) In the event that CHP, CHPAC or any of their Subsidiaries receives notice, whether orally or in writing, of any pending or threatened federal, state, local or foreign tax examinations, claims settlements, proposed adjustments or related matters with respect to Taxes that would reasonably be expected to affect Advisor or any of the Stockholders, or if Advisor or

any of the Stockholders receives notice of such matters that would reasonably be expected to affect CHP, CHPAC or any of their Subsidiaries, the Party receiving such notice shall promptly notify in writing the potentially affected Party. The failure of either Party to give the notice required by this Section 9.8(c) shall not impair such Party's rights under this Agreement except to the extent that the other Party demonstrates that it has been damaged thereby.

(d) The Stockholders (other than FARS) shall have the responsibility for, and shall be entitled, at their expense, to contest, control, compromise, settle or appeal all proceedings with respect to pre-closing Taxes, provided, however, that any decision or action with respect to any of the foregoing that reasonably could be expected to affect either CHP or CHPAC adversely shall require the prior written consent of CHP acting with and based upon the approval

in their sole discretion of at least a majority of all of CHP's disinterested directors who are non-employee directors, it being understood that, for purposes of this Agreement, a director of CHP will be deemed not to be disinterested if such director is a member of the CNL Group or an Affiliate of any member of the CNL Group, and provided further that the Stockholders (other than FARS), in accordance with his or its Pro Rata Percentage of the Merger Consideration, shall indemnify CHP and CHPAC from any and all costs incurred by CHP and CHPAC in connection with or as a result thereof.

(e) CREG hereby additionally agrees to assume and be responsible for the pro rata portion of any reimbursement, payment, indemnity or other obligation of FARS as a Stockholder that may or would otherwise have been attributable to FARS pursuant to this Section 9.8 and is owed or payable to CHP or CHPAC.

(f) In the event that any taxable period for the Advisor or the Development Company shall commence prior to the Closing Date and end after the Closing Date (a "Straddle Year") under the applicable law of any taxing jurisdiction (a "Straddle Year Jurisdiction"), then (i) the Stockholders (other than FARS) shall prepare or cause to be prepared a pro forma Tax Return for the Straddle Year Jurisdiction for the portion of the Straddle Year commencing prior to the Closing Date and ending with the close of business on the Closing Date (the "Pre-Closing Straddle Period") and shall deliver such pro forma Tax Return to CHP, together with an amount of cash equal to all Taxes that would be payable to the Straddle Year Jurisdiction with respect to the Pre-Closing Straddle Period (referred to as "Pre-Closing Straddle Period Taxes") and (ii) CHP shall prepare or cause to be prepared a pro forma Tax Return for the Straddle Year Jurisdiction for the portion of the Straddle Year commencing on the day following the Closing Date and ending on the last day of the Straddle Year (the "Post-Closing Straddle Period") and shall deliver such pro forma Tax Return to the Representative for his review, provided that CHP shall have the right to make all determinations with respect thereto. CHP will be responsible for preparing and filing with the Straddle Year Jurisdiction all required Tax Returns for the Straddle Year, and shall be responsible for all Taxes attributable to the Post-Closing Straddle Period (with such Taxes referred to as "Post-Closing Straddle Period Taxes"). To the maximum extent practicable, the rights and responsibilities of the Stockholders with respect to Pre-Closing Straddle Period Taxes shall be as set forth in subparagraphs (a) through (e) with respect to Taxes for periods ending on or prior to the Closing Date.

9.9 Post-Closing Employment Arrangements. At or prior to the Closing, the Advisor and its Affiliates will have entered into agreements or arrangements in form and substance

satisfactory to the Special Committee on behalf of CHP in its sole discretion, for the continuation and/or substitution of benefits to employees of the Advisor

and the Development Company following the Merger.

9.10 Assumption of Certain Liabilities of the Advisor Concerning the Class Action Lawsuit and Related Matters.

(a) Without limiting the Indemnifying Stockholders' obligations under Article 12, as of the Effective Time and without any further action by any of the Parties, the Indemnifying Stockholders shall, according to his or its Pro Rata Percentage, be deemed to have assumed and hereby expressly acknowledge and agree that they shall assume from the Advisor and otherwise succeed to all the rights and Liabilities of the Advisor, if any, with respect to the Class Action Lawsuit and the matters out of which the Class Action Lawsuit arose as if such rights and Liabilities originally were the rights and Liabilities of the Indemnifying Stockholders (such Liabilities, the "Assumed Advisor Liabilities"), provided that CREG hereby additionally agrees to assume and be responsible for the pro rata portion of any Assumed Advisor Liabilities that otherwise would have been attributable to FARS. The Indemnifying Stockholders shall diligently pursue, control and bear the expense, including attorneys' fees, of the defense, settlement, adjustment or compromise of the Assumed Advisor Liabilities, if any, with counsel reasonably acceptable to CHP (and CHP acknowledges that the Advisor's current counsel is acceptable), provided that the Indemnifying Stockholders shall obtain the written consent of CHP and Surviving Company before entering into any settlement, adjustment or compromise of such Assumed Advisor Liabilities (if CHP is not a party to said settlement, adjustment, or compromise), if any, or ceasing to defend against such Assumed Advisor Liabilities, if any, if as a result thereof, or pursuant thereto, there would be imposed on CHP and/or Surviving Company any additional Liability not covered by the indemnity obligations of the Indemnifying Stockholders under this Agreement and resulting from such settlement, adjustment or compromise (including, without limitation, any injunctive relief or other remedy). The Parties intend and agree that, by operation of this Section 9.10 and Article 12, (i) the Merger would not diminish CHP's rights or increase CHP's Liabilities, if any, with respect to the Class Action Lawsuit or the matters out of which the Class Action Lawsuit arose and (ii) the Indemnifying Stockholders' rights and Liabilities with respect to the Class Action Lawsuit or the matters out of which the Class Action Lawsuit arose after the Effective Time be identical to the Advisor's rights and Liabilities with respect to the Class Action Lawsuit and the matters out of which the Class Action Lawsuit arose had this Agreement not been executed and delivered by the Parties and had the Merger not occurred, including, but not limited to, any rights or Liabilities with respect to any applicable fee sharing agreements, arbitration awards, or court orders with respect to the Class Action Lawsuit and the matters out of which the Class Action Lawsuit arose.

(b) The Indemnifying Stockholders shall cooperate reasonably with CHP and Surviving Company and with their respective representatives in connection with any steps to be taken as part of their obligations under this Section 9.10 and shall (i) furnish upon request to each other and to CHP and Surviving Company such further information, (ii) execute and deliver to each other and to CHP and/or Surviving Company such other documents and (iii) do such other acts and things, each as may be reasonably requested by CHP and/or the Surviving Company for the purpose of carrying out the intent of this Section 9.10.

(c) The Indemnifying Stockholders may allocate among themselves by written agreement responsibility for their obligations under this Section 9.10 with respect to the Assumed Advisor Liabilities, subject to CHP's prior written consent, which consent shall not be unreasonably be withheld, it being understood that any such allocation shall not affect CHP's and/or the Surviving Company's rights under Article 12.

ARTICLE 10

CONDITIONS TO OBLIGATION TO CLOSE

10.1 Conditions to Each Party's Obligation. The respective obligations of CHP, CHPAC, the Advisor and the Stockholders to consummate the Merger are subject to the satisfaction at or prior to the Closing Date of each of the following conditions, which conditions may be waived upon the written consent of the Special Committee on behalf of CHP and the Representative:

(a) CHP Stockholder Approval. CHP shall have obtained the CHP Stockholder Approval.

(b) Governmental Approvals. The Parties shall have received all other authorizations, consents, and approvals of governments and governmental agencies listed on and Sections 5.2 and 7.3 of the Disclosure Schedule and otherwise referred to in Section 5.2, Section 6.4, and Section 7.3 above and such consents shall remain in effect as of the Closing Date.

(c) Opinions. (i) CHP and CHPAC and the Stockholders shall have received an opinion dated as of the Closing Date from Greenberg Traurig, LLP, counsel to CHP and CHPAC, addressed to the Special Committee on behalf of CHP in the form agreed upon by CHP, CHPAC, the Stockholders and Greenberg Traurig, LLP immediately prior to the execution and delivery of this Agreement by the Parties.

(ii) CHP and CHPAC shall have received an opinion dated as of the Closing Date from Greenberg Traurig, LLP, counsel to CHP and CHPAC, addressed to the Special Committee on behalf of CHP in the form agreed upon by CHP, CHPAC and Greenberg Traurig, LLP immediately prior to the execution and delivery of this Agreement by the Parties. CHP, CHPAC and the Advisor shall provide representation letters to Greenberg Traurig, LLP in the form agreed upon by CHP, CHPAC, the Advisor and Greenberg Traurig, LLP immediately prior to the execution and delivery of this Agreement by the Parties.

(iii) The Advisor and the Stockholders shall have received an opinion dated as of the Closing Date from Arnold & Porter LLP, special tax counsel to the Advisor, addressed to the Advisor and the Stockholders in the

form agreed upon by the Advisor, the Stockholders and Arnold & Porter LLP immediately prior to the execution and delivery of this Agreement by the Parties. CHP, CHPAC and the Advisor shall provide representation letters to Arnold & Porter LLP in the form agreed upon by CHP, CHPAC, the Advisor and Arnold & Porter LLP immediately prior to the execution and delivery of this Agreement by the Parties.

10.2 Conditions to Obligation of CHP and CHPAC. The obligations of CHP and CHPAC to consummate the Merger and take the actions to be performed by them in connection

with the Closing are subject to satisfaction or waiver by the Special Committee on behalf of CHP, in its sole discretion, of the following conditions:

(a) No Injunction or Proceedings. There shall not be in effect any action, suit, or proceeding pending or threatened before any court or quasi-judicial or administrative agency of any federal, state, local, or foreign jurisdiction or before any arbitrator wherein an unfavorable injunction, judgment, order, decree or ruling that would, in the reasonable judgment of the Special Committee on behalf of CHP, (i) prevent consummation of the Merger, (ii) cause the Merger to be rescinded following consummation, (iii) affect adversely the right of CHP to own the capital stock of the Surviving Company, or (iv) affect adversely the right of the Surviving Company to own its assets and to operate its businesses (and no such injunction, judgment, order, decree, ruling, or charge is in effect);

(b) Officers Certificate. Each of the Stockholders and the chief executive officer of the Advisor shall have delivered to CHP a certificate to the effect that, to the Actual Knowledge of such certifying Person (it being acknowledged and agreed by the Parties that, for purposes of this Section 10.2(b), the Actual Knowledge of the chief executive officer of the Advisor shall mean the Actual Knowledge of such officer following a reasonable investigation, the Actual Knowledge of the certifying Stockholder shall mean the individual Actual Knowledge of such certifying Stockholder, and the Actual Knowledge of such individual Stockholder shall not be attributed to the other Stockholders):

(i) the representations and warranties set forth in Article 5 and Article 7 above applicable to it that are qualified as to materiality shall be true and correct, and those applicable to it not so qualified shall be true and correct in all material respects, as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date, except that the representation and warranty made in Section 7.30 shall be true and correct in all material respects as of the date of this Agreement;

(ii) the Stockholders and the Advisor shall have performed and

complied in all material respects with all of their covenants and obligations to be performed by it under this Agreement at or prior to the Closing Date, including the Advisor's performance of the actions contemplated by Section 10.2(d) below;

(iii) the Advisor and the Stockholders have procured all of the third party consents specified in Section 5.3 and 7.4 above and such consents shall remain in effect as of the Closing Date; and

(iv) no action, suit, or proceeding is pending or threatened against the Advisor or such Stockholder before any court or quasi-judicial or administrative agency of any federal, state, local, or foreign jurisdiction or before any arbitrator wherein an unfavorable injunction, judgment, order, decree or ruling that would (A) prevent consummation of the Merger, (B) cause the Merger to be rescinded following consummation, (C) affect adversely the right of CHP to own the membership interests of the Surviving Company, or (D) affect adversely the right of the Surviving Company to own its assets and to operate its businesses (and no such injunction, judgment, order, decree or ruling is in effect) other than any action, suit, proceeding or claim that is pending or threatened against the Advisor as of the date hereof;

(c) Certain Advisor Actions. All of the Advisor Actions shall have been effected prior the Closing Date and shall not have otherwise been rescinded or be subject to rescission as of or following the Closing Date;

(d) Declaration and Payment of Dividend by Advisor. The Board of Directors of the Advisor shall have adopted the resolutions in substantially the form presented to CHP by the Advisor and the Stockholders immediately prior to the execution and delivery of this Agreement, such resolutions shall not have been withdrawn, modified or otherwise rescinded as of the Closing Date, and the Advisor shall have effected all of the actions contemplated by such resolutions, including the payment of the dividend to the Stockholders declared by the Board of Directors of the Advisor pursuant thereto;

(e) Certain Agreement Among Stockholders. The Stockholders shall have executed and delivered to each other and CHP an agreement in substantially the form presented to CHP by the Advisor and the Stockholders immediately prior to the execution and delivery of this Agreement concerning certain post-Closing obligations of the Stockholders;

(f) Pledge and Security Agreement. The Pledge and Security Agreement shall have been executed and delivered by the parties thereto.

(g) Opinion of LDDK&R. CHP and CHPAC shall have received an opinion dated as of the Closing Date from Lowndes, Drosdick, Doster, Kantor & Reed, P.A., counsel to the Advisor, in substantially the form agreed upon by CHP,

CHPAC, and Lowndes, Drosdick, Doster, Kantor & Reed, P.A. immediately prior to the execution and delivery of this Agreement by the Parties;

(h) Comfort Letter. CHP shall have received written comfort in form and substance reasonably satisfactory to the Special Committee from PricewaterhouseCoopers LLP that the Advisor will not have any accumulated or current earning and profits within the meaning of Section 312 of the Code as of the Effective Time, which written comfort tax counsel to CHP will be permitted to rely upon for purposes of rendering opinions from and after the time of the Merger with respect to the qualification of CHP as a REIT;

(i) Fairness Opinion. Lehman Brothers, Inc. shall have not withdrawn its Fairness Opinion issued in connection with the Merger and, if requested by the Special Committee, shall have issued to the Special Committee an updated opinion dated as of the Closing Date;

(j) Resignations. CHP shall have received copies of the resignations, effective as of the Closing, of each director and officer of the Advisor and the Development Company other than those whom the Special Committee on behalf of CHP, in its sole discretion, shall have specified in writing prior to the Closing;

(k) Bonus Arrangements. CHP shall have received satisfactory evidence that all bonus plans under which officers, directors or employees of the Advisor or the Development Company are beneficiaries have been terminated as of the Closing Date;

(l) Employment Agreements. Each of the Employment Agreements shall become effective in accordance with its terms, effective as of the Effective Time, and CHP shall not as of the Closing Date have any good faith reason to believe that the counterparty to each such Employment Agreement does not intend to perform his obligations under his Employment Agreement in accordance with the terms thereof;

(m) Transition Services Agreement, New Brand License Agreement and Other Agreements. Guarantor or its Affiliate shall have executed and delivered the Transition Services Agreement and the New Brand License Agreement referred to in Sections 8.16 and 8.17, respectively, and any other agreements necessary for the Surviving Company to conduct its business in substantially the same manner as conducted by the Advisor immediately prior to the Closing Date (including any furniture or equipment leases or subleases, office space leases or subleases, and software licenses), in each case in form and substance reasonably satisfactory to the Special Committee on behalf of CHP, in its sole discretion, and CHP shall have obtained insurance for the Surviving Company of a similar type to that maintained for the Advisor as of the date of this Agreement on terms reasonably satisfactory to the Special Committee on behalf of CHP, in

its sole discretion;

(n) Material Adverse Effect. Since December 31, 2003, there shall not have occurred any Material Adverse Effect on the Advisor;

(o) Advisor Amendment. The Advisor shall have filed any and all Advisor Amendments with the Florida Department of State, and the Advisor Amendment shall have become effective;

(p) Opinion of Compensation Consultant. The Special Committee shall have received a written report from the independent compensation consultant engaged by the Compensation Committee of the CHP Board of Directors that would provide a basis for such committees, in their sole discretion, to determine that the terms and conditions of the Employment Agreements are fair and reasonable to CHP;

(q) Majority Vote Charter Amendment. The Majority Vote Charter Amendment shall have been filed with the Maryland State Department of Assessments and Taxation and shall have become effective;

(r) Stockholders' Agreement. The Stockholders' Agreement dated as of February 24, 1999 by and among the Advisor, CREG, FARS and the other Stockholders identified therein, shall have been amended, modified or terminated by the parties thereto, effective as of the Effective Time, as and to the extent determined to be necessary or appropriate by the Special Committee, on behalf of CHP, in its sole discretion;

(s) Tax Sharing Agreement. The Tax Sharing Agreement dated as of February 24, 1999 by and between CNL Group, Inc., the predecessor to the Guarantor, and CNL Hospitality Advisors, Inc., the predecessor to the Advisor, as the same shall have been amended from time to time (the "Tax Sharing Agreement"), shall have been terminated as of the Effective Time with respect to the Advisor and all Subsidiaries of the Advisor, with the Advisor and all of the Subsidiaries of the Advisor expressly and unconditionally relieved of any and all monetary

Liability of any kind or nature thereunder to the Guarantor and any other member of the "Affiliated Group" (as defined in the Tax Sharing Agreement) attributable to taxable years of the Advisor and/or its Subsidiaries ending after the Effective Time. The termination of the Tax Sharing Agreement shall contain such other terms and conditions as the Special Committee, on behalf of CHP, in its sole discretion, shall determine to be necessary or appropriate. Any and all amounts payable by the Surviving Company (as the successor to the Advisor under the Tax Sharing Agreement) to the "Parent" (as defined in the Tax Sharing Agreement) pursuant to or as a result of the Tax Sharing Agreement shall be a CHP Indemnity Claim (as defined in Section 12.1 below) under Section 12.1(iv)

below, and shall be covered by the guaranty of the Guarantor pursuant to Section 13.2 of this Agreement. The termination of the Tax Sharing Agreement shall provide that the Surviving Company (as the successor to the Advisor under the Tax Sharing Agreement) shall have the right to satisfy any and all obligations for payment thereunder by assigning to the party to which such payment is owed, the Surviving Company's rights to the corresponding CHP Indemnity Claim (including its rights against the Guarantor with respect thereto); and

(t) Appraisal Rights. Holders of, in the aggregate, 1% or more of the CHP Common Shares outstanding as of the date of the CHP Stockholder Meeting shall not have exercised or purported to have exercised appraisal rights under applicable provisions of Maryland General Corporation Law with respect to one or more of the amendments contained in the CHP Charter Amendments by filing with CHP a written objection thereto and not otherwise voting in favor thereof (or by taking such other actions required to be taken at such time in order to exercise appraisal rights pursuant to applicable provisions of Maryland General Corporation Law).

10.3 Conditions to Obligation of the Stockholders and the Advisor. The obligation of the Stockholders and the Advisor to consummate the Merger and take the actions to be performed by them in connection with the Closing is subject to satisfaction or waiver by the Representative of the following conditions:

(a) No Injunction or Proceedings. There shall not be in effect any action, suit, or proceeding pending or threatened before any court or quasi-judicial or administrative agency of any federal, state, local, or foreign jurisdiction or before any arbitrator wherein an unfavorable injunction, judgment, order, decree or ruling that would, in the reasonable judgment of the Advisor, (i) prevent consummation of the Merger, (ii) cause the Merger to be rescinded following consummation or (iii) affect adversely the right of the Stockholders to receive the Merger Consideration;

(b) Officers Certificate. The chief executive officer of CHP and the Manager of CHPAC each shall have delivered to the Stockholders and the Advisor a certificate to the effect that, to their Actual Knowledge, following a reasonable investigation:

(i) the representations and warranties set forth in Article 6 above that are qualified as to materiality shall be true and correct, and those not so qualified shall be true and correct in all material respects, as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date, except that the representation and warranty made in Section 6.2 shall be true and correct in all material respects as of the date of this Agreement;

(ii) CHP and CHPAC shall have performed and complied in all

material respects with all of its covenants and obligations to be performed by it under this Agreement at or prior to the Closing Date; and

(iii) no action, suit, or proceeding shall be pending or threatened against CHP or CHPAC before any court or quasi-judicial or administrative agency of any federal, state, local, or foreign jurisdiction or before any arbitrator wherein an unfavorable injunction, judgment, order, decree or ruling would (A) prevent consummation of the Merger or (B) cause the Merger to be rescinded following consummation (and no such injunction, judgment, order, decree or ruling shall be in effect) other than any action, suit, proceeding or claim that is pending or threatened against CHP as of the date hereof;

(c) Merger Consideration. CHP shall have delivered to the Stockholders the Merger Consideration pursuant to Section 4.2;

(d) Material Adverse Effect. Since the date hereof, there shall not have occurred any Material Adverse Effect on CHP;

(e) Registration Rights Agreement. The Registration Rights Agreement shall have been executed and delivered by the parties thereto; and

(f) FARS Note or Inter-Company FARS Final Payment Funding Note. CHP shall have assumed and concurrently with the Closing shall repay in full, by wire transfer to an account designated by FARS in writing not less than two (2) business days prior to the Closing, the FARS Note; provided, however, that in the event that prior to the Closing the Advisor has paid in full all of the outstanding interest and principal due and payable under the FARS Note, then CHP shall have assumed and concurrently with the Closing shall repay in full the Inter-Company FARS Final Payment Funding Note by wire transfer to an account designated by CREG in writing not less than two (2) business days prior to the Closing.

ARTICLE 11

TERMINATION

11.1 Termination by Mutual Consent. This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time, before or after the approval by the stockholders of CHP, by the mutual written consent of the Advisor and the Special Committee on behalf of CHP.

11.2 Termination by Either CHP or the Advisor. This Agreement may be terminated and the Merger may be abandoned (a) by action of the Special Committee on behalf of CHP (i) in the event of a failure of a condition to the obligations of CHP and CHPAC set forth in Section 10.1 or Section 10.2 of this Agreement or, (ii) no later than the time of the CHP Stockholder Meeting, in the event that the Special Committee shall have determined that it is not satisfied, in its sole discretion, with the results of its examination of the books, records, assets, liabilities, prospects and business of the Advisor; (b) by the Representative in the event of a failure of a condition to the obligations of the Stockholders or the Advisor set forth in Section 10.1 or Section 10.3 of

this Agreement; (c) by either CHP or the Advisor in the event the Closing has not

occurred on or before December 31, 2006; or (d) by either CHP or the Advisor in the event that a United States federal or state court of competent jurisdiction or United States federal or state governmental agency shall have issued an order, decree or ruling or taken any other action permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement and such order, decree, ruling or other action shall have become final and non-appealable; provided, however, that the right to terminate this Agreement pursuant to clause (a), (b), or (c) above shall not be available to any Party whose breach of this Agreement has been a principal cause for the failure of the condition referred to in said clause.

11.3 Effect of Termination and Abandonment. In the event of termination of this Agreement and abandonment of the Merger pursuant to this Article 11, no Party hereto (or any of its directors or officers) shall have any Liability or further obligation to any other Party to this Agreement, except that nothing herein will relieve any Party from Liability for any willful breach of this Agreement.

ARTICLE 12

INDEMNIFICATION

12.1 Indemnity Obligations of the Stockholders. Subject to Section 12.5 and Section 12.6 hereof, each of the Stockholders, other than FARS (the "Indemnifying Stockholders"), hereby severally, in accordance with his or its Pro Rata Percentage of the Merger Consideration, agrees to indemnify and hold CHP and the Surviving Company harmless from, and to reimburse CHP and the Surviving Company for, any CHP Indemnity Claims arising under the terms and conditions of this Agreement; provided, however, that CREG hereby additionally agrees to assume and be responsible for the pro rata portion of any CHP Indemnity Claim that would otherwise have been attributable to FARS as a Stockholder pursuant to this Article 12. For purposes of this Agreement, the term "CHP Indemnity Claim" shall mean any loss, damage, deficiency, claim, liability, obligation, suit, action, fee, cost or expense of any nature whatsoever (collectively, "Losses") to the extent resulting from (i) any breach of any representation and warranty of the Indemnifying Stockholders or the Advisor which is contained in this Agreement or in any Schedule, Exhibit or certificate delivered pursuant hereto; (ii) any breach or non-fulfillment of, or any failure to perform, any of the covenants, agreements or undertakings of the Stockholders or the Advisor which are contained in or made pursuant to this Agreement; (iii) any Liability for Taxes of the Advisor or the Development Company for the taxable period of the Advisor and the Development Company that includes the Effective Time; provided, however, that this clause (iii) shall not

apply to any Tax payable with respect to such taxable period solely by reason of the Merger failing to qualify as a reorganization under Section 368(a) of the Code (if such Tax would not have been imposed in such taxable period had the Merger qualified as a reorganization under Section 368(a) of the Code); (iv) any Taxes which may be imposed upon the Advisor or any Subsidiary of the Advisor (or any successor to any of the foregoing) pursuant to Treas. Reg. Section 1.1502-6 (or any similar provision of state, local or foreign law) with respect to any taxable period by reason of the inclusion of the Advisor or any Subsidiary of the Advisor (or any predecessor to any of the foregoing), at any time prior to or including the Effective Time, in any "affiliated group of corporations" as defined for purposes of Section 1504 of the Code, whether pursuant to the Tax Sharing Agreement or otherwise; (v) any amounts required to be

paid by CHP to the IRS or any state or local taxing authority by reason of or in connection with a determination by any taxing authority or CHP (referred to as a "Determination") that either the Advisor or the Development Company had, as of the Effective Time, any accumulated earnings and profits (as calculated for federal income tax purposes), with the indemnification hereunder to include, but not be limited to, any Taxes required to be paid by CHP because distributions made by CHP after the Effective Time are treated as distributions of any such earnings and profits, rather than as dividends that are deductible in computing the "real estate investment trust taxable income" of CHP under Section 857(b) of the Code, any payment made by CHP pursuant to Section 860(c)(1) of the Code in connection with any "deficiency dividend" paid by CHP in connection with or as a result of any such determination, and/or any interest charge required to be paid by reason of the application of the principles of Section 852(e)(3) of the Code to CHP by reason of it being determined to have earnings and profits of a "C corporation" as a result of the Merger, provided, however, that in the event that there shall have been a Determination, CHP thereafter shall have an affirmative duty to mitigate claims under this clause (v) to the extent such steps are permitted under applicable Tax law and in the reasonable judgment of CHP, after good faith consultation with its Tax advisors, the Representative and the Representative's Tax advisor, would have the effect of mitigating the claims under this clause (v), by (A) paying Deficiency Dividends and/or other dividends, or (B) paying any amounts required in order to satisfy the requirements of Section 856(g)(5) of the Code (the "REIT Savings" provisions) to the extent permitted under applicable Tax law (with any such amounts payable pursuant to the REIT Savings provisions to be subject to indemnification under this clause (v)), provided, further that in the event that CHP shall, following a Determination, fail to take either of the steps described in subclauses (A) and (B) and such steps were available under applicable Tax law, and if taken, would have mitigated the amounts payable under this clause (v)), the CHP Indemnity Claim pursuant to this clause (v) shall be (A) reduced to take into account the effect of any allowable deduction, under the applicable Tax law, for any Deficiency Dividends or other dividends that could have been, but were not, paid and (B) increased for (1) any interest charge that would have been payable

by CHP as a result of or in connection with such dividend or Deficiency Dividend, and (2) any interest charge or penalty that would have been payable by CHP as a result of or in connection with satisfying the requirements under Section 856(g)(5) of the Code; and provided, further that a Loss pursuant to this clause (v) or clause (i) of this Section 12.1 shall not in any event be considered to include the actual amount of any Deficiency Dividend or other dividend paid by CHP in connection herewith; (vi) any and all Liabilities of the Advisor relating to any action, suit, proceeding or claim that is pending or threatened against the Advisor immediately prior to the Effective Time or instituted after the Effective Time based on actions or omissions of the Advisor prior to or at the Effective Time; and (vii) all interest, penalties, costs and expenses (including, without limitation, all reasonable fees and disbursements of counsel) and other Losses arising out of or related to any indemnification made under this Section 12.1. The Parties hereby expressly acknowledge and agree that the Liabilities of the Advisor described in clause (vi) of the preceding sentence include, with respect to the Class Action Lawsuit, only (A) any and all Liabilities relating to or arising out of the Class Action Lawsuit or the matters out of which the Class Action Lawsuit arose that would have been attributed to the Advisor but for the Merger and that instead may become or have become Liabilities of CHP and/or Surviving Company as a result of the Merger and (B) any and all Liabilities that the Advisor would have had to CHP relating to or arising out of the Class Action Lawsuit or the matters out of which the Class Action Lawsuit arose had the Merger not occurred, including any obligation of indemnity

or contribution of the Advisor (including, without limitation, any obligation of indemnity pursuant to the Advisory Agreement in effect at the time the acts or omissions that gave rise to such Liability occurred). In addition, the Parties hereby expressly acknowledge and agree that any amounts that may become due and payable by the Indemnifying Stockholders pursuant to clause (vi) of this Section 12.1 shall be offset by that amount that would have been due and payable to the Advisor by CHP pursuant to any obligation of CHP to indemnify the Advisor for such Liabilities arising out of CHP's charter and the Advisory Agreement in effect at the time the acts or omissions that gave rise to such Liability occurred, it being understood and agreed that the intent of such offset is to provide the Indemnifying Stockholders the benefit of such indemnity rights to the same extent that the Advisor would have benefited from such indemnities, if at all, had the Merger not occurred.

12.2 Indemnity Obligations of CHP. CHP and the Surviving Company hereby jointly and severally agree to indemnify and hold each of the Stockholders harmless from, and to reimburse each of the Stockholders for, any Stockholder Indemnity Claims arising under the terms and conditions of this Agreement. For purposes of this Agreement, the term "Stockholder Indemnity Claim" shall mean any Loss incurred by any of the Stockholders resulting from (a) any breach of any representation and warranty of CHP and CHPAC which is contained in this

Agreement or any schedule, exhibit or certificate delivered pursuant hereto, (b) any breach or non-fulfillment of, or failure to perform, any of the covenants, agreements or undertakings of CHP and CHPAC which are contained in or made pursuant to the terms and conditions of this Agreement, and (c) all interest, penalties, costs and expenses (including, without limitation, all reasonable fees and disbursements of counsel) and other Losses arising out of or related to any indemnification made under this Section 12.2. In addition, the term Stockholder Indemnity Claim shall mean, with respect only to the Indemnifying Stockholders, any Loss incurred by any of the Indemnifying Stockholders from a Third Party Claim relating to the Assumed Advisor Liabilities that would have been due and payable to the Advisor by CHP pursuant to any obligation of CHP to indemnify the Advisor for such Third Party Claim or Loss arising out of CHP's charter and the Advisory Agreement in effect at the time the acts or omissions that gave rise to such Loss occurred, it being understood and agreed that the intent of such indemnification obligation of CHP and the Surviving Company is to provide the Indemnifying Stockholders the benefit of such indemnity rights to the same extent that the Advisor would have benefited from such indemnities, if at all, had the Merger not occurred. Notwithstanding anything to the contrary contained in this Section 12.2, neither CHP nor the Surviving Company shall be obligated to indemnify and hold any of the Stockholders harmless from (i) any breach of any representation and warranty of CHP and CHPAC which is contained in this Agreement or any schedule, exhibit or certificate delivered pursuant hereto or (ii) any breach or non-fulfillment of, or failure to perform, any of the covenants, agreements or undertakings of CHP and CHPAC which are contained in or made pursuant to the terms and conditions of this Agreement if, in either case, the Advisor or any Stockholder had Knowledge of any facts or circumstances that (A) would have reasonably affected CHP or CHPAC's ability to make any representation or warranty of CHP or CHPAC contained in this Agreement or any schedule, exhibit or certificate delivered pursuant hereto or (B) would have reasonably affected CHP or CHPAC's ability to fulfill or perform any of the covenants, agreements or undertakings of CHP and CHP which are contained in or made pursuant to the terms of this Agreement, and the Advisor did not inform CHP and CHPAC of such facts and circumstances prior to making such representation or warranty or undertaking to fulfill or perform such covenants, agreements or undertakings.

12.3 Appointment of Representative. Each of the Stockholders (other than FARS) hereby appoints James M. Seneff, Jr. as its exclusive agent to act on its behalf with respect to any and all Stockholder Indemnity Claims and any and all CHP Indemnity Claims arising under this Agreement and for such other purposes specified in this Agreement. In the event that James M. Seneff, Jr. is unable or unwilling to serve in such capacity, then another representative of the Stockholders (other than FARS) may be appointed by a majority in interest of the Stockholders (other than FARS). Such agent is herein referred to as the "Representative." The Representative shall take, and the Stockholders (other than FARS) agree that the Representative shall take, any and all actions which the Representative believes are necessary or appropriate under this Agreement

for and on behalf of the Stockholders (other than FARS), as fully as if such Parties were acting on their own behalf, including, without limitation, asserting Stockholder Indemnity Claims against CHP, defending all CHP Indemnity Claims, consenting to, compromising or settling all Stockholder Indemnity Claims and CHP Indemnity Claims, conducting negotiations with CHP and its representatives regarding such claims, taking any and all other actions specified in or contemplated by this Agreement and engaging counsel, accountants or other representatives in connection with the foregoing matters. CHP shall have the right to rely upon all actions taken or omitted to be taken by the Representative pursuant to this Agreement, all of which actions or omissions shall be legally binding upon the Stockholders (other than FARS). The Representative, acting pursuant to this Section 12.3, shall not be liable to any other Stockholder for any act or omission, except in connection with any act or omission that was the result of the Representative's bad faith or gross negligence.

12.4 Notification of Claims. Subject to the provisions of Section 12.5 and Section 12.9, in the event of the occurrence of an event which any Party asserts constitutes a CHP Indemnity Claim or a Stockholder Indemnity Claim, as applicable, such Party shall provide the indemnifying Party with prompt notice of such event and shall otherwise make available to the indemnifying Party all relevant information which is material to the claim and which is in the possession of the indemnified Party. If such event involves the claim of any third party (a "Third Party Claim"), the indemnifying Party shall have the right to elect to join in the defense, settlement, adjustment or compromise of any such Third Party Claim, and to employ counsel to assist such indemnifying Party in connection with the handling of such claim, at the sole expense of the indemnifying Party, and no such claim shall be settled, adjusted or compromised, or the defense thereof terminated, without the prior written consent of the indemnifying Party unless and until the indemnifying Party shall have failed, after the lapse of a reasonable period of time, but in no event more than 30 days after written notice to it of the Third Party Claim, to join in the defense, settlement, adjustment or compromise of the same. An indemnified Party's failure to give timely notice or to furnish the indemnifying Party with any relevant data and documents in connection with any Third Party Claim shall not constitute a defense (in part or in whole) to any claim for indemnification by such Party, except and only to the extent that such failure shall result in any material prejudice to the indemnifying Party. If so desired by any indemnifying Party, such Party may elect, at such Party's sole expense, to assume control of the defense, settlement, adjustment or compromise of any Third Party Claim, with counsel reasonably acceptable to the indemnified Parties, insofar as such claim relates to the Liability of the indemnifying Party, provided that such indemnifying Party shall obtain the written consent of all indemnified Parties before entering into any settlement, adjustment or compromise of such claims, or ceasing to defend against such claims, if as a result thereof, or pursuant thereto, there would be imposed on an indemnified Party any Liability not covered by the indemnity

obligations of the indemnifying Parties under this Agreement (including, without limitation, any injunctive relief or other remedy). In connection with any Third Party Claim, the indemnified Party, or the indemnifying Party if it has assumed the defense of such claim pursuant to the preceding sentence, shall diligently pursue the defense of such Third Party Claim.

12.5 Survival. All representations and warranties contained in or made pursuant to this Agreement, and the rights of the Parties to seek indemnification hereunder with respect to such representations and warranties, shall survive for a period equal to eighteen (18) months after the Closing Date; provided, however, (a) the representations and warranties contained in Sections 5.2, 6.2, 6.4, 7.3, 7.9, 7.10, 7.11, 7.19, 7.20, 7.21, 7.23 and 7.33, and the rights of the Parties to seek indemnification hereunder with respect to such representations and warranties, shall survive until the expiration of the applicable statute of limitations with respect to the matters covered thereby and (b) the representations and warranties contained in Sections 6.7 and 6.8 shall not survive the Closing. Except as otherwise provided in the preceding sentence or the last sentence of this Section 12.5, all covenants and agreements of the Parties contained in or made pursuant to this Agreement, and the rights of the Parties to seek indemnification hereunder with respect to such covenants and agreements (other than Section 9.10, which shall survive indefinitely), shall survive until the later of (i) eighteen (18) months after the Closing Date, (ii) sixty (60) days after the expiration of the statute of limitations applicable to the subject matter of such covenant or agreement, or (iii) sixty (60) days after the end of the time period expressly set forth in such covenant or agreement. No indemnification claim hereunder shall be made after expiration of the applicable survival period, but (A) the expiration of the survival period with respect to a representation and warranty or covenant and agreement shall not limit or affect the right of a Party to obtain indemnification hereunder after any such expiration date with respect to any Claim duly made in accordance with this Agreement prior to such expiration date, (B) notwithstanding anything to the contrary contained in this Agreement, CHP and the Surviving Company shall be entitled to make a CHP Indemnity Claim, and indemnification rights of CHP and the Surviving Company pursuant to clause (vi) of Section 12.1 with respect to all matters relating to the Class Action Lawsuit shall survive, until eighteen (18) months after the entry of a final judgment in such Class Actions Lawsuit that is not subject to further review, and (C) notwithstanding anything to the contrary contained in this Agreement, the Indemnifying Stockholders shall be entitled to make a Stockholder Indemnity Claim of the type described in the third sentence of Section 12.2, and indemnification rights of the Indemnifying Stockholders pursuant to Section 12.2 with respect only to such type of Stockholder Indemnity Claim shall survive, until eighteen (18) months after the entry of a final judgment in the Class Action Lawsuit that is not subject to further review.

12.6 Limitations. Notwithstanding the foregoing provisions of this Article 12, subject to the last sentence of this Section 12.6, in no event (i) shall the Stockholders or any of them have any liability to CHP and/or CHPAC on account of any CHP Indemnity Claim or for any claim for breach of warranty or for misrepresentation, or any other claim whatsoever arising under this Agreement or

in connection with the transactions contemplated herein (individually a "Claim" and collectively, "Claims") or for any Losses directly resulting from Claims unless, until and only to the extent that the accumulated amount of all Losses exceeds the amount of $200,000 in the aggregate, nor (ii) shall the individual liability of any Stockholder on account of Claims and Losses exceed an amount equal to the sum of the following (the "Stockholder Consideration"): (A) the amount of cash received by such Stockholder hereunder as Merger

Consideration in lieu of fractional shares, plus (B) the value of the CHP Common Shares received by such Stockholder hereunder as Merger Consideration, calculated based on the Per Share Price, provided, however, that in the case of CREG, the amount of Stockholder Consideration received by FARS shall be added to CREG's Stockholder Consideration. To the extent that any Claim is asserted against one or more Stockholders, each Stockholder shall be liable only for such Stockholder's pro rata share based upon the amount of the Stockholder Consideration received by each such Stockholder (except for CREG, which will also be liable for any Claims against FARS). If a Listing has occurred, any Claim against a Stockholder, including a CHP Indemnity Claim, may be satisfied by such Stockholder, in such Stockholder's sole discretion, by surrendering to the claimant(s) CHP Common Shares at a value equal to the average closing price per share of such shares on the NYSE for the 30-trading day period preceding the date such CHP Common Shares are surrendered for payment. Notwithstanding the foregoing, the limitations set forth in this Section 12.6 shall not apply to Claims or Losses arising as a result of (i) a breach of the representations and warranties contained in Sections 7.11, 7.31 and 7.33 of this Agreement, (ii) any breach or non-fulfillment of, or any failure to perform, any of the covenants, agreements or undertakings of the Stockholders or the Advisor which are contained in or made pursuant to Sections 8.8, 8.13, 8.15, 9.5, 9.8 and 9.10 of this Agreement, (iii) Taxes or other amounts described in clauses (iii), (iv) or (v) of Section 12.1 of this Agreement, except that no Management Stockholder shall be liable for Taxes or other amounts described in clauses (iii), (iv) or (v) of Section 12.1 of this Agreement that exceed the Stockholder Consideration received by such Management Stockholder, and CREG hereby additionally agrees to assume and be responsible for the pro rata portion of any indemnity or other obligation of the Management Stockholders that otherwise would have been attributable to such Management Stockholders for Taxes or other amounts described in clauses (iii), (iv) or (v) of Section 12.1 of this Agreement but for the exception in this clause (iii), or (iv) any and all Liabilities described in clause (vi) of Section 12.1.

12.7 Exclusive Provisions; No Rescission. Except as set forth in this Agreement, no Party is making any representation, warranty, covenant or agreement with respect to the matters contained herein. Anything herein to the contrary notwithstanding, no breach of any representation, warranty, covenant or agreement contained herein or in any certificate or other document delivered pursuant hereto relating to the Merger shall give rise to any right on the part

of any Party, after the consummation of the Merger, to rescind this Agreement or the transactions contemplated by this Agreement. Following the consummation of the Merger, the rights of the Parties under the provisions of Articles 12 and 13, Sections 9.8 and 9.10, and in any agreement that is both executed and delivered by a Party to another Party in connection with the Merger and referred to in this Agreement, including the Pledge and Security Agreement, shall be the sole and exclusive remedy available to the Parties with respect to claims, assertions, events or proceedings arising out of or relating to the Merger, except (i) for any statutory or common law remedy for fraud and (ii) for any liability for willful breach by FARS of the representations and warranties contained in Article 5 of this Agreement, solely as they relate to FARS, and of the covenants contained in Article 8 of this Agreement, solely as they relate to FARS. The Parties hereby expressly acknowledge and agree that nothing in this Agreement is intended by the Parties to affect (a) any directors' and officers' insurance coverage for named insureds who are or were officers and/or directors of CHP or the Advisor (or their respective

Affiliates, to the extent directors and officers of such Affiliates were included in such insurance coverage) in their respective capacities as officers and/or directors of CHP or the Advisor (or their respective Affiliates, to the extent directors and officers of such Affiliates were included in such insurance coverage) and (b) indemnification agreements between CHP and Persons who are or were officers and/or directors of CHP in their capacities as such, it being understood that the obligations of the Indemnifying Stockholders in Sections 9.8 and 9.10 and Article 12 are not obligations incurred by them as either (i) present or former officers, directors or employees of CHP or (ii) present or former officers, directors or employees of the Advisor or any of their Affiliates and thus are not indemnifiable by CHP or any of its present or future Subsidiaries, including Surviving Company, pursuant to (x) any obligation CHP may have to indemnify present or former officers, directors or employees of CHP or (y) any obligation the Advisor may have to indemnify present or former officers, directors or employees of the Advisor or any of their Affiliates.

12.8 Certain Claims for Indemnification. If and to the extent that any Stockholder would in its capacity as a former stockholder of the Advisor or Affiliate of the Advisor prior to the Effective Time have been entitled to seek directly or indirectly any claim against CHP and/or the Surviving Company for indemnification under the Advisory Agreements or the charter or bylaws of CHP, each such Stockholder hereby waives and releases CHP and/or the Surviving Company from any such potential claim for indemnification.

12.9 Further Cooperation. Prior to taking any action or position, making any election or filing any document, report, notice or return with respect to any matter which may result in a CHP Indemnity Claim under Section 12.1(iii) (a "Proposed Indemnity Action"), CHP shall notify the Representative or its designee, of the Proposed Indemnity Action, including any relevant data and

documents of CHP supporting the Proposed Indemnity Action. CHP shall consult in good faith with and permit the Representative a reasonable period of time not to exceed ten (10) business days to comment on its proposed course of action regarding such Proposed Indemnity Action prior to taking such action.

ARTICLE 13

REPRESENTATIONS, WARRANTIES AND GUARANTEES OF GUARANTOR

13.1 Representations, Warranties and Covenants. Guarantor hereby represents, warrants and covenants to CHP and CHPAC that:

(a) Guarantor is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida, and has the full and unrestricted corporate power and authority to execute and deliver this Agreement and to carry out the obligations contemplated hereby, (b) this Agreement, when executed and delivered by Guarantor, will be the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms, (c) the execution, delivery and performance of this Agreement, the fulfillment of and compliance with the terms and provisions hereof, and the obligations contemplated hereby by Guarantor do not and will not (i) conflict with, or constitute a breach or default under, Guarantor's articles or certificate of incorporation or bylaws or any agreement, contract, commitment, or instrument to which Guarantor is a party or to which it is bound or subject, (ii) require the consent, approval or authorization of, or notice, declaration, filing or registration with, any third party or (iii) conflict with, or violate any applicable law, and (d) Guarantor has

not previously granted and will not grant any rights to any third party which are, nor contract with any third party in any manner which is, inconsistent with the rights granted herein.

(b) Guarantor owns, and as of the Effective Time will own, all of the outstanding shares of capital stock of CREG and has, and will maintain through the later to occur of (x) the seventh (7th) anniversary of the Closing Date or (y) the date on which all CHP Indemnity Claims asserted prior to the seventh (7th) anniversary of the Closing Date have been resolved or otherwise satisfied in accordance with Section 12.1, a net worth of not less than $75 million.

(c) There are no actions, suits, claims, arbitrations, proceedings or investigations pending, or threatened against, affecting or involving Guarantor that would affect Guarantor's ability to perform its obligations and agreements in this Agreement, and there is no Basis for any such actions, suits, claims, arbitrations, proceedings or investigations.

13.2 Guarantee.

(a) Guarantor hereby irrevocably, absolutely and unconditionally guarantees to CHP and the Surviving Company the full and punctual payment and performance of the obligations of each and every Stockholder pursuant to Section 9.8 and Article 12 of this Agreement (individually, a "Stockholder's Obligations", and collectively referred to as "Stockholders' Obligations"). Guarantor consents to any and all amendments, modifications, forbearances and extensions of time of payment and performance of the Stockholders' Obligations under this Agreement as may be agreed in writing by the Advisor and/or the Representative and CHP and/or the Surviving Company and to any and all changes in terms, covenants, and conditions thereof as may be agreed in writing by the Advisor and/or the Representative and CHP and/or the Surviving Company, it being acknowledged and agreed by the Parties that, notwithstanding anything to the contrary contained in this Agreement, (i) Guarantor shall be liable as a principal with respect to the Stockholders' Obligations and (ii) CHP and the Surviving Company will not be required to pursue or exhaust any remedies as against any Stockholder as a condition to enforcing Guarantor's obligations under this Section 13.2. It is further acknowledged and agreed by the Parties that, notwithstanding anything to the contrary contained in this Agreement, (A) Guarantor may be called upon by CHP and/or the Surviving Company to perform any one or more Stockholders' Obligations in Section 9.8 of this Agreement beginning at such time as CHP and/or the Surviving Company delivers to the applicable Stockholder or Stockholders a written notice to the effect that such Stockholder or Stockholders are required to reimburse or pay to CHP and/or the Surviving Company or otherwise indemnify CHP and/or the Surviving Company for, any amount pursuant to Section 9.8 of this Agreement and (B) Guarantor may be called upon by CHP and/or the Surviving Company to perform any one or more Stockholders' Obligations in Article 12 of this Agreement beginning on the thirtieth (30th) day following the date on which CHP and/or the Surviving Company delivers to the applicable Stockholder or Stockholders written notice of a CHP Indemnity Claim in accordance with Section 12.4 of this Agreement, provided, however, that CHP and/or the Surviving Company shall not be required to provide any further notice or notices pursuant to Section 12.4 of this Agreement or otherwise in connection with making any subsequent calls upon the Guarantor to perform such Stockholders' Obligations relating to any CHP Indemnity Claim that previously has been the subject of any written notice and (ii) CHP and/or the Surviving

Company, as the case may be, shall simultaneously provide to Guarantor copies of all notices delivered to a Stockholder referred to in clauses (A) or (B) of this sentence. In the event that Guarantor is required to pay any amount pursuant to this Section 13.2(a), Guarantor shall have a right of subrogation and contribution as to each Stockholder (other than FARS) for the Stockholder's pro rata share (determined pursuant to Section 12.6 of this Agreement) of such amount. Furthermore, neither CHP nor Surviving Company nor their respective successors shall take any action to impair or diminish such right to subrogation or contribution against or rights to implead such Stockholder.

(b) Guarantor agrees that the obligations of Guarantor as a guarantor shall not be impaired, modified, changed, released, or limited in any manner whatsoever by any impairment, modification, change, release or limitation of liability of any Stockholder resulting from the operation of any present or future provision of the federal bankruptcy laws or other successor or similar statute, or from the decision of any court applying, interpreting or enforcing such laws. Without limiting the preceding sentence, it is expressly understood and agreed among the Parties and Guarantor that Guarantor's obligation to CHP and the Surviving Company will continue notwithstanding any Stockholder's bankruptcy.

(c) Guarantor agrees that in the event that CHP and/or the Surviving Company demands in writing that Guarantor fulfill its obligations under this Article 13 and Guarantor does not comply, then if CHP and/or the Surviving Company retains or engages an attorney or attorneys to enforce this guarantee in a court proceeding and CHP and/or the Surviving Company prevails in enforcement of this guarantee in such court proceeding, Guarantor will reimburse CHP and/or the Surviving Company for all reasonable expenses incurred by CHP and/or the Surviving Company, including reasonable attorneys' fees and disbursements.

(d) Guarantor agrees that, through the later to occur of (x) the seventh (7th) anniversary of the Closing Date or (y) the date on which all CHP Indemnity Claims asserted prior to the seventh (7th) anniversary of the Closing Date have been resolved or otherwise satisfied in accordance with Section 12.1, it will not enter into any transaction, including a merger, consolidation, sale of all or substantially all of its assets, or similar transaction, unless the obligations of the Guarantor pursuant to this Article 13 are expressly assumed by the acquiring corporation or entity.

(e) Guarantor waives any defense arising by reason of any disability or other defense of any Stockholder, or the cessation from any cause whatsoever of the liability of such Stockholder for any Stockholders' Obligations, except for a voluntary release of the Stockholders' Obligations by CHP, Surviving Company, or their respective successors, arising by operation of law or any bankruptcy, insolvency or debtor relief proceeding, or from any other cause, including any such defense or cessation of liability arising from or as a result of any claim of fraudulent transfer or preference, or any claim that Guarantor's obligations exceed or are more burdensome than the Stockholders' Obligations. Guarantor waives any defense arising by reason of any statute of limitations affecting any Stockholders' Obligations if a Stockholder was called upon to perform the applicable Stockholders' Obligations prior to the expiration of such statute of limitations. Until the Stockholders' Obligations are satisfied in full, Guarantor waives all rights and defenses arising out of an election of remedies by CHP or the Surviving Company,

even though that election of remedies, such as a nonjudicial foreclosure with respect to security for the Guaranteed Obligations, has eliminated Guarantor's rights of subrogation and reimbursement against any Stockholder and all rights or defenses the Guarantor may have by reason of protection afforded to a Stockholder with respect to such Stockholders' Obligations pursuant to the antideficiency laws of any jurisdiction limiting or discharging such Stockholders' Obligations.

(f) Guarantor waives any right to enforce any remedy which any Stockholder now has or may hereafter have against CHP or the Surviving Company and waives any benefit of and any right to participate in any security now or hereafter held by CHP or the Surviving Company to secure any Stockholders' Obligations or Guarantor's guarantee thereof.

(g) Guarantor waives any right or defense it may have at law or equity, including a fair market value hearing or action to determine a deficiency judgment after a foreclosure in connection with the payment and performance of its obligations pursuant to this Article 13. Guarantor waives all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor and notices of acceptance of this guarantee and of the existence, creation, or incurring of new or additional Stockholders' Obligations.

(h) If any payment or transfer of any interest in property by a Stockholder to CHP or the Surviving Company in fulfillment of any Stockholder's Obligation is rescinded or must at any time (including after the return or cancellation of this guarantee) be returned, in whole or in part, by CHP or the Surviving Company to such Stockholder or any other Person, upon the insolvency, bankruptcy or reorganization of such Stockholder or otherwise, this guarantee shall be reinstated with respect to any such payment or transfer, regardless of any such prior return or cancellation.

13.3 Additional Guarantor Covenants. Through the later to occur of (x) the seventh (7th) anniversary of the Closing Date or (y) the date on which all CHP Indemnity Claims asserted prior to the seventh (7th) anniversary of the Closing Date have been resolved or otherwise satisfied in accordance with Section 12.1, Guarantor will:

(a) (i) preserve and maintain its existence as a corporation and all rights, privileges and franchises necessary and desirable in the normal conduct of its business, in the operation and ownership of its properties and assets, and in the performance of its obligations hereunder and not dissolve or otherwise discontinue its existence or operations and (ii) take no action or suffer any actions to be taken by others which would alter, change or destroy its status as a corporation or would reasonably be expected to adversely affect its ability to perform its obligations hereunder;

(b) comply with the requirements of all applicable laws, rules, and regulations (including those related to Taxes), non-compliance with which would have a Material Adverse Effect on Guarantor's business, properties or condition,

financial or otherwise, or would reasonably be expected to have a Material Adverse Effect on the Guarantor's ability to perform its obligations hereunder;

(c) maintain insurance with responsible and reputable insurance companies or associations in such amounts and covering such risks as is usually carried by companies engaged in similar businesses and owning similar properties in the same general areas in which it operates;

(d) pay when due all of its obligations and liabilities, except where the same are being contested in good faith by appropriate proceedings diligently prosecuted and appropriate reserves or other provision, if any, as shall be required in conformity with GAAP shall have been made therefor; and

(e) furnish to CHP and the Surviving Company:

(i) as soon as possible, and in any event within five (5) business days, after any officer of Guarantor obtains Knowledge of any condition or event that constitutes a breach of or default under any covenant in this Article 13, or any event, development or occurrence reasonably likely to have a Material Adverse Effect continuing on the date of such statement, a statement of the chief executive officer or person holding a similar position of Guarantor setting forth details of such breach or default, or any such event, development or occurrence and the action that Guarantor has taken and proposes to take with respect thereto; and

(ii) no later than sixty (60) days after the end of each of Guarantor's fiscal year, an officer's certificate of Guarantor stating that the signing officer has reviewed the terms of Article 13 of this Agreement and has made, or caused to be made under his or her supervision, a review in reasonable detail of the transactions and condition of Guarantor and its Subsidiaries during the fiscal year and that such review has not disclosed the existence during or at the end of such fiscal year, and that the signing officer does not have Knowledge of the existence as at the date of such officer's certificate, of any condition or event that constitutes a breach or default of this Article 13, or, if any such condition or event existed or exists, specifying the nature and period of existence thereof and what action Guarantor has taken, is taking and proposes to take with respect thereto.

ARTICLE 14

MISCELLANEOUS

14.1 Limitation on Obligations of FARS. Notwithstanding anything in this Agreement to the contrary, FARS shall not have any liabilities or obligations pursuant to this Agreement as a Stockholder or otherwise as a Party to this Agreement, including pursuant to Article 8 of this Agreement, except (i) as set

forth in Article 4 of this Agreement in connection with the procedures for the surrender of any Advisor Common Share Certificates in exchange for the payment of the Merger Consideration, (ii) any liability for the willful breach by FARS of the representations and warranties contained in Article 5 of this Agreement, solely as they relate to FARS (it being acknowledged and agreed by the Parties that, for the avoidance of doubt and notwithstanding anything to the contrary contained in this Agreement, the representations and warranties of FARS in Article 5 relate only to matters respecting or concerning FARS and not any other Stockholder), and (iii) any liability for the willful breach by FARS of the covenants of FARS set forth in the immediately succeeding sentence, as described below. Notwithstanding

anything in this Agreement to the contrary, FARS (x) shall not take any action, or omit to take any action, that would be reasonably likely to adversely affect the ability of the Advisor, CHP or CHPAC to consummate the Merger on the terms set forth in this Agreement, and (y) shall reasonably cooperate with the other Parties to this Agreement in order to effectuate the consummation of the Merger on the terms set forth in this Agreement; it being understood and agreed that FARS shall not have any liability or obligation with respect to the covenants contained in this sentence except to the extent of a willful breach thereof by FARS. The Parties acknowledge that FARS would not have agreed to enter into this Agreement without the limitations on its liabilities and obligations as a Party to this Agreement specified in this Section 14.1.

14.2 Press Releases and Public Announcements. No Party shall issue any press release or make any public announcement relating to the subject matter of this Agreement prior to the Closing without the prior written approval of CHP and the Representative; provided, however, that any Party may make any public disclosure it believes in good faith is required by applicable law (in which case the disclosing Party will use its commercially reasonable efforts to consult with the other Parties prior to making the disclosure).

14.3 No Third Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

14.4 Entire Agreement. This Agreement (including the documents referred to herein) constitutes the entire agreement among the Parties and supersedes any prior understandings, agreements, or representations by or among the Parties, written or oral, to the extent they related in any way to the subject matter hereof, including the Initial Merger Agreement.

14.5 Succession and Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns. No Party may assign either this Agreement or any of his rights, interests, or obligations hereunder without the prior written approval

of CHP and the Representative; provided, however, that CHP may (i) assign any or all of its rights and interests hereunder to one or more of its Affiliates and (ii) designate one or more of its Affiliates to perform its obligations hereunder (in any or all of which cases CHP nonetheless shall remain responsible for the performance of all of its obligations hereunder).

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

14.7 Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

14.8 Notices. All notices, requests, demands, claims, and other communications hereunder will be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given if (and then effective two business days after) it is sent by

registered or certified mail, return receipt requested, postage prepaid, and addressed to the intended recipient as set forth below:

If to the Advisor, the Stockholders or Guarantor:

c/o James M. Seneff, Jr.
CNL Center II at City Commons
420 South Orange Avenue
Orlando, Florida 32801
Telecopy: (407) 650-1011

With copy to:

Lowndes, Drosdick, Doster, Kantor & Reed, P.A.
450 South Orange Avenue, Suite 800
Orlando, Florida 32801
Attn: Richard Davidson, Esq.
Telecopy: (407) 843-4444

Arnold & Porter LLP
555 Twelfth Street, N.W.
Washington, D.C. 20004
Attn: Scott B. Schreiber, Esq.
Telecopy: (202) 942-5999

If to FARS:

Five Arrows Realty Securities II, L.L.C.
c/o John D. McGurk, President
Matthew W. Kaplan, Managing Director
Rothschild Realty Inc.
1251 Avenue of the Americas
New York, NY 10020
Telecopy: (212) 403-3578

With copy to:

Schulte Roth & Zabel LLP
919 Third Avenue
New York, NY 10022
Attn: Andre Weiss, Esq.
Telecopy: (212) 593-5955

If to CHP, CHPAC or Former Merger Sub:

Thomas J. Hutchison, III
Chief Executive Officer
CNL Hotels & Resorts, Inc.
CNL Center II at City Commons
420 South Orange Avenue
Orlando, Florida 32801
Telecopy: (407) 835-3229

With copy to:

Special Committee of CNL Hotels & Resorts, Inc.
CNL Center II at City Commons
420 South Orange Avenue
Orlando, Florida 32801
Attn: Chairman of the Special Committee
Telecopy: (407) 835-3229

Greenberg Traurig, LLP
The MetLife Building
200 Park Avenue
New York, NY 10166
Attn: Judith D. Fryer, Esq.
Telecopy: (212) 801-6400

Hogan & Hartson L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
Attn: J. Warren Gorrell, Jr., Esq.

Telecopy: (202) 637-5910

Any Party may send any notice, request, demand, claim, or other communication hereunder to the intended recipient at the address set forth above using any other means (including personal delivery, expedited courier, messenger service, telecopy, ordinary mail, or electronic mail), but no such notice, request, demand, claim, or other communication shall be deemed to have been duly given unless and until it actually is received by the intended recipient. Any Party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other Parties notice in the manner herein set forth.

14.9 GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE DOMESTIC LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO ANY CHOICE OR CONFLICT OF LAW PROVISION OR RULE (WHETHER OF THE STATE OF NEW YORK OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF NEW YORK (EXCEPT FOR THE RELATIVE RIGHTS AND OBLIGATIONS OF THE STOCKHOLDERS OF CHPAC AND

THE ADVISOR, WHICH WILL BE GOVERNED BY THE CORPORATE LAWS OF THE STATES OF FLORIDA).

14.10 Amendments and Waivers. This Agreement may be amended by CHP and the Representative at any time before or after receipt of the CHP Stockholder Approval; provided, however, that (a) after receipt of the CHP Stockholder Approval, there shall be made no amendment that by applicable law requires further approval by the stockholders of CHP without the further approval of such stockholders, it being acknowledged and agreed that, following the receipt of CHP Stockholder Approval, if the parties agree to amend this Agreement to reduce the amount of the Merger Consideration, no approval of the stockholders of CHP shall be required for such amendment to be effected, (b) no amendment shall be made to this Agreement after the Effective Time and (c) except as provided above no amendment of this Agreement shall require the approval of the stockholders of CHP. This Agreement may not be amended except by an instrument in writing signed by CHP and the Representative. Any amendment that adversely affects the rights and obligations of FARS pursuant to this Agreement must also be approved in writing by FARS. No waiver by any Party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent occurrence.

14.11 Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other

situation or in any other jurisdiction.

14.12 Expenses. Each of the Parties will bear his, her or its own costs and expenses (including legal fees and expenses) incurred in connection with this Agreement and the transactions contemplated hereby; it being understood and agreed that the expenses of Legg Mason as set forth in Section 7.26 and of counsel to the Advisor will be paid by the Advisor prior to the Closing (consistent with Section 8.15 above).

14.13 Construction. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The word "including" shall mean including without limitation. The Parties intend that each representation, warranty, and covenant contained herein shall have independent significance. If any Party has breached any representation, warranty, or covenant contained herein in any respect, the fact that there exists another representation, warranty, or covenant relating to the same subject matter (regardless of the relative levels of specificity) which the Party has not breached shall not detract from or mitigate the fact that the Party is in breach of the first representation, warranty, or covenant.

14.14 Incorporation of Exhibits and Schedules. The Exhibits and Schedules identified in this Agreement are incorporated herein by reference and made a part hereof.

14.15 Specific Performance. Each of the Parties acknowledges and agrees that the other Parties would be damaged irreparably in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached. Accordingly, each of the Parties agrees that the other Parties shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in any action instituted in any court of the United States or any state thereof having jurisdiction over the Parties and the matter (subject to the provisions set forth in Section 13.15 below), in addition to any other remedy to which they may be entitled, at law or in equity.

14.16 Submission to Jurisdiction. EACH OF THE PARTIES SUBMITS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT SITTING IN THE STATE OF NEW YORK, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT AND AGREES THAT ALL CLAIMS IN RESPECT OF THE ACTION OR PROCEEDING MAY BE HEARD AND

DETERMINED IN ANY SUCH COURT.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the date first above written.

CNL HOTELS & RESORTS, INC.

By: /s/ Greerson G. McMullen

Name: Greerson G. McMullen
Title: Chief General Counsel and Corporate Secretary

CNL HOTELS & RESORTS ACQUISITION, LLC

By: /s/ Greerson G. McMullen

Name: Greerson G. McMullen
Title: Chief General Counsel and Corporate Secretary

CNL HOSPITALITY PROPERTIES ACQUISITION CORP.

By: /s/ Greerson G. McMullen

Name: Greerson G. McMullen
Title: Chief General Counsel and Corporate Secretary

ADVISOR:

CNL HOSPITALITY CORP.

By /s/ James M. Seneff, Jr.

Name: James M. Seneff, Jr.

Title: Chairman

STOCKHOLDERS:

CNL REAL ESTATE GROUP, INC.

By: /s/ Robert A. Bourne

Name: Robert A. Bourne
Title: Director and Vice President

/s/ James M. Seneff, Jr.

James M. Seneff, Jr.

/s/ Robert A.Bourne

Robert A. Bourne

/s/ C. Brian Strickland

C. Brian Strickland

/s/ Thomas J. Hutchison, III

Thomas J. Hutchison, III

/s/ John A. Griswold

John A. Griswold

/s/ Barry A. N. Bloom

Barry A.N. Bloom

/s/ Marcel Verbaas

Marcel Verbaas

FIVE ARROWS REALTY SECURITIES II L.L.C.

By: /s/ Matthew W. Kaplan

Name: Matthew W. Kaplan
Title: Manager

GUARANTOR:

CNL FINANCIAL GROUP, INC.

By: /s/ James M. Seneff, Jr.

Name: James M. Seneff, Jr.
Title: Chief Executive Officer

Exhibit 10.2

EXHIBIT A

FORM OF MAJORITY VOTE CHARTER AMENDMENT

EXHIBIT A

ARTICLES OF AMENDMENT AND RESTATEMENT
OF
CNL HOTELS & RESORTS, INC.

CNL Hotels & Resorts, Inc., a Maryland corporation having its principal office at 300 East Lombard Street, Baltimore, Maryland 21202 (hereinafter, the "Company"), hereby certifies to the State Department of Assessments and Taxation of Maryland, that:

FIRST: The Company desires to amend and restate its charter as currently in effect.

SECOND: The provisions of the charter now in effect and as amended hereby in accordance with the Maryland General Corporation Law (the "MGCL"), are as follows:

ARTICLES OF AMENDMENT AND RESTATEMENT
OF
CNL HOTELS & RESORTS, INC.

* * * * * * * * *

ARTICLE I

THE COMPANY; DEFINITIONS

SECTION 1.1 Name. The name of the corporation (the "Company") is:

CNL Hotels & Resorts, Inc.

SECTION 1.2 Resident Agent. The name and address of the resident agent of the Company in the State of Maryland is The Corporation Trust Incorporated, 300 East Lombard Street, Baltimore, Maryland 21202. The resident agent is a Maryland corporation. The Company's principal office address in the State of Maryland is c/o The Corporation Trust Incorporated, 300 East Lombard Street, Baltimore, Maryland 21202. The Company may also have such other offices or places of business within or without the State of Maryland as the Board of Directors may from time to time determine.

SECTION 1.3 Nature of Company. The Company is a Maryland corporation within the meaning of the MGCL.

SECTION 1.4 Purposes. The purposes for which the Company is formed are to engage in any lawful act or activity for which corporations may be organized under the laws of the State of Maryland as now or hereafter permitted by such laws including, but not limited to, the following: (i) to acquire, hold, own, develop, construct, improve, maintain, operate, sell, lease, transfer, encumber, convey, exchange and otherwise dispose of, deal with or invest in real and personal property; (ii) to engage in the business of offering financing, including mortgage financing secured by Real Property; and (iii) to enter into any partnership, Joint Venture or other similar arrangement to engage in any of the foregoing.

SECTION 1.5 Definitions. As used in the Charter, the following terms shall have the following meanings unless the context otherwise requires (certain other terms used in Article V hereof are defined in Section 5.6(a) hereof):

An "Affiliate" of, or a Person "Affiliated" with, a specified Person, is a Person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the Person specified.

"Bylaws" means the bylaws of the Company, as the same are in effect and may be amended from time to time.

"Charter" means these Articles of Amendment and Restatement, as amended and supplemented from time to time.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, or any successor statute thereto.

"Common Shares" means the common stock, par value $0.01 per share, of the Company that may be issued from time to time in accordance with the terms of the Charter and applicable law, as described in Section 5.2(b) hereof.

"Company Property" or "Assets" means any and all Properties, Loans and other Permitted Investments of the Company, real, personal or otherwise, tangible or intangible, which are transferred or conveyed to the Company (including all rents, income, profits and gains therefrom), which are owned or held by, or for the account of, the Company.

"Directors," "Board of Directors" or "Board" means, collectively, the individuals named in Section 2.3 of the Charter so long as they continue in office and all other individuals who have been duly elected and qualify as directors of the Company hereunder.

"Distributions" means any distribution of money or other property, pursuant to Section 5.2(d) hereof, by the Company to owners of Equity Shares,

including distributions that may constitute a return of capital for federal income tax purposes.

"Equity Shares" means shares of capital stock of the Company of any class or series (other than Excess Shares). The use of the term "Equity Shares" or any term defined by reference to the term "Equity Shares" shall refer to the particular class or series of capital stock of the Company which is appropriate under the context.

"Excess Shares" means the excess stock, par value $0.01 per share, of the Company, as described in Section 5.7 hereof.

"Joint Ventures" means those joint venture or general partnership arrangements in which the Company is a co-venturer or general partner which are established to acquire Properties and/or make Loans or other Permitted Investments.

"Listing" means the listing of the Common Shares of the Company on a national securities exchange or over-the-counter market.

"Loans" means mortgage loans and other types of debt financing provided by the Company.

"MGCL" means the Maryland General Corporation Law as contained in Titles 1 through 3 of the Corporations and Associations Article of the Annotated Code of Maryland.

"Mortgages" means mortgages, deeds of trust or other security interests on or applicable to Real Property.

"Net Sales Proceeds" means in the case of a transaction described in clause (i)(A) of the definition of Sale, the proceeds of any such transaction less the amount of all real estate commissions and closing costs paid by the Company. In the case of a transaction described in clause (i)(B) of such definition, Net Sales Proceeds means the proceeds of any such transaction less the amount of any legal and other selling expenses incurred in connection with such transaction. In the case of a transaction described in clause (i)(C) of such definition, Net Sales Proceeds means the proceeds of any such transaction actually distributed to the Company from the Joint Venture. In the case of a transaction or series of transactions described in clause (i)(D) of the definition of Sale, Net Sales Proceeds means the proceeds of any such transaction less the amount of all commissions and closing costs paid by the Company. In the case of a transaction described in clause (ii) of the definition of Sale, Net Sales Proceeds means the proceeds of such transaction or series of transactions less all amounts generated thereby and reinvested in one or more Properties within one hundred eighty (180) days thereafter and less the amount of any real estate commissions, closing costs, and legal and other selling

expenses incurred by or allocated to the Company in connection with such transaction or series of transactions. Net Sales Proceeds shall also include, in the case of any lease of a Property consisting of a building only, any amounts from tenants, borrowers or lessees that the Company determines, in its discretion, to be economically equivalent to the proceeds of a Sale. Net Sales Proceeds shall not include, as determined by the Company in its sole discretion, any amounts reinvested in one or more Properties or other assets, to repay outstanding indebtedness, or to establish reserves.

"NYSE" means the New York Stock Exchange.

"Permitted Investments" means all investments that the Company may make or acquire pursuant to the Charter and the Bylaws.

"Person" means an individual, corporation, partnership, estate, trust (including a trust qualified under Section 401(a) or 501(c)(17) of the Code), a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, association, private foundation within the meaning of Section 509(a) of the Code, joint stock company or other entity, or any government or any agency or political subdivision thereof, and also includes a group as that term is used for purposes of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), but does not include an underwriter that participates in a public offering of Equity Shares for a period of sixty (60) days following the initial purchase by such underwriter of such Equity Shares in such public offering, provided that the foregoing exclusion shall apply only if the ownership of such Equity Shares by an underwriter would not cause the Company to fail to qualify as a REIT by reason of being "closely held" within the meaning of Section 856(a) of the Code or otherwise cause the Company to fail to qualify as a REIT.

"Preferred Shares" means any class or series of preferred stock, par value $0.01 per share, of the Company that may be issued from time to time in accordance with the terms of the Charter and applicable law, as described in Section 5.3 hereof.

"Property" or "Properties" means interests in (i) the Real Properties, including the buildings and equipment located thereon, (ii) the Real Properties only, or (iii) the buildings only, including equipment located therein; whether such interest is acquired by the Company, either directly or indirectly through the acquisition of interests in Joint Ventures, partnerships, or other legal entities.

"Real Property" or "Real Estate" means land, rights in land (including leasehold interests), and any buildings, structures, improvements, furnishings, fixtures and equipment located on or used in connection with land and rights or interests in land.

"REIT" means a "real estate investment trust" as defined pursuant to Sections 856 through 860 of the Code.

"REIT Provisions of the Code" means Sections 856 through 860 of the Code and any successor or other provisions of the Code relating to REITs (including provisions as to the attribution of ownership of beneficial interests therein) and the regulations promulgated thereunder.

"Roll-Up Entity" means a partnership, real estate investment trust, corporation, trust or similar entity that would be created or would survive after the successful completion of a proposed Roll-Up Transaction.

"Roll-Up Transaction" means a transaction involving the acquisition, merger, conversion, or consolidation, directly or indirectly, of the Company and the issuance of securities of a Roll-Up Entity. Such term does not include: (i) a transaction involving securities of the Company that have been listed on a national securities exchange or included for quotation on the National Market System of the National Association of Securities Dealers Automated Quotation System for at least 12 months; or (ii) a transaction involving the conversion to corporate, trust, or association form of only the Company if, as a consequence of the transaction, there will be no significant adverse change in Stockholder voting rights, the term of existence of the Company, or the investment objectives of the Company.

"Sale" or "Sales" (i) means any transaction or series of transactions whereby: (A) the Company sells, grants, transfers, conveys or relinquishes its ownership of any Property or portion thereof, including the lease of any Property consisting of the building only, and including any event with respect to any Property which gives rise to a significant amount of insurance proceeds or condemnation awards; (B) the Company sells, grants, transfers, conveys or relinquishes its ownership of all or substantially all of the interest of the Company in any Joint Venture in which it is a co-venturer or partner; (C) any Joint Venture in which the Company as a co-venturer or partner sells, grants, transfers, conveys or relinquishes its ownership of any Property or portion thereof, including any event with respect to any Property which gives rise to insurance claims or condemnation awards; or (D) the Company sells, grants, conveys, or relinquishes its interest in any asset or portion thereof, including any asset which gives rise to a significant amount of insurance proceeds or similar awards, but (ii) shall not include any transaction or series of transactions specified in clause (i)(A), (i)(B), or (i)(C) above in which the proceeds of such transaction or series of transactions are reinvested in one or more Properties within one hundred eighty (180) days thereafter.

"Securities" means Equity Shares, Excess Shares, any other stock, shares or other evidences of equity or beneficial or other interests, voting trust certificates, bonds, debentures, notes or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in, temporary or interim certificates for, receipts for, guarantees of, or warrants, options or rights to subscribe to, purchase or acquire, any of the foregoing.

"Stockholders" means the stockholders of record of any class of the Company's Equity Shares.

ARTICLE II

BOARD OF DIRECTORS

SECTION 2.1 Number. The number of Directors of the Company initially shall be nine (9), which number may be increased or decreased from time to time by the Board of Directors pursuant to the Bylaws or by the affirmative vote of the holders of at least a majority of the Equity Shares then outstanding and entitled to vote thereon; provided, however, that the total number of Directors shall never be less than the minimum number required by the MGCL. No reduction in the number of Directors shall cause the removal of any Director from office prior to the expiration of his term. Any vacancy created by an increase in the number of Directors will be filled, at any regular meeting or at any special meeting of the Board of Directors called for that purpose, by a majority of the entire Board of Directors. Any other vacancy will be filled at any annual meeting or at any special meeting of the Stockholders called for that purpose by a majority of the Common Shares present in person or by proxy and entitled to vote thereon. Each Equity Share of stock may be voted for as many individuals as there are directors to be elected and for whose election the Equity Share is entitled to be voted.

SECTION 2.2 Committees. Subject to the MGCL, the Directors may establish such committees as they deem appropriate, in their discretion.

SECTION 2.3 Term; Current Board. Each Director shall hold office for one (1) year, until the next annual meeting of Stockholders and until his successor shall have been duly elected and qualify. Directors may be elected to an unlimited number of successive terms.

The names of the current Directors who shall serve until the next annual meeting of Stockholders and until their successors are duly elected and qualify are:

James M. Seneff, Jr., Chairman of the Board
Robert A. Bourne
Thomas J. Hutchison III
John A. Griswold
James Douglas Holladay
Jack F. Kemp
Craig M. McAllaster
Dianna Morgan
Robert E. Parsons, Jr.

SECTION 2.4 Resignation and Removal. Any Director may resign by written notice to the Board of Directors, effective upon execution and delivery to the Company of such written notice or upon any future date specified in the notice. A Director may be removed from office with or without cause, only at a meeting of the Stockholders by the affirmative vote of the holders of not less than a majority of the Equity Shares then outstanding and entitled to vote in the election of Directors, subject to the rights of the holders of any Preferred Shares to elect or remove one or more Directors. The notice of such meeting shall indicate that the purpose, or one of the purposes, of such meeting is to determine if a Director should be removed.

ARTICLE III

POWERS OF DIRECTORS

SECTION 3.1 General. Subject to the express limitations herein or in the Bylaws and to the general standard of care required of directors under the MGCL and other applicable law, (i) the business and affairs of the Company shall be managed under the direction of the Board of Directors and (ii) the Board of Directors shall have full, exclusive and absolute power, control and authority over the Company Property and over the business of the Company as if they, in their own right, were the sole owners thereof, except as otherwise limited by the Charter. The Directors have established the written policies on investments and borrowing set forth in this Article III and shall monitor the administrative procedures, investment operations and performance of the Company to assure that such policies are carried out. The Board of Directors may take any actions that, in their sole judgment and discretion, are necessary or desirable to conduct the business of the Company. The Charter shall be construed with a presumption in favor of the grant of power and authority to the Board of Directors. Any construction of the Charter or determination made in good faith by the Directors concerning their powers and authority hereunder shall be conclusive. The enumeration and definition of particular powers of the Board of Directors included in this Article III shall in no way be limited or restricted by reference to or inference from the terms of this or any other provision of the Charter or construed or deemed by inference or otherwise in any manner to exclude or limit the powers conferred upon the Board of Directors under the general laws of the State of Maryland as now or hereafter in force.

SECTION 3.2 Specific Powers and Authority. Subject only to the express limitations herein, and in addition to all other powers and authority conferred by the Charter or by law, the Board of Directors, without any vote, action or consent by the Stockholders, shall have and may exercise, at any time or times, in the name of the Company or on its behalf the following powers and authorities:

(a) Investments. To invest in, purchase or otherwise acquire and to hold Company Property of any kind wherever located, or rights or interests

therein or in connection therewith, all without regard to whether such Company Property, interests or rights are authorized by law for the investment of funds held by trustees or other fiduciaries, or whether obligations the Company acquires have a term greater or lesser than the term of office of the Directors or the possible termination of the Company, for such consideration as the Board of Directors may deem proper (including cash, property of any kind or Securities of the Company); provided, however, that the Board of Directors shall take such actions as they deem necessary and desirable to comply with any requirements of the MGCL relating to the types of Assets held by the Company.

(b) REIT Qualification and Termination of Status. The Board of Directors shall use its reasonable best efforts to cause the Company to continue to qualify for U.S. federal income tax treatment in accordance with the provisions of the Code applicable to REITs. In furtherance of the foregoing, the Board of Directors shall use its reasonable best efforts to take such actions as are necessary, and may take such actions as it deems desirable (in its sole discretion) to preserve the status of the Company as a REIT; provided, however, that in the event that the Board of Directors determines, by vote of at least two-thirds (2/3) of the Directors, that it no longer is in the best interests of the Company to continue to qualify as a REIT, the Board of Directors, in accordance with Section 3.2(x) below, may revoke or otherwise terminate the Company's REIT election pursuant to Section 856(g) of the Code.

(c) Sale, Disposition and Use of Company Property. Subject to Section 8.2 hereof, the Board of Directors shall have the authority to sell, rent, lease, hire, exchange, release, partition, assign, mortgage, grant security interests in, encumber, negotiate, dedicate, grant easements in and options with respect to, convey, transfer (including transfers to entities wholly or partially owned by the Company or

the Directors) or otherwise dispose of any or all of the Company Property by deeds (including deeds in lieu of foreclosure with or without consideration), trust deeds, assignments, bills of sale, transfers, leases, Mortgages, financing statements, security agreements and other instruments for any of such purposes executed and delivered for and on behalf of the Company or the Board of Directors by one or more of the Directors or by a duly authorized officer, employee, agent or nominee of the Company, on such terms as they deem appropriate; to give consents and make contracts relating to the Company Property and its use or other property or matters; to develop, improve, manage, use, alter or otherwise deal with the Company Property; and to rent, lease or hire from others property of any kind; provided, however, that the Company may not use or apply land for any purposes not permitted by applicable law.

(d) Financings. To borrow or, in any other manner, raise money for the purposes and on the terms they determine, which terms may (i) include evidencing the same by issuance of Securities of the Company and (ii) have such provisions as the Board of Directors determines; to guarantee, indemnify or act

as surety with respect to payment or performance of obligations of any Person; to mortgage, pledge, assign, grant security interests in or otherwise encumber the Company Property to secure any such Securities of the Company, contracts or obligations (including guarantees, indemnifications and suretyships); and to renew, modify, release, compromise, extend, consolidate or cancel, in whole or in part, any obligation to or of the Company or participate in any reorganization of obligors to the Company.

(e) Lending. To lend money or other Company Property on such terms, for such purposes and to such Persons as they may determine.

(f) Issuance of Securities. Subject to the restrictions or limitations, if any, as may be set forth in the Charter or the Bylaws, to create and authorize and direct the issuance (on either a pro rata or a non-pro rata basis) by the Company of shares, units or amounts of one or more types, series or classes, of Securities of the Company, which may have such preferences, conversions or other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications, or terms or conditions of redemption or other rights as the Board of Directors may determine, without vote of or other action by the Stockholders, to such Persons for such consideration, at such time or times and in such manner and on such terms as the Board of Directors determines (or without consideration in the case of a stock split or stock dividend); to purchase or otherwise acquire, hold, cancel, reissue, sell and transfer any Securities of the Company; and to acquire Excess Shares from the Excess Shares Trust pursuant to Section 5.7(j).

(g) Expenses and Taxes. To pay any charges, expenses or liabilities necessary or desirable, in the sole discretion of the Board of Directors, for carrying out the purposes of the Charter and conducting business of the Company, including compensation or fees to Directors, officers, employees and agents of the Company, and to Persons contracting with the Company, and any taxes, levies, charges and assessments of any kind imposed upon or chargeable against the Company, the Company Property or the Directors in connection therewith; and to prepare and file any tax returns, reports or other documents and take any other appropriate action relating to the payment of any such charges, expenses or liabilities.

(h) Collection and Enforcement. To collect, sue for and receive money or other property due to the Company; to consent to extensions of the time for payment, or to the renewal, of any Securities or obligations; to engage or to intervene in, prosecute, defend, compound, enforce, compromise, release, abandon or adjust any actions, suits, proceedings, disputes, claims, demands, security interests or things relating to the Company, the Company Property or the Company's affairs; to exercise any rights and enter into any agreements and take any other action necessary or desirable in connection with the foregoing.

(i) Deposits. To deposit funds or Securities constituting part of

the Company Property in banks, trust companies, savings and loan associations, financial institutions and other depositories, whether or not such deposits will draw interest, subject to withdrawal on such terms and in such manner as the Board of Directors determines.

(j) Allocation; Accounts. To determine whether moneys, profits or other Assets of the Company shall be charged or credited to, or allocated between, income and capital, including whether or not to amortize any premium or discount and to determine in what manner any expenses or disbursements are to be borne as between income and capital (regardless of how such items would normally or otherwise be charged to or allocated between income and capital without such determination); to treat any dividend or other distribution on any investment as, or apportion it between, income and capital; in its discretion to provide reserves for depreciation, amortization, obsolescence or other purposes in respect of any Company Property in such amounts and by such methods as it determines; to determine what constitutes net earnings, profits or surplus; to determine the method or form in which the accounts and records of the Company shall be maintained; and to allocate to the Stockholders' equity account less than all of the consideration paid for Securities and to allocate the balance to paid-in capital or capital surplus.

(k) Valuation of Property. To determine the value of all or any part of the Company Property and of any services, Securities or other consideration to be furnished to or acquired by the Company, and to revalue all or any part of the Company Property, all in accordance with such appraisals or other information as are reasonable, in its sole judgment.

(l) Ownership and Voting Powers. To exercise all of the rights, powers, options and privileges pertaining to the ownership of any Mortgages, Securities, Real Estate, Loans and other Permitted Investments and other Company Property to the same extent that an individual owner might, including without limitation to vote or give any consent, request or notice or waive any notice, either in person or by proxy or power of attorney, which proxies and powers of attorney may be for any general or special meetings or action, and may include the exercise of discretionary powers.

(m) Officers, Etc.; Delegation of Powers. To elect, appoint or employ such officers for the Company and such committees of the Board of Directors with such powers and duties as the Board of Directors may determine, the Company's Bylaws provide or the MGCL requires; to engage, employ or contract with and pay compensation to any Person (including subject to Section 7.4 hereof, any Director or Person who is an Affiliate of any Director) as agent, representative, member of an advisory board, employee or independent contractor (including advisors, consultants, transfer agents, registrars, underwriters, accountants, attorneys-at-law, real estate agents, property and other managers, appraisers, brokers, architects, engineers, construction managers, general contractors or otherwise) in one or more capacities, to perform such services on such terms as the Board of Directors may determine; to delegate to one or more Directors, officers or other Persons engaged or employed as aforesaid or to committees of the Board of Directors, the performance of acts or other things (including granting of consents), the making of decisions and the execution of

such deeds, contracts, leases or other instruments, either in the names of the Company, the Directors or as their attorneys or otherwise, as the Board of Directors may determine and as may be permitted by Maryland law; and to establish such committees as it deems appropriate.

(n) Associations. To cause the Company to enter into Joint Ventures, general or limited partnerships, participation or agency arrangements or any other lawful combinations, relationships or associations of any kind.

(o) Reorganizations, Etc. Subject to Section 8.2 hereof and the MGCL, to cause to be organized or assist in organizing any Person under the laws of any jurisdiction to acquire all or any

part of the Company Property, carry on any business in which the Company shall have an interest or otherwise exercise the powers the Board of Directors deems necessary, useful or desirable to carry on the business of the Company or to carry out the provisions of the Charter, to merge or consolidate the Company with any Person; to sell, rent, lease, hire, convey, negotiate, assign, exchange or transfer all or any part of the Company Property to or with any Person in exchange for Securities of such Person or otherwise; and to lend money to, subscribe for and purchase the Securities of, and enter into any contracts with, any Person in which the Company holds, or is about to acquire, Securities or any other interests.

(p) Insurance. To purchase and pay for out of Company Property insurance policies insuring the Stockholders, Company and the Company Property against any and all risks, and insuring the Directors of the Company individually (each an "Insured") against all claims and liabilities of every nature arising by reason of holding or having held any such status, office or position or by reason of any action alleged to have been taken or omitted by the Insured in such capacity, whether or not the Company would have the power to indemnify against such claim or liability. Nothing contained herein shall preclude the Company from purchasing and paying for such types of insurance, including extended coverage liability and casualty and workers' compensation, as would be customary for any Person owning comparable assets and engaged in a similar business, or from naming the Insured as an additional insured party thereunder, provided that such addition does not add to the premiums payable by the Company.

(q) Distributions. To authorize the payment of dividends or other Distributions to Stockholders, subject to the provisions of Section 5.2 hereof.

(r) Discontinue Operations; Bankruptcy. To discontinue the operations of the Company (subject to Article IX hereof); to petition or apply for relief under any provision of federal or state bankruptcy, insolvency or reorganization laws or similar laws for the relief of debtors; to permit any Company Property to be foreclosed upon without raising any legal or equitable

defenses that may be available to the Company or the Directors or otherwise defending or responding to such foreclosure; or to take such other action with respect to indebtedness or other obligations of the Directors in their capacities as Directors, the Company Property or the Company as the Board of Directors in its discretion may determine.

(s) Fiscal Year. Subject to the Code, to adopt, and from time to time change, a fiscal year for the Company.

(t) Seal. To adopt and use a seal, but the use of a seal shall not be required for the execution of instruments or obligations of the Company.

(u) Bylaws. To adopt, implement and from time to time alter, amend or repeal the Bylaws of the Company relating to the business and organization of the Company, provided that such amendments are not inconsistent with the provisions of the Charter, and further provided that the Directors may not amend the Bylaws without the affirmative vote of a majority of the Equity Shares, to the extent such amendments adversely affect the rights, preferences and privileges of Stockholders.

(v) Listing of Securities. To cause the listing of any of the Company's Securities on a national securities exchange or for quotation on any automated inter-dealer quotation system.

(w) Further Powers. To do all other acts and things and execute and deliver all instruments incident to the foregoing powers, and to exercise all powers which it deems necessary, useful or desirable to carry on the business of the Company or to carry out the provisions of the Charter, even if such powers are not specifically provided hereby.

(x) Termination of Status. To terminate the status of the Company as a REIT under the REIT Provisions of the Code; provided, however, that the Board of Directors shall take no action to terminate the Company's status as a REIT under the REIT Provisions of the Code until such time as (i) the Board of Directors adopts a resolution recommending that the Company terminate its status as a REIT under the REIT Provisions of the Code, (ii) the Board of Directors presents the resolution at an annual or special meeting of the Stockholders and (iii) such resolution is approved by the holders of a majority of the issued and outstanding Common Shares.

SECTION 3.3 Determinations by Board. The determination as to any of the following matters, made in good faith by or pursuant to the direction of the Board of Directors consistent with the Charter, shall be final and conclusive and shall be binding upon the Company and every holder of shares of capital stock of the Company: the amount of the net income of the Company for any period and the amount of assets at any time legally available for the payment of dividends, redemption of shares of capital stock of the Company or the payment

of other distributions on shares of capital stock of the Company; the amount of paid-in surplus, net assets, other surplus, annual or other cash flow, funds from operations, net profit, net assets in excess of capital, undivided profits or excess of profits over losses on sales of assets; the amount, purpose, time of creation, increase or decrease, alteration or cancellation of any reserves or charges and the propriety thereof (whether or not any obligation or liability for which such reserves or charges shall have been created shall have been paid or discharged); any interpretation of the terms, preferences, conversion or other rights, voting powers or rights, restrictions, limitations as to dividends or distributions, qualifications or terms or conditions of redemption of any class or series of capital stock of the Company; the fair value, or any sale, bid or asked price to be applied in determining the fair value, of any asset owned or held by the Company or of any shares of capital stock of the Company; the number of shares of any class or series of capital stock of the Company; any matter relating to the acquisition, holding and disposition of any assets by the Company; or any other matter relating to the business and affairs of the Company or required or permitted by applicable law, the Charter or Bylaws or otherwise to be determined by the Board of Directors. In determining what is in the best interest of the Company in connection with a potential acquisition of control, a Director may consider (i) the effect thereof on the Stockholders of the Company, the Company's employees, suppliers, creditors and customers, and the communities in which the offices or Company Properties are located, and (ii) the long-term as well as short-term interests of the Company, including the possibility that these interests may be best served by the continued independence of the Company.

SECTION 3.4 Extraordinary Actions. Except as specifically provided in Article II, Section 2.4 hereof, notwithstanding any provision of law permitting or requiring any action to be taken or approved by the affirmative vote of the holders of shares entitled to cast a greater number of votes, any such action shall be effective and valid if declared advisable by the Board of Directors and taken or approved by the affirmative vote of holders of shares entitled to cast a majority of all the votes entitled to be cast on the matter.

ARTICLE IV

OPERATING RESTRICTIONS

In addition to other operating restrictions imposed by the Board of Directors from time to time, the Company will not operate so as to be classified as an "investment company" under the Investment Company Act of 1940, as amended.

ARTICLE V

SHARES

SECTION 5.1 Authorized Shares. The total number of shares of capital stock which the Company is authorized to issue is three billion six hundred seventy

five million (3,675,000,000) shares, consisting of three billion (3,000,000,000) Common Shares, $0.01 par value per share (as described in Section 5.2(b) hereof), seventy five million (75,000,000) Preferred Shares, $0.01 par value per share (as described in Section 5.3 hereof) and six hundred million (600,000,000) Excess Shares, $0.01 par value per share (as described in Section 5.7 hereof). Of the 600,000,000 Excess Shares, 585,000,000 are issuable in exchange for Common Shares and 15,000,000 are issuable in exchange for Preferred Shares. All such shares shall be fully paid and nonassessable when issued. Shares of capital stock of the Company may be issued for such consideration as the Board of Directors determines, or if issued as a result of a stock dividend or stock split, without any consideration.

SECTION 5.2 Common Shares.

(a) Common Shares Subject to Terms of Preferred Shares. The Common Shares shall be subject to the express terms of any series of Preferred Shares.

(b) Description. Common Shares shall have a par value of $0.01 per share and shall entitle the holders to one (1) vote per share on all matters upon which Stockholders are entitled to vote pursuant to Section 6.2 hereof, and shares of a particular class of issued Common Shares shall have equal dividend, distribution, liquidation and other rights, and shall have no preference, cumulative, conversion or exchange rights over other shares of that same particular class. The Board of Directors is hereby expressly authorized, from time to time, to classify or reclassify and issue any unissued Common Shares by setting or changing the number, designation, preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications or terms or conditions of redemption of any such Common Shares and, in such event, the Company shall file for record with the State Department of Assessments and Taxation of Maryland articles supplementary in substance and form as prescribed by the MGCL.

(c) Distribution Rights. The holders of Common Shares shall be entitled to receive such Distributions as may be authorized by the Board of Directors of the Company out of funds legally available therefor.

(d) Dividend or Distribution Rights. The Board of Directors from time to time may authorize the payment to Stockholders of such dividends or Distributions in cash or other property as the Board of Directors in its discretion shall determine. The Board of Directors shall endeavor to authorize the payment of such dividends and Distributions as shall be necessary for the Company to qualify as a REIT under the REIT Provisions of the Code; provided, however, Stockholders shall have no right to any dividend or Distribution unless and until authorized by the Board of Directors and declared by the Company. The exercise of the powers and rights of the Board of Directors pursuant to this section shall be subject to the provisions of any class or series of Equity Shares at the time outstanding. The receipt by any Person in whose name any Equity Shares are registered on the records of the Company or by his duly authorized agent shall be a sufficient discharge for all dividends or Distributions payable or deliverable in respect of such Equity Shares and from all liability to see to the application thereof.

(e) Rights Upon Liquidation. In the event of any voluntary or involuntary liquidation, dissolution or winding up, or any distribution of the assets of the Company, the aggregate assets available for distribution to holders of the Common Shares (including holders of Excess Shares

resulting from the conversion of Common Shares pursuant to Section 5.7(a) hereof) shall be determined in accordance with applicable law. Subject to Section 5.7(f) hereof, each holder of Common Shares shall be entitled to receive, ratably with (i) each other holder of Common Shares and (ii) each holder of Excess Shares resulting from the conversion of Common Shares, that portion of such aggregate assets available for distribution to the Common Shares as the number of the outstanding Common Shares or Excess Shares held by such holder bears to the total number of outstanding Common Shares and Excess Shares resulting from the conversion of Common Shares then outstanding.

(f) Voting Rights. Except as may be provided in the Charter, and subject to the express terms of any series of Preferred Shares, the holders of the Common Shares shall have the exclusive right to vote on all matters at all meetings of the Stockholders of the Company, and shall be entitled to one (1) vote for each Common Share entitled to vote at such meeting.

SECTION 5.3 Preferred Shares. The Board of Directors is hereby expressly authorized, from time to time, to authorize and issue one or more series of Preferred Shares. Prior to the issuance of each such series, the Board of Directors, by resolution, shall fix the number of shares to be included in each series, and the terms, rights, restrictions and qualifications of the shares of each series. The authority of the Board of Directors with respect to each series shall include, but not be limited to, determination of the following:

(a) The designation of the series, which may be by distinguishing number, letter or title.

(b) The dividend rate on the shares of the series, if any, whether any dividends shall be cumulative and, if so, from which date or dates, and the relative rights of priority, if any, of payment of dividends on shares of the series.

(c) The redemption rights, including conditions and the price or prices, if any, for shares of the series.

(d) The terms and amounts of any sinking fund for the purchase or redemption of shares of the series.

(e) The rights of the shares of the series in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company, and the relative rights of priority, if any, of payment of

shares of the series.

(f) Whether the shares of the series shall be convertible into shares of any other class or series, or any other security, of the Company or any other corporation or other entity, and, if so, the specification of such other class or series of such other security, the conversion price or prices or rate or rates, any adjustments thereof, the date or dates on which such shares shall be convertible and all other terms and conditions upon which such conversion may be made.

(g) Restrictions on the issuance of shares of the same series or of any other class or series.

(h) The voting rights, if any, of the holders of shares of the series.

(i) Any other relative rights, preferences and limitations on that series.

Subject to the express provisions of any other series of Preferred Shares then outstanding, and notwithstanding any other provision of the Charter, the Board of Directors is hereby expressly authorized, from time to time, to alter the designation or classify or reclassify and issue any unissued shares of a particular series of Preferred Shares of any series by setting or changing in one or more respects, from time to time before issuing the shares, the number, designation, preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications or terms or conditions of redemption of any such Preferred Shares and, in such event, the Company shall file for record with the State Department of Assessments and Taxation of Maryland articles supplementary in substance and form as prescribed by Section 2-208 of the MGCL.

Any of the terms of any class or series of stock set or changed pursuant to Sections 5.2 and 5.3 hereof may be made dependent upon facts or events ascertainable outside the Charter (including determinations by the Board of Directors or other facts or events within the control of the Company) and may vary among holders thereof, provided that the manner in which such facts, events or variations shall operate upon the terms of such class or series of stock is clearly and expressly set forth in the articles supplementary or other Charter document.

SECTION 5.4 No Preemptive Rights. Except as may be provided by the Board of Directors in setting the terms of classified or reclassified shares of stock pursuant to Section 5.2(b) or as may otherwise be provided by contract, holders of Equity Shares shall not have any preemptive or other right to purchase or subscribe for any class of Securities of the Company which the Company may at any time issue or sell.

SECTION 5.5 No Issuance of Share Certificates. The Company shall not issue share certificates except to Stockholders who make a written request to the Company. A Stockholder's investment shall be recorded on the books of the Company. To transfer his or her Equity Shares a Stockholder shall submit an executed form to the Company, which form shall be provided by the Company upon request. Such transfer will also be recorded on the books of the Company. Upon issuance or transfer of shares, the Company will provide the Stockholder with information concerning his or her rights with regard to such stock, in a form substantially similar to Section 5.6(h), and required by the Bylaws and the MGCL or other applicable law.

SECTION 5.6 Restrictions on Ownership and Transfer.

(a) Definitions. For purposes of Sections 5.6 and 5.7 and any other provision of the Charter, the following terms shall have the meanings set forth below:

"Acquire" means the acquisition of Beneficial or Constructive Ownership of Equity Shares by any means, including, without limitation, the exercise of any rights under any option, warrant, convertible security, pledge or other security interest or similar right to acquire Equity Shares, but shall not include the acquisition of any such rights unless, as a result, the acquiror would be considered a Beneficial Owner or a Constructive Owner. The terms "Acquires" and "Acquisition" shall have correlative meanings.

"Beneficial Ownership," when used with respect to ownership of Equity Shares by any Person, shall mean ownership of Equity Shares which are (i) directly owned by such Person, (ii) indirectly owned by such Person for purposes of Section 542(a)(2) of the Code, taking into account the constructive ownership rules of Sections 544 and 856(h)(3) of the Code, as modified by Section 856(h)(1)(B) of the Code or (iii) beneficially owned by such Person pursuant to Rule 13d-3 under the Exchange Act. Whenever a Person Beneficially Owns Equity Shares that are not actually outstanding (e.g., shares issuable upon the exercise of an option or convertible security) ("Option Shares"), then, whenever the Charter requires a determination of the percentage of outstanding shares of a class of Equity Shares

Beneficially Owned by that Person, the Option Shares Beneficially Owned by that Person shall also be deemed to be outstanding. The terms "Beneficial Owner," "Beneficially Owns" and "Beneficially Owned" shall have correlative meanings.

"Beneficiary" shall mean, with respect to any Excess Shares Trust, one or more organizations described in each of Section 170(b)(1)(A) (other than clauses (vii) and (viii) thereof) and Section 170(c)(2) of the Code that are named by the Company as the beneficiary or beneficiaries of such Excess Shares Trust, in accordance with the provisions of Section 5.7(d).

"Business Day" shall mean any weekday that is not an official holiday in the State of California.

"Charter Effective Date" shall mean the date upon which the Charter is accepted for record by the State Department of Assessments and Taxation of Maryland.

"Constructive Ownership" shall mean ownership of Equity Shares by a Person who is or would be treated as a direct or indirect owner of such Equity Shares through the application of Section 318 of the Code, as modified by Section 856(d)(5) of the Code. The terms "Constructive Owner," "Constructively Own," "Constructively Owns" and "Constructively Owned" shall have correlative meanings.

"Excepted Holder" shall mean a Stockholder of the Company for whom an Excepted Holder Limit is created by the Board of Directors of the Company pursuant to Section 5.6(d)(ii) hereof.

"Excepted Holder Limit" shall mean, provided that the affected Excepted Holder agrees to comply with the requirements established by the Board of Directors of the Company pursuant to Section 5.6(d)(ii), the ownership limit with respect to the Equity Shares of the Company established by the Board of Directors of the Company pursuant to Section 5.6(d)(ii) for or in respect of such holder.

"Excess Shares Trust" shall mean any separate trust created and administered in accordance with the terms of Section 5.7 for the exclusive benefit of any Beneficiary.

"Individual" shall mean (i) an "individual" within the meaning of Section 542(a)(2) of the Code, as modified by Section 544 of the Code and/or (ii) any beneficiary of a "qualified trust" (as defined in Section 856(h)(3)(E) of the Code) which qualified trust is eligible for look-through treatment under Section 856(h)(3)(A) of the Code for purposes of determining whether a REIT is closely held under Section 856(a)(6) of the Code.

"Market Price" means, until the Equity Shares are Listed, the price per Equity Share if Equity Shares have been sold during the prior quarter pursuant to a registration statement filed with the Securities and Exchange Commission and otherwise a price per Equity Share determined on the basis of a quarterly valuation of the Company's assets. Upon Listing, Market Price shall mean the average of the Closing Prices for the ten (10) consecutive Trading Days immediately preceding the day as of which Market Price is to be determined (or those days during such ten (10)-day period for which Closing Prices are available). The "Closing Price" on any date shall mean (i) where there exists a public market for the Company's Equity Shares, the last sale price, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the NYSE or, if the Equity Shares are not listed or

admitted to trading on the NYSE, as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the Equity Shares are listed or admitted to trading or, if the Equity Shares are not listed or admitted to trading on any national securities exchange, the last quoted price, or if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported

by the Nasdaq Stock Market, Inc. or, if such system is no longer in use, the principal other automated quotation system that may then be in use or (ii) if no public market for the Equity Shares exists, the Market Price will be determined by a single, independent appraiser selected by the Board of Directors of the Company, which appraiser shall appraise the Market Price for such Equity Shares within such guidelines as shall be determined by the Board of Directors of the Company.

"Non-Transfer Event" shall mean an event other than a purported Transfer that would cause any Person to Beneficially Own or Constructively Own a greater number of Equity Shares than such Person Beneficially Owned or Constructively Owned immediately prior to such event. Non-Transfer Events include, but are not limited to, (i) the granting of any option or entering into any agreement for the sale, transfer or other disposition of shares (or of Beneficial Ownership of shares) of Equity Shares or (ii) the sale, transfer, assignment or other disposition of interests in any Person or of any securities or rights convertible into or exchangeable for Equity Shares or for interests in any Person that directly or indirectly results in changes in Beneficial Ownership or Constructive Ownership of Equity Shares.

"Ownership Limit" shall mean, with respect to each class or series of Equity Shares, 9.8% (by value) of the outstanding shares of such Equity Shares.

"Permitted Transferee" shall mean any Person designated as a Permitted Transferee in accordance with the provisions of Section 5.7(h).

"Prohibited Owner" shall mean, with respect to any purported Transfer or Non-Transfer Event, any Person who is prevented from becoming or remaining the owner of record title to Equity Shares by the provisions of Section 5.7(a).

"Restriction Termination Date" shall mean the first day on which the Board of Directors of the Company determines that it is no longer in the best interests of the Company to attempt to, or continue to, qualify under the Code as a REIT.

"Subsidiary" shall mean any direct or indirect subsidiary, whether a corporation, partnership, limited liability company or other entity, of the Company, which may be treated as a "pass-through" entity for federal income tax purposes.

"Trading Day" shall mean a day on which the principal national securities exchange on which any of the Equity Shares are listed or admitted to trading is open for the transaction of business or, if none of the Equity Shares are listed or admitted to trading on any national securities exchange, any day other than a Saturday, a Sunday or a day on which banking institutions in the State of New York are authorized or obligated by law or executive order to close.

"Transfer" (as a noun) shall mean any sale, transfer, gift, assignment, devise or other disposition of shares (or of Beneficial Ownership of shares) of Equity Shares (including but not limited to the initial issuance of Common Shares by the Company), whether voluntary or involuntary, whether of record, constructively or beneficially and whether by operation of law or otherwise. "Transfer" (as a verb) shall have the correlative meaning.

"Trustee" shall mean any Person or entity, unaffiliated with both the Company and any Prohibited Owner (and, if different than the Prohibited Owner, the Person who would have had Beneficial Ownership of the Equity Shares that would have been owned of record by the Prohibited Owner), designated by the Company to act as trustee of any Excess Shares Trust, or any successor trustee thereof.

(b) Restriction on Ownership and Transfer.

(i) Subject to Section 5.6(e), except as provided in Section 5.6(d)(i), from and after the Charter Effective Date and until the Restriction Termination Date, any Transfer of Equity Shares that, if effective, would cause the Company to Constructively Own a 10% or greater ownership interest in a tenant of the Company or in a tenant of any direct or indirect Subsidiary of the Company within the meaning of Section 856(d)(2)(B) of the Code (other than a tenant that is a "taxable REIT subsidiary" (within the meaning of Section 856(l) of the Code) of the Company that satisfies one or more of the exceptions set forth in Section 856(d)(8) of the Code), shall be void ab initio as to the Transfer of that number of Equity Shares that would cause the Company to Constructively Own a 10% or greater ownership interest in a tenant of the Company or in a tenant of any direct or indirect Subsidiary within the meaning of Section 856(d)(2)(B) of the Code (other than a tenant that is a "taxable REIT subsidiary" (within the meaning of Section 856(l) of the Code) of the Company that satisfies one or more of the exceptions set forth in Section 856(d)(8) of the Code), and the intended transferee shall acquire no rights in such Equity Shares.

(ii) (A) Except as provided in Section 5.6(d)(ii), from and after the Charter Effective Date and until the Restriction Termination Date, no Person (other than an Excepted Holder) shall Beneficially Own shares of any class or series of Equity Shares in excess of the Ownership Limit and no Excepted Holder shall Beneficially Own shares of any class or series of Equity Shares in excess

of the Excepted Holder Limit for such Excepted Holder.

(B) Subject to Section 5.6(e), except as provided in Section 5.6(d)(ii), from and after the Charter Effective Date and until the Restriction Termination Date, any purported Transfer that, if effective, would result in any Person (other than an Excepted Holder) Beneficially Owning shares of any class or series of Equity Shares in excess of the Ownership Limit shall be void ab initio as to the Transfer of that number of Equity Shares which would be otherwise Beneficially Owned by such Person in excess of the Ownership Limit, and the intended transferee shall acquire no rights in such Equity Shares.

(C) Subject to Section 5.6(e), except as provided in Section 5.6(d)(ii), from and after the Charter Effective Date and until the Restriction Termination Date, any purported Transfer that, if effective, would result in any Excepted Holder Beneficially Owning shares of any class or series of Equity Shares in excess of the applicable Excepted Holder Limit shall be void ab initio as to the Transfer of that number of Equity Shares which would be otherwise Beneficially Owned by such Excepted Holder in excess of the applicable Excepted Holder Limit established for such Excepted Holder by the Board of Directors of the Company pursuant to Section 5.6(d)(ii), and the intended transferee shall acquire no rights in such Equity Shares.

(D) Notwithstanding anything to the contrary set forth herein, the provisions of this Section 5.6(b)(ii) shall be applied only insofar as may be necessary to accomplish the intents and purposes of the foregoing.

(iii) Subject to Section 5.6(e), from and after the Charter Effective Date and until the Restriction Termination Date, any purported Transfer of Equity Shares that, if effective, would result in the Company being "closely held" within the meaning of Section 856(h) of the Code, or otherwise result in the failure of the Company to qualify as a REIT, shall be void ab initio as to the Transfer of that number of Equity Shares that would cause the Company to be "closely held" within the meaning of Section 856(h) of the Code, or otherwise result in the failure

of the Company to qualify as a REIT, and the intended transferee shall acquire no rights in such Equity Shares.

(iv) Subject to Section 5.6(e), from and after the Charter Effective Date and until the Restriction Termination Date, any purported Transfer that, if effective, would result in Equity Shares being beneficially owned by fewer than 100 persons for purposes of Section 856(a)(5) of the Code shall be void ab initio and the intended transferee shall acquire no rights in such Equity Shares.

(v) Subject to Section 5.6(e), except as provided in Section 5.6(d)(i), from and after the Charter Effective Date and until the Restriction

Termination Date, any purported Transfer that, if effective, would (A) cause any Person (other than a "taxable REIT subsidiary" (within the meaning of Section 856(l) of the Code) of the Company) who renders or furnishes services to one or more tenants of the Company or a Subsidiary which are not "related" to the Company within the meaning of Section 856(d)(2)(B)(i) of the Code (determined without regard to the provisions of Section 856(d)(8) of the Code), to be other than an "independent contractor" for purposes of Section 856(d)(3) of the Code, or (B) cause any Person who renders or furnishes services to a "taxable REIT subsidiary" of the Company which leases directly or indirectly from the Company a "qualified lodging facility" (within the meaning of Section 856(d)(8)(B) of the Code) to be other than an "eligible independent contractor" within the meaning of Section 856(d)(9) of the Code, shall be void ab initio as to the Transfer of that number of Equity Shares that would cause such Person to be other than an "independent contractor" for purposes of Section 856(d)(3) of the Code or an "eligible independent contractor" within the meaning of Section 856(d)(9) of the Code, as applicable, and the intended transferee shall acquire no rights in such Equity Shares.

(c) Owners Required to Provide Information.

Until the Restriction Termination Date:

(i) Every record owner of more than 5%, or such lower percentages as is then required pursuant to regulations under the Code, of the outstanding shares of any class or series of Equity Shares of the Company shall, no later than January 30 of each year, provide to the Company a written statement or affidavit stating the name and address of such record owner, the number of Equity Shares owned by such record owner, and a description of how such shares are held. Each such record owner shall provide to the Company such additional information as the Company may request in order to determine the effect, if any, of such ownership on the Company's status as a REIT and to ensure compliance with the Ownership Limit.

(ii) Each Person who is a Beneficial Owner of Equity Shares and each Person (including the stockholder of record) who is holding Equity Shares for a Beneficial Owner shall, within thirty (30) days of receiving written request from the Company therefor, provide to the Company a written statement or affidavit stating the name and address of such Beneficial Owner, the number of Equity Shares Beneficially Owned by such Beneficial Owner, a description of how such shares are held, and such other information as the Company may request in order to determine the Company's status as a REIT and to ensure compliance with the Ownership Limit.

(d) Exceptions.

(i) The Board of Directors of the Company, upon receipt of a ruling from the Internal Revenue Service or an opinion of counsel or other evidence or undertakings

acceptable to the Board of Directors of the Company, may, in its sole discretion, waive (prospectively or retroactively) the application of Section 5.6(b)(i) or Section 5.6(b)(v) to a Person subject, as the case may be, to any such limitations on Transfer, provided that (A) the Board of Directors of the Company obtains such representations and undertakings from such Person as are reasonably necessary (as determined by the Board of Directors of the Company), if any, to ascertain that such Person's Beneficial Ownership or Constructive Ownership of Equity Shares will not now or in the future result in the Company failing to satisfy the gross income limitations provided for in Sections 856(c)(2) and (3) of the Code and (B) insofar as required by the Board of Directors of the Company, such Person agrees in writing that any violation or attempted violation of (1) such other limitation as the Board of Directors of the Company may establish at the time of such waiver with respect to such Person or (2) such other restrictions and conditions as the Board of Directors of the Company may in its sole discretion impose at the time of such waiver with respect to such Person, will result, as of the time of such violation even if discovered after such violation, in the conversion of such shares in excess of the original limit applicable to such Person into Excess Shares pursuant to Section 5.7(a).

(ii) The Board of Directors of the Company, upon receipt of a ruling from the Internal Revenue Service or an opinion of counsel or other evidence or undertakings acceptable to the Board of Directors of the Company, may, in its sole discretion, waive (prospectively or retroactively) the application of the Ownership Limit to a Person otherwise subject to any such limit, provided that (A) the Board of Directors of the Company obtains such representations and undertakings from such Person as are reasonably necessary (as determined by the Board of Directors of the Company), if any, to ascertain that such Person's Beneficial Ownership or Constructive Ownership of Equity Shares will not now or in the future (1) result in the Company being "closely held" within the meaning of Section 856(h) of the Code, (2) cause the Company to Constructively Own a 10% or greater ownership interest in a tenant of the Company or a Subsidiary within the meaning of Section 856(d)(2)(B) of the Code (other than a "taxable REIT subsidiary" (within the meaning of Section 856(l) of the Code) of the Company that satisfies one or more of the exceptions set forth in Section 856(d)(8) of the Code) and to fail either the 75% gross income test of Section 856(c)(3) of the Code or the 95% gross income test of Section 856(c)(2) of the Code, (3) result in the Equity Shares of the Company being beneficially owned by fewer than 100 persons within the meaning of Section 856(a)(5) of the Code, or (4) cause the Company to receive "impermissible tenant service income" within the meaning of Section 856(d)(7) of the Code, and (B) such Person provides to the Board of Directors of the Company such representations and undertakings, if any, as the Board of Directors of the Company, may in its sole and absolute discretion, require (including, without limitation, an agreement as to a reduced Ownership Limit or Excepted Holder Limit for such Person with respect to the Beneficial Ownership of one or more other classes of Equity Shares not subject to the exception), and, insofar as required by the Board of Directors of the Company, such Person agrees in writing that any violation or attempted violation of (x) such other limitation as the Board of Directors of the Company may establish at the time of such waiver with respect to such Person or (y) such

other restrictions and conditions as the Board of Directors of the Company may in its sole discretion impose at the time of such waiver with respect to such Person, will result, as of the time of such violation even if discovered after such violation, in the conversion of such shares in excess of the original limit applicable to such Person into Excess Shares pursuant to Section 5.7(a).

(iii) The Board of Directors of the Company may only reduce the Excepted Holder Limit for an Excepted Holder (A) with the written consent of such Excepted Holder at any time or (B) pursuant to the terms and conditions of the agreements and undertakings entered into with such Excepted Holder in connection with the establishment of the Excepted Holder Limit for

that Excepted Holder. No Excepted Holder Limit shall be reduced to a percentage that is less than the Ownership Limit. Notwithstanding the foregoing, nothing in this Section 5.6(d)(iii) is intended to limit or modify the restrictions on ownership contained in Section 5.6(b)(ii) and the authority of the Board of Directors of the Company under Section 5.6(d)(i).

(e) Public Market. Notwithstanding any provision to the contrary, nothing in the Charter shall preclude the settlement of any transaction entered into through the facilities of the NYSE or any other national securities exchange or any automated quotation system. In no event, however, shall the existence or application of the preceding sentence have the effect of deterring or preventing the conversion of Equity Shares into Excess Shares as contemplated herein.

(f) Ambiguity. In the case of an ambiguity in the application of any of the provisions of this Section 5.6, including any definition contained in Section 5.6(a) above, the Board of Directors of the Company shall have the power and authority, in its sole discretion, to determine the application of the provisions of this Section 5.6 with respect to any situation based on the facts known to it.

(g) Remedies Not Limited. Except as set forth in Section 5.6(e) above, nothing contained in this Section 5.6 or Section 5.7 shall limit the authority of the Company to take such other action as it deems necessary or advisable to protect the Company and the interests of its stockholders by preservation of the Company's status as a REIT and to ensure compliance with the Ownership Limit or the Excepted Holder Limit.

(h) Legend; Notice to Stockholders Upon Issuance or Transfer. Each certificate for Equity Shares shall bear substantially the following legend, or upon issuance or transfer of uncertificated Equity Shares, the Company shall provide the recipient with a notice containing information about the shares purchased or otherwise transferred, in lieu of issuance of a share certificate, in a form substantially similar to the following:

"[The securities represented by this certificate] [The securities issued or transferred] are subject to restrictions on transfer and ownership for the purpose of maintenance of the Company's status as a real estate investment trust (a "REIT") under Sections 856 through 860 of the Internal Revenue Code of 1986, as amended (the "Code"). Except as otherwise provided pursuant to the Charter of the Company, no Person may (i) Beneficially or Constructively Own Common Shares of the Company in excess of 9.8% (by value), (or such greater percent as may be determined by the Board of Directors of the Company) of the outstanding Common Shares; (ii) Beneficially or Constructively Own shares of any series of Preferred Shares of the Company in excess of 9.8% (by value), (or such greater percent as may be determined by the Board of Directors of the Company) of the outstanding shares of such series of Preferred Shares; or (iii) Beneficially or Constructively Own Common Shares or Preferred Shares (of any class or series) which would result in the Company being "closely held" under Section 856(h) of the Code or which otherwise would cause the Company to fail to qualify as a REIT. Any Person who has Beneficial or Constructive Ownership, or who Acquires or attempts to Acquire Beneficial or Constructive Ownership, of Common Shares and/or Preferred Shares in excess of the above limitations must immediately notify the Company in writing or, in the event of a proposed or attempted Transfer or Acquisition or purported change in Beneficial or Constructive Ownership, must give

written notice to the Company at least 15 days prior to the proposed or attempted Transfer, transaction or other event. Any purported Transfer of Common Shares and/or Preferred Shares which results in violation of the ownership or transfer limitations set forth in the Company's Charter shall be void ab initio and the intended transferee shall not have or acquire any rights in such Common Shares and/or Preferred Shares. If the transfer and ownership limitations referred to herein are violated and notwithstanding such violation, shares of any class of Equity Shares would be Beneficially or Constructively Owned by a Person in violation of such ownership or transfer limitations, the Common Shares or Preferred Shares represented hereby will be automatically converted into Excess Shares to the extent of violation of such limitations, and such Excess Shares will be automatically transferred to an Excess Shares Trust, all as provided by the Charter of the Company. All defined terms used in this legend have the meanings identified in the Company's Charter, as the same may be amended from time to time, a copy of which, including the restrictions on transfer, will be sent without charge to each Stockholder who so requests."

SECTION 5.7 Excess Shares.

(a) Conversion into Excess Shares.

(i) If, notwithstanding the other provisions contained in the Charter, from and after the Charter Effective Date and prior to the Restriction Termination Date, there is a purported Transfer or Non-Transfer Event such that any Person (other than an Excepted Holder) would Beneficially Own shares of any class or series of Equity Shares in excess of the Ownership Limit, or such that any Person that is an Excepted Holder would Beneficially Own shares of any class or series of Equity Shares in excess of the applicable Excepted Holder Limit, then, except as otherwise provided in Section 5.6(d), (A) the purported transferee shall be deemed to be a Prohibited Owner and shall acquire no right or interest (or, in the case of a Non-Transfer Event, the Person holding record title to the Equity Shares Beneficially Owned by such Beneficial Owner shall cease to own any right or interest) in such number of Equity Shares the ownership of which by a Beneficial Owner would cause (1) a Person to Beneficially Own shares of any class or series of Equity Shares in excess of the Ownership Limit or (2) an Excepted Holder to Beneficially Own shares of any class or series of Equity Shares in excess of the applicable Excepted Holder Limit, as the case may be, (B) such number of Equity Shares in excess of the Ownership Limit or the applicable Excepted Holder Limit, as the case may be (rounded up to the nearest whole share), shall be automatically converted into an equal number of Excess Shares and transferred to an Excess Shares Trust in accordance with Section 5.7(d) and (C) the Prohibited Owner shall submit the certificates, if any, representing such number of Equity Shares to the Company, accompanied by all requisite and duly executed assignments of transfer thereof, for registration in the name of the Trustee of the Excess Shares Trust. If the Equity Shares that are converted into Excess Shares are not shares of Common Shares, then the Excess Shares into which they are converted shall be deemed to be a separate series of Excess Shares with a designation and title corresponding to the designation and title of the shares that have been converted into the Excess Shares, followed by the words "Excess Shares" in the designation thereof. Such conversion into Excess Shares and transfer to an Excess Shares Trust shall be effective as of the close of trading on the Business Day prior to the date of the purported Transfer or Non-Transfer Event, as the case may be, even though the certificates, if any, representing the Equity Shares so converted may be submitted to the Company at a later date.

(ii) If, notwithstanding the other provisions contained in the Charter, (A) from and after the Charter Effective Date and prior to the Restriction Termination Date there is a purported Transfer or Non-Transfer Event that, if effective, would result in the Company being "closely held" within the meaning of Section 856(h) of the Code, or otherwise result in the failure of the Company to qualify as a REIT, (B) from and after the Charter Effective Date and prior to the Restriction Termination Date, there is a purported Transfer or Non-Transfer Event that, if effective, would cause the Company to Constructively Own a 10% or greater ownership interest in a tenant of the Company or in a

tenant of a Subsidiary for purposes of Section 856(d)(2)(B) of the Code (other than a tenant that is a "taxable REIT Subsidiary" (within the meaning of Section 856(l) of the Code) of the Company that satisfies one or more of the exceptions set forth in Section 856(d)(8) of the Code), (C) from and after the Charter Effective Date and prior to the Restriction Termination Date, there is a purported Transfer or Non-Transfer Event, that, if effective, would result in the Equity Shares being beneficially owned by fewer than 100 persons for purposes of Section 856(a)(5) of the Code, or (D) from and after the Charter Effective Date and prior to the Restriction Termination Date, there is a purported Transfer or Non-Transfer Event that, if effective, would (1) cause any Person (other than a "taxable REIT subsidiary" (within the meaning of Section 856(l) of the Code) of the Company) who renders or furnishes services to one or more tenants of the Company or tenants of a Subsidiary which are not "related" to the Company within the meaning of Section 856(d)(2)(B)(i) of the Code (determined without regard to the provisions of Section 856(d)(8) of the Code), to be other than an "independent contractor" for purposes of Section 856(d)(3) of the Code, or (2) cause any Person who renders or furnishes services to a "taxable REIT subsidiary" of the Company which leases, directly or indirectly from the Company, a "qualified lodging facility" within the meaning of Section 856(d)(8)(B) of the Code, to be other than an "eligible independent contractor" within the meaning of Section 856(d)(9) of the Code, then, except to the extent a waiver was obtained with respect to such restriction pursuant to Section 5.6(d), (X) the purported transferee shall be deemed to be a Prohibited Owner and shall acquire no right or interest (or, in the case of a Non-Transfer Event, the Person holding record title of the Equity Shares with respect to which such Non-Transfer Event occurred shall cease to own any right or interest) in such number of Equity Shares, the ownership of which by such purported transferee or record holder would (AA) result in the Company being "closely held" within the meaning of Section 856(h) of the Code, or otherwise result in the failure of the Company to qualify as a REIT, (BB) cause the Company to Constructively Own a 10% or greater ownership interest in a tenant of the Company or in a tenant of a Subsidiary for purposes of Section 856(d)(2)(B) of the Code (other than a "taxable REIT Subsidiary" (within the meaning of Section 856(l) of the Code) of the Company that satisfies one or more of the exceptions set forth in Section 856(d)(8) of the Code), (CC) result in the Equity Shares being beneficially owned by fewer than 100 persons for purposes of Section 856(a)(5) of the Code, or (DD)(1) cause any Person (other than a "taxable REIT subsidiary" (within the meaning of Section 856(l) of the Code) of the Company) who renders or furnishes services to one or more tenants of the Company or tenants of a Subsidiary which are not "related" to the Company within the meaning of Section 856(d)(2)(B)(i) of the Code (determined without regard to the provisions of Section 856(d)(8) of the Code), to be other than an "independent contractor" for purposes of Section 856(d)(3) of the Code, or (2) cause any Person who renders or furnishes services to a "taxable REIT subsidiary" of the Company which leases from the Company, directly or indirectly, a "qualified lodging facility" within the meaning of Section 856(d)(8)(B) of the Code, to be other than an "eligible independent contractor" within the meaning of Section 856(d)(9) of the Code, (Y) such number of Equity Shares (rounded up to the nearest whole share) shall be automatically converted into an equal number of Excess Shares and transferred to an Excess Shares Trust in accordance with Section 5.7(d) and (Z) the Prohibited Owner shall submit certificates, if any, representing such number of Equity Shares to

the Company, accompanied by all requisite and duly executed assignments of transfer thereof, for registration in the name of the

Trustee of the Excess Shares Trust. If the Equity Shares that are converted into Excess Shares are not Common Shares, then the Excess Shares into which they are converted shall be deemed to be a separate series of Excess Shares with a designation and title corresponding to the designation and title of the shares that have been converted into the Excess Shares, followed by the words "Excess Shares" in the designation thereof. Such conversion into Excess Shares and transfer to an Excess Shares Trust shall be effective as of the close business on the Business Day prior to the date of the purported Transfer or Non-Transfer Event, as the case may be, even though the certificates, if any, representing the Equity Shares so converted may be submitted to the Company at a later date.

(iii) Upon the occurrence of a conversion of Equity Shares into an equal number of Excess Shares, without any action required by any Person, including the Board of Directors of the Company, such Equity Shares shall be restored to the status of authorized but unissued shares of the particular class or series of Equity Shares that was converted into Excess Shares and may be reissued by the Company as that particular class or series of Equity Shares.

(b) Remedies for Breach. If the Company, or its designees, shall at any time determine in good faith that a Transfer has taken place in violation of Section 5.6(b) or that a Person intends to Acquire or has attempted to Acquire Beneficial Ownership or Constructive Ownership of any Equity Shares in violation of Section 5.6(b), the Company shall take such action as it deems advisable to refuse to give effect to or to prevent such Transfer or Acquisition, including, but not limited to, refusing to give effect to such Transfer on the stock transfer books of the Company or instituting proceedings to enjoin such Transfer or Acquisition, but the failure to take any such action shall not affect the automatic conversion of Equity Shares into Excess Shares and their transfer to an Excess Shares Trust in accordance with Section 5.7(a) and Section 5.7(d).

(c) Notice of Restricted Transfer. Any Person who Acquires or attempts to Acquire Equity Shares in violation of Section 5.6(b), or any Person who owned Equity Shares that were converted into Excess Shares and transferred to an Excess Shares Trust pursuant to Sections 5.7(a) and 5.7(d), shall immediately give written notice to the Company, or, in the event of a proposed or attempted Transfer, Acquisition or purported change in Beneficial Ownership or Constructive Ownership, shall give at least fifteen (15) days prior written notice to the Company, of such event and shall provide to the Company such other information as the Company, in its sole discretion, may request in order to determine the effect, if any, of such Transfer, Acquisition, or Non-Transfer Event, as the case may be, on the Company's status as a REIT.

(d) Ownership in Excess Shares Trust. Upon any purported Transfer, Acquisition, or Non-Transfer Event that results in Excess Shares pursuant to Section 5.7(a), such Excess Shares shall be automatically and by operation of law transferred to one or more Trustees as trustee of one or more Excess Shares Trusts to be held for the exclusive benefit of one or more Beneficiaries. Any conversion of Equity Shares into Excess Shares and transfer to an Excess Shares Trust shall be effective as of the close of business on the Business Day prior to the date of the purported Transfer, Acquisition or Non-Transfer Event that results in the conversion. Excess Shares so held in trust shall remain issued and outstanding shares of capital stock of the Company.

(e) Dividend Rights. Each Excess Share shall be entitled to the same dividends and distributions (as to both timing and amount) as may be authorized by the Board of Directors of the Company with respect to shares of the same class and series as the Equity Shares that were converted into such Excess Shares. The Trustee, as record holder of the Excess Shares, shall be entitled to receive all dividends and distributions and shall hold all such dividends and distributions in trust for the benefit of the Beneficiary. The Prohibited Owner with respect to such Excess Shares shall repay to the Excess

Shares Trust the amount of any dividends or distributions received by it (i) that are attributable to any Equity Shares that have been converted into Excess Shares and (ii) which were distributed by the Company to stockholders of record on a record date which was on or after the date that such shares were converted into Excess Shares. The Company shall have the right to take all measures that it determines reasonably necessary to recover the amount of any such dividend or distribution paid to a Prohibited Owner, including, if necessary, withholding any portion of future dividends or distributions payable on Equity Shares Beneficially Owned by the Person who, but for the provisions of Sections 5.6 and 5.7, would Constructively Own or Beneficially Own the Equity Shares that were converted into Excess Shares; and, as soon as reasonably practicable following the Company's receipt or withholding thereof, shall pay over to the Excess Shares Trust for the benefit of the Beneficiary the dividends so received or withheld, as the case may be.

(f) Rights upon Liquidation. In the event of any voluntary or involuntary liquidation of, or winding up of, or any distribution of the Assets of, the Company, each holder of Excess Shares shall be entitled to receive, ratably with each holder of Equity Shares of the same class and series as the shares which were converted into such Excess Shares and other holders of such Excess Shares, that portion of the assets of the Company that is available for distribution to the holders of such Equity Shares. The Excess Shares Trust shall distribute to the Prohibited Owner the amounts received upon such liquidation, dissolution, winding up or distribution; provided, however, that the Prohibited Owner shall not be entitled to receive amounts in excess of the lesser of, in the case of a purported Transfer or Acquisition in which the Prohibited Owner

gave value for Equity Shares and which Transfer or Acquisition resulted in the conversion of the shares into Excess Shares, the product of (i) the price per share, if any, such Prohibited Owner paid for the Equity Shares and (ii) the number of Equity Shares which were so converted into Excess Shares and held by the Excess Shares Trust, and, in the case of a Non-Transfer Event or purported Transfer or Acquisition in which the Prohibited Owner did not give value for such shares (e.g., if the shares were received through a gift or devise) and which Non-Transfer Event or purported Transfer or Acquisition, as the case may be, resulted in the conversion of the shares into Excess Shares, the product of (x) the price per share equal to the Market Price for the shares that were converted into such Excess Shares on the date of such Non-Transfer Event or purported Transfer or Acquisition and (y) the number of Equity Shares which were so converted into Excess Shares. Any remaining amount in such Excess Shares Trust shall be distributed to the Beneficiary; provided, however, that in the event of any voluntary or involuntary liquidation of, or winding up of, or any distribution of the Assets of, the Company that occurs during the period in which the Company has the right to accept the offer to purchase Excess Shares under Section 5.7(j) hereof (but with respect to which the Company has not yet accepted such offer), then (i) the Company shall be deemed to have accepted such offer immediately prior to the time at which the liquidating distribution is to be determined for the holders of Equity Shares of the same class and series as the shares which were converted into such Excess Shares (or such earlier time as is necessary to permit such offer to be accepted) and to have simultaneously purchased such shares at the price per share set forth in Section 5.7(j), (ii) the Prohibited Owner with respect to such Excess Shares shall receive in connection with such deemed purchase the compensation amount set forth Section 5.7(i) (as if such shares were purchased by the Company directly from the Excess Shares Trust), (iii) the amount, if any, by which the deemed purchase price exceeds such compensation amount shall be distributed to the Beneficiary and (iv) accordingly, any amounts that would have been distributed with respect to such Excess Shares in such liquidation, winding-up or distribution (if such deemed purchase had not occurred) in excess of the deemed purchase price shall be distributed to the holders of the Equity Shares and holders of Excess Shares resulting from the conversion of such Equity Shares entitled to such distribution.

(g) Voting Rights. The holders of Excess Shares shall not be entitled to voting rights with respect to such shares. Any vote by a Prohibited Owner as a purported holder of Equity Shares prior to the discovery by the Company that such Equity Shares have been converted into Excess Shares shall,

subject to applicable law, be rescinded and shall be void ab initio with respect to such Excess Shares; provided, however, that if the Company has already taken irreversible corporate action, then the Trustee shall not have the authority to rescind such vote.

(h) Designation of Permitted Transferee.

(i) As soon as practicable after the Trustee acquires Excess Shares, but in an orderly fashion so as not to materially adversely affect the price of Common Shares, the Trustee shall designate one or more Persons as Permitted Transferees and sell to such Permitted Transferees any Excess Shares held by the Trustee; provided, however, that (A) any Permitted Transferee so designated purchases for valuable consideration (whether in a public or private sale) the Excess Shares and (B) any Permitted Transferee so designated may acquire such Excess Shares without violating any of the restrictions set forth in Section 5.6(b) (assuming for this purpose the automatic conversion of such Excess Shares into Equity Shares pursuant to clause (ii) below) and without such acquisition resulting in the re-conversion of the Equity Shares underlying the Excess Shares so acquired into Excess Shares and the transfer of such shares to an Excess Shares Trust pursuant to Sections 5.7(a) and 5.7(d). The Trustee shall have the exclusive and absolute right to designate Permitted Transferees of any and all Excess Shares. Prior to any transfer by the Trustee of Excess Shares to a Permitted Transferee, the Trustee shall give not less than five (5) Business Days' prior written notice to the Company of such intended transfer to enable the Company to determine whether to exercise or waive its purchase rights under Section 5.7(j). No such transfer by the Trustee of Excess Shares to a Permitted Transferee shall be consummated unless the Trustee has received a written waiver of the Company's purchase rights under Section 5.7(j).

(ii) Upon the designation by the Trustee of a Permitted Transferee and compliance with the provisions of this Section 5.7(h), the Trustee shall cause to be transferred to the Permitted Transferee the Excess Shares acquired by the Trustee pursuant to Section 5.7(d). Upon such transfer of Excess Shares to the Permitted Transferee, such Excess Shares shall be automatically converted into an equal number of Equity Shares of the same class and series as the Equity Shares which were converted into such Excess Shares. Upon the occurrence of such a conversion of Excess Shares into an equal number of Equity Shares, such Excess Shares, without any action required by the Board of Directors of the Company, shall thereupon be restored to the status of authorized but unissued Excess Shares and may be reissued by the Company as Excess Shares. The Trustee shall (A) cause to be recorded on the stock transfer books of the Company that the Permitted Transferee is the holder of record of such number of Equity Shares, and (B) distribute to the Beneficiary any and all amounts held with respect to such Excess Shares after making payment to the Prohibited Owner pursuant to Section 5.7(i).

(iii) If the Transfer of Excess Shares to a purported Permitted Transferee would or does violate any of the transfer restrictions set forth in Section 5.6(b) (assuming for this purpose the automatic conversion of such Excess Shares into Equity Shares pursuant to clause (ii) above), such Transfer shall be void ab initio as to that number of Excess Shares that cause the violation of any such restriction when such shares are converted into Equity Shares (as described in clause (ii) above) and the purported Permitted Transferee shall be deemed to be a

Prohibited Owner and shall acquire no rights in such Excess Shares or Equity Shares. Such Equity Shares shall be automatically re-converted into Excess Shares and transferred to the Excess Shares Trust from which they were originally Transferred. Such conversion and transfer to the Excess Shares Trust shall be effective as of the close of trading on the Business Day prior to the date of the Transfer to the purported Permitted Transferee and the provisions of this Section 5.7 shall apply

to such shares, including, without limitation, the provisions of Sections 5.7(h) through 5.7(j) with respect to any future Transfer of such shares by the Excess Shares Trust.

(i) Compensation to Record Holder of Equity Shares That Are Converted into Excess Shares. Any Prohibited Owner shall be entitled (following acquisition of the Excess Shares and subsequent designation of and sale of Excess Shares to a Permitted Transferee in accordance with Section 5.7(h) or following the acceptance of the offer to purchase such shares in accordance with Section 5.7(j)) to receive from the Trustee following the sale or other disposition of such Excess Shares the lesser of (i)(A) in the case of a purported Transfer or Acquisition in which the Prohibited Owner gave value for Equity Shares and which Transfer or Acquisition resulted in the conversion of such shares into Excess Shares, the product of (1) the price per share, if any, such Prohibited Owner paid for the Equity Shares and (2) the number of Equity Shares which were so converted into Excess Shares and (B) in the case of a Non-Transfer Event or purported Transfer or Acquisition in which the Prohibited Owner did not give value for such shares (e.g., if the shares were received through a gift or devise) and which Non-Transfer Event or purported Transfer or Acquisition, as the case may be, resulted in the conversion of such shares into Excess Shares, the product of (1) the price per share equal to the Market Price for the shares that were converted into such Excess Shares on the date of such Non-Transfer Event or purported Transfer or Acquisition and (2) the number of Equity Shares which were so converted into Excess Shares, (ii) the proceeds received by the Trustee from the sale or other disposition of such Excess Shares in accordance with Section 5.7(h) or Section 5.7(j) or (iii) the pro-rata amount of such Prohibited Owner's initial capital investment in the Company properly allocated to such Excess Shares (determined by multiplying the Prohibited Owner's total initial capital investment in the Company by a fraction, the numerator of which is the number of shares of the Prohibited Owner's Equity Shares converted into such Excess Shares and the denominator of which is the total number of Equity Shares held (or purported to be held) by the Prohibited Owner immediately prior to such conversion (including the shares so converted)). Any amounts received by the Trustee in respect of such Excess Shares that is in excess of such amounts to be paid to the Prohibited Owner pursuant to this Section 5.7(i) shall be distributed to the Beneficiary. Each Beneficiary and Prohibited Owner shall be deemed to have waived and, if requested, shall execute a written confirmation of the waiver of, any and all claims that it may have against the Trustee and the Excess Shares Trust arising out of the disposition

of Excess Shares, except for claims arising out of the gross negligence or willful misconduct of such Trustee or any failure to make payments in accordance with this Section 5.7 by such Trustee.

(j) Purchase Right in Excess Shares. Excess Shares shall be deemed to have been offered for sale to the Company or its designee, at a price per share equal to the lesser of (i) the price per share of Equity Shares in the transaction that created such Excess Shares (or, in the case of a Non-Transfer Event, Transfer or Acquisition in which the Prohibited Owner did not give value for the shares (e.g., if the shares were received through a gift or devise), the Market Price for the shares that were converted into such Excess Shares on the date of such Non-Transfer Event, Transfer or Acquisition or (ii) the Market Price for the shares that were converted into such Excess Shares on the date the Company, or its designee, accepts such offer. The Company shall have the right to accept such offer for a period of ninety (90) days following the later of (x) the date of the Acquisition, Non-Transfer Event or purported Transfer which results in such Excess Shares or (y) the first to occur of (A) the date the Board of Directors of the Company first determined that an Acquisition, Transfer or Non-Transfer Event resulting in Excess Shares has occurred and (B) the date that the Company received a notice of such Acquisition, Transfer or Non-Transfer Event pursuant to Section 5.7(c).

(k) Nothing in this Section 5.7 shall limit the authority of the Board of Directors of the Company to take such other action as it deems necessary or advisable to protect the Company and the interests of its Stockholders in preserving the Company's status as a REIT.

SECTION 5.8 Severability. If any provision of this Article V or any application of any such provision is determined to be void, invalid or unenforceable by any court having jurisdiction over the issue, the validity and enforceability of the remaining provisions of this Article V shall not be affected and other applications of such provision shall be affected only to the extent necessary to comply with the determination of such court.

SECTION 5.9 Waiver. The Company shall have authority at any time to waive the requirements that Excess Shares be issued or be deemed outstanding in accordance with the provisions of this Article V if the Company determines, based on an opinion of nationally recognized tax counsel, that the issuance of such Excess Shares or the fact that such Excess Shares are deemed to be outstanding, would jeopardize the status of the Company as a REIT (as that term is defined in Section 1.5).

SECTION 5.10 Enforcement. The Company is authorized specifically to seek equitable relief, including injunctive relief, to enforce the provisions of this Article V.

ARTICLE VI

SECTION 6.1 Meetings of Stockholders. There shall be an annual meeting of the Stockholders, to be held at such time and place as shall be determined by or in the manner prescribed in the Bylaws, at which the Directors shall be elected and any other proper business may be conducted. A plurality of all the votes cast at a meeting of Stockholders duly called and at which a quorum is present shall be sufficient to elect a Director. A quorum shall be the holders of 50% or more of the then outstanding Equity Shares entitled to vote. Special meetings of Stockholders may be called in the manner provided in the Bylaws, including at any time by Stockholders holding, in the aggregate, not less than ten percent (10%) of the outstanding Equity Shares entitled to be cast on any issue proposed to be considered at any such special meeting. If there are no Directors, the officers of the Company shall promptly call a special meeting of the Stockholders entitled to vote for the election of successor Directors. Any meeting may be adjourned and reconvened as the Directors determine or as provided by the Bylaws.

SECTION 6.2 Voting Rights of Stockholders. Subject to the provisions of any class or series of Equity Shares then outstanding and the mandatory provisions of any applicable laws or regulations, the Stockholders shall be entitled to vote only on the following matters: (a) election or removal of Directors as provided in Sections 6.1, 2.3 and 2.4 hereof; (b) amendment of the Charter as provided in Section 8.1 hereof; (c) dissolution of the Company as provided in Article IX hereof; (d) merger, consolidation or sale or other disposition of all or substantially all of the Company Property, as provided in Section 8.2 hereof; and (e) termination of the Company's status as a REIT under the REIT Provisions of the Code, as provided in Section 3.2(x) hereof. Except with respect to the foregoing matters, no action taken by the Stockholders at any meeting shall in any way bind the Directors.

SECTION 6.3 Right of Inspection. Any Stockholder and any designated representative thereof shall be permitted access to all records of the Company at all reasonable times, and may inspect and copy any of them for a reasonable charge. Inspection of the Company books and records by the office or agency administering the securities laws of a jurisdiction shall be provided upon reasonable notice and during normal business hours.

SECTION 6.4 Access to Stockholder List. An alphabetical list of the names, addresses and telephone numbers of the Stockholders of the Company, along with the number of Shares held by each of them (the "Stockholder List"), shall be maintained as part of the books and records of the Company and shall be available for inspection by any Stockholder or the Stockholder's designated agent at the home

office of the Company upon the request of the Stockholder. The Stockholder List

shall be updated at least quarterly to reflect changes in the information contained therein. A copy of such list shall be mailed to any Stockholder so requesting within ten (10) days of the request. The copy of the Stockholder List shall be printed in alphabetical order, on white paper, and in a readily readable type size (in no event smaller than 10-point type). The Company may impose a reasonable charge for expenses incurred in reproduction pursuant to the Stockholder request. A Stockholder may request a copy of the Stockholder List in connection with matters relating to Stockholders' voting rights, and the exercise of Stockholder rights under federal proxy laws.

If the Directors neglect or refuse to exhibit, produce or mail a copy of the Stockholder List as requested, the Directors shall be liable to any Stockholder requesting the list for the costs, including attorneys' fees, incurred by that Stockholder for compelling the production of the Stockholder List, and for actual damages suffered by any Stockholder by reason of such refusal or neglect. It shall be a defense that the actual purpose and reason for the requests for inspection or for a copy of the Stockholder List is to secure such list of Stockholders or other information for the purpose of selling such list or copies thereof, or of using the same for a commercial purpose other than in the interest of the applicant as a Stockholder relative to the affairs of the Company. The Company may require the Stockholder requesting the Stockholder List to represent that the list is not requested for a commercial purpose unrelated to the Stockholder's interest in the Company. The remedies provided hereunder to Stockholders requesting copies of the Stockholder List are in addition, to and shall not in any way limit, other remedies available to Stockholders under federal law, or the laws of any state.

SECTION 6.5 Reports. The Directors, including the Independent Directors, shall take reasonable steps to ensure that the Company shall cause to be prepared and mailed or delivered to each Stockholder as of a record date after the end of the fiscal year and each holder of other publicly held securities of the Company an annual report for each fiscal year in accordance with the requirements of the Securities and Exchange Commission.

ARTICLE VII

LIMITATION OF STOCKHOLDER LIABILITY; INDEMNIFICATION; EXPRESS EXCULPATORY CLAUSES IN INSTRUMENTS; TRANSACTIONS WITH AFFILIATES

SECTION 7.1 Limitation of Stockholder Liability. No Stockholder shall be liable for any debt, claim, demand, judgment or obligation of any kind of, against or with respect to the Company by reason of his being a Stockholder, nor shall any Stockholder be subject to any personal liability whatsoever, in tort, contract or otherwise, to any Person in connection with the Company Property or the affairs of the Company by reason of his being a Stockholder.

SECTION 7.2 Indemnification. The Company shall be obligated, to the maximum extent permitted by Maryland law in effect from time to time, to indemnify, and to pay or reimburse reasonable expenses in advance of final disposition of a proceeding to: (a) any individual who is a present or former director or officer of the Company or (b) any individual who, while a director

or officer of the Company and at the request of the Company, serves or has served as a director, officer, partner or trustee of another corporation, REIT, partnership, joint venture, trust, employee benefit plan or any other enterprise from and against any claim or liability to which such person may become subject or which such person may incur by reason of his or her service in such capacity. The Company shall have the power, with the approval of the Board of Directors, to provide such indemnification and advancement of expenses to a person who served a predecessor of the Company in any of the capacities described in (a) or (b) above and to any employee or agent of the Company or a predecessor of the Company.

SECTION 7.3 Express Exculpatory Clauses In Instruments. Neither the Stockholders nor the Directors, officers, employees or agents of the Company shall be liable under any written instrument creating an obligation of the Company by reason of their being Stockholders, Directors, officers, employees or agents of the Company, and all Persons shall look solely to the Company Property for the payment of any claim under or for the performance of that instrument. The omission of the foregoing exculpatory language from any instrument shall not affect the validity or enforceability of such instrument and shall not render any Stockholder, Director, officer, employee or agent liable thereunder to any third party, nor shall the Directors or any officer, employee or agent of the Company be liable to anyone as a result of such omission.

SECTION 7.4 Transactions with Affiliates. The Company may engage in transactions with any Affiliates, subject to any express restrictions adopted by the Directors in the Bylaws or by resolution, and further subject to the disclosure and ratification requirements of Section 2-419 of the MGCL and other applicable law.

ARTICLE VIII

AMENDMENT; MERGER, CONSOLIDATION OR SALE OF COMPANY PROPERTY

SECTION 8.1 Amendment.

(a) The Charter may be amended, without the necessity for concurrence by the Board of Directors, by the affirmative vote of the holders of not less than a majority of the Equity Shares then outstanding and entitled to vote thereon, except that (1) no amendment may be made which would change any rights with respect to any outstanding class of securities, by reducing the amount payable thereon upon liquidation, or by diminishing or eliminating any voting rights pertaining thereto; and (2) Section 8.2 hereof and this Section 8.1 shall not be amended (or any other provision of the Charter be amended or any provision of the Charter be added that would have the effect of amending such sections), without the affirmative vote of the holders of two-thirds (2/3) of the Equity Shares then outstanding and entitled to vote thereon.

(b) This Charter may not be amended except as provided in this Section 8.1.

SECTION 8.2 Reorganization. Subject to the provisions of any class or series of Equity Shares at the time outstanding, the Directors shall have the power (i) to cause the organization of a corporation, association, trust or other organization to take over the Company Property and to carry on the affairs of the Company, or (ii) merge the Company into, or sell, convey and transfer the Company Property to any such corporation, association, trust or organization in exchange for Securities thereof or beneficial interests therein, and the assumption by the transferee of the liabilities of the Company, and upon the occurrence of (i) or (ii) above terminate the Company and deliver such Securities or beneficial interests ratably among the Stockholders according to the respective rights of the class or series of Equity Shares held by them; provided, however, that any such action shall have been approved, at a meeting of the Stockholders called for that purpose, by the affirmative vote of the holders of not less than a majority of the Equity Shares then outstanding and entitled to vote thereon.

SECTION 8.3 Merger, Consolidation or Sale of Company Property. Subject to the provisions of any class or series of Equity Shares at the time outstanding, the Board of Directors shall have the power to (i) merge the Company with or into another entity, (ii) consolidate the Company with one (1) or more other entities into a new entity, (iii) sell or otherwise dispose of all or substantially all of the Company Property, or (iv) dissolve or liquidate the Company; provided, however, that such action shall

have been approved, at a meeting of the Stockholders called for that purpose, by the affirmative vote of the holders of not less than a majority of the Equity Shares then outstanding and entitled to vote thereon.

In connection with any proposed Roll-Up Transaction, which, in general terms, is any transaction involving the acquisition, merger, conversion, or consolidation, directly or indirectly, of the Company and the issuance of securities of a Roll-Up Entity that would be created or would survive after the successful completion of the Roll-Up Transaction, an appraisal of all Properties shall be obtained from a competent independent appraiser. The Properties shall be appraised on a consistent basis, and the appraisal shall be based on the evaluation of all relevant information and shall indicate the value of the Properties as of a date immediately prior to the announcement of the proposed Roll-Up Transaction. The appraisal shall assume an orderly liquidation of Properties over a 12-month period. The terms of the engagement of the independent appraiser shall clearly state that the engagement is for the benefit of the Company and the Stockholders. A summary of the appraisal, indicating all material assumptions underlying the appraisal, shall be included in a report to Stockholders in connection with a proposed Roll-Up Transaction. In connection with a proposed Roll-Up Transaction, the person sponsoring the Roll-Up

Transaction shall offer to Stockholders who vote against the proposed Roll-Up Transaction the choice of:

(a) accepting the securities of a Roll-Up Entity offered in the proposed Roll-Up Transaction; or

(b) one of the following:

(i) remaining Stockholders of the Company and preserving their interests therein on the same terms and conditions as existed previously; or

(ii) receiving cash in an amount equal to the Stockholder's pro rata share of the appraised value of the net assets of the Company.

The Company is prohibited from participating in any proposed Roll-Up Transaction:

(c) which would result in the Stockholders having democracy rights in a Roll-Up Entity that are less than the rights provided for in Sections 6.1, 6.2, 6.3, 6.4 and 7.1 of this Charter;

(d) which includes provisions that would operate as a material impediment to, or frustration of, the accumulation of shares by any purchaser of the securities of the Roll-Up Entity (except to the minimum extent necessary to preserve the tax status of the Roll-Up Entity), or which would limit the ability of an investor to exercise the voting rights of its Securities of the Roll-Up Entity on the basis of the number of Shares held by that investor;

(e) in which investor's rights to access of records of the Roll-Up Entity will be less than those described in Sections 6.3 and 6.4 hereof; or

(f) in which any of the costs of the Roll-Up Transaction would be borne by the Company if the Roll-Up Transaction is not approved by the Stockholders.

ARTICLE IX

DURATION OF COMPANY

SECTION 9.1 The Company automatically will terminate and dissolve on December 31, 2007, will undertake orderly liquidation and Sales of Company assets and will distribute any Net Sales Proceeds to Stockholders, unless Listing occurs, in which event the Company shall continue perpetually unless dissolved pursuant to the provisions contained herein or pursuant to any applicable provision of the MGCL.

SECTION 9.2 Dissolution of the Company by Stockholder Vote. Subject to

applicable law, the Company may be dissolved at any time, provided that such action has been approved by the affirmative vote of the holders of at least a majority of the outstanding Equity Shares entitled to vote thereon.

ARTICLE X

LIMITATION OF LIABILITY

To the maximum extent that Maryland law in effect from time to time permits limitation of the liability of directors and officers of a corporation, no present or former director or officer of the Company shall be liable to the Company or its Stockholders for money damages. Neither the amendment nor repeal of this Article X, nor the adoption or amendment of any other provision of the Charter or Bylaws inconsistent with this Article X, shall apply to or affect in any respect the applicability of the preceding sentence with respect to any act or failure to act which occurred prior to such amendment, repeal or adoption.

ARTICLE XI

MISCELLANEOUS

SECTION 11.1 Governing Law. These Articles of Amendment and Restatement are executed by the undersigned Directors and delivered in the State of Maryland with reference to the laws thereof, and the rights of all parties and the validity, construction and effect of every provision hereof shall be subject to and construed according to the laws of the State of Maryland without regard to conflicts of laws provisions thereof.

SECTION 11.2 Reliance by Third Parties. Any certificate shall be final and conclusive as to any persons dealing with the Company if executed by an individual who, according to the records of the Company or of any recording office in which the Charter may be recorded, appears to be the Secretary or an Assistant Secretary of the Company or a Director, and if certifying to: (i) the number or identity of Directors, officers of the Company or Stockholders; (ii) the due authorization of the execution of any document; (iii) the action or vote taken, and the existence of a quorum, at a meeting of the Directors or Stockholders; (iv) a copy of the Charter or of the Bylaws as a true and complete copy as then in force; (v) an amendment to the Charter; (vi) the dissolution of the Company; or (vii) the existence of any fact or facts which relate to the affairs of the Company. No purchaser, lender, transfer agent or other person shall be bound to make any inquiry concerning the validity of any transaction purporting to be made on behalf of the Company by the Directors or by any duly authorized officer, employee or agent of the Company.

SECTION 11.3 Provisions in Conflict with Law or Regulations.

(a) The provisions of the Charter are severable, and if the Board of

Directors shall determine that any one or more of such provisions are in conflict with the REIT Provisions of the Code, or other applicable federal or state laws, the conflicting provisions shall be deemed never to have constituted a part of the Charter, even without any amendment of the Charter pursuant to Section 8.1 hereof; provided, however, that such determination by the Board of Directors shall not affect or impair any of the remaining provisions of the Charter or render invalid or improper any action taken or omitted prior to such determination.

(b) If any provision of the Charter shall be held invalid or unenforceable in any jurisdiction, such holding shall not in any manner affect or render invalid or unenforceable such provision in any other jurisdiction or any other provision of the Charter in any jurisdiction.

SECTION 11.4 Construction. In the Charter, unless the context otherwise requires, words used in the singular or in the plural include both the plural and singular and words denoting any gender include both genders. The title and headings of different parts are inserted for convenience and shall not affect the meaning, construction or effect of the Charter.

SECTION 11.5 Recordation. The Charter and any amendment hereto shall be filed for record with the State Department of Assessments and Taxation of Maryland and may also be filed or recorded in such other places as the Directors deem appropriate, but failure to file for record the Charter or any amendment hereto in any office other than in the State of Maryland shall not affect or impair the validity or effectiveness of the Charter or any amendment hereto. A restated Charter shall, upon filing, be conclusive evidence of all amendments contained therein and may thereafter be referred to in lieu of the original Declaration of Trust and the various amendments thereto.

* * * * * * * * * *

THIRD: The amendment to and restatement of the Charter as hereinabove set forth have been duly advised by the Board of Directors and approved by the Stockholders of the Company as required by law.

FOURTH: The current address of the principal office of the Company in the State of Maryland and the name and address of the Company's current registered agent are as set forth in Article I, Section 1.2 of the foregoing amendment and restatement of the Charter.

FIFTH: The number of Directors of the Company and the names of those currently in office are as set forth in Article II, Section 2.3 of the foregoing amendment and restatement of the Charter.

SIXTH: THE UNDERSIGNED, Chief Executive Officer of CNL Hotels & Resorts, Inc., hereby acknowledges the foregoing Articles of Amendment and Restatement to

be the corporate act of said Company and as to all matters or facts required to be verified under oath, the undersigned Chief Executive Officer acknowledges, that, to the best of his knowledge, information and belief, these matters and facts are true in all material respects, and that this statement is made under the penalties for perjury.

IN WITNESS WHEREOF, the Company has caused these Articles of Amendment and Restatement to be signed in its name and on its behalf by its Chief Executive Officer and attested to by its Secretary on this day of , 2006.

ATTEST:	CNL HOTELS & RESORTS, INC.
	By:
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Greerson G. McMullen	Thomas J. Hutchison III
Secretary	Chief Executive Officer

Exhibit 10.3

EXHIBIT B

FORM OF CHARTER AMENDMENTS

EXHIBIT B

ARTICLES OF AMENDMENT AND RESTATEMENT
OF
CNL HOTELS & RESORTS, INC.

CNL Hotels & Resorts, Inc., a Maryland corporation having its principal office at 300 East Lombard Street, Baltimore, Maryland 21202 (hereinafter, the "Company"), hereby certifies to the State Department of Assessments and Taxation of Maryland, that:

FIRST: The Company desires to amend and restate its charter as currently in effect.

SECOND: The provisions of the charter now in effect and as amended hereby in accordance with the Maryland General Corporation Law (the "MGCL"), are as follows:

ARTICLES OF AMENDMENT AND RESTATEMENT
OF
CNL HOTELS & RESORTS, INC.

* * * * * * * * *

ARTICLE I

THE COMPANY; DEFINITIONS

SECTION 1.1 Name. The name of the corporation (the "Company") is:

CNL Hotels & Resorts, Inc.

SECTION 1.2 Resident Agent. The name and address of the resident agent of the Company in the State of Maryland is The Corporation Trust Incorporated, 300 East Lombard Street, Baltimore, Maryland 21202. The resident agent is a Maryland corporation. The Company's principal office address in the State of Maryland is c/o The Corporation Trust Incorporated, 300 East Lombard Street, Baltimore, Maryland 21202. The Company may also have such other offices or places of business within or without the State of Maryland as the Board of Directors may from time to time determine.

SECTION 1.3 Nature of Company. The Company is a Maryland corporation within the meaning of the MGCL.

SECTION 1.4 Purposes. The purposes for which the Company is formed are to engage in any lawful act or activity for which corporations may be organized under the laws of the State of Maryland as now or hereafter permitted by such laws including, but not limited to, the following: (i) to acquire, hold, own, develop, construct, improve, maintain, operate, sell, lease, transfer, encumber, convey, exchange and otherwise dispose of, deal with or invest in real and personal property; (ii) to engage in the business of offering financing, including mortgage financing secured by Real Property; and (iii) to enter into any partnership, Joint Venture or other similar arrangement to engage in any of the foregoing.

SECTION 1.5 Definitions. As used in the Charter, the following terms shall have the following meanings unless the context otherwise requires (certain other terms used in Article V hereof are defined in Section 5.6(a) hereof):

An "Affiliate" of, or a Person "Affiliated" with, a specified Person, is a Person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the Person specified.

"Bylaws" means the bylaws of the Company, as the same are in effect and may be amended from time to time.

"Charter" means these Articles of Amendment and Restatement, as amended and supplemented from time to time.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, or any successor statute thereto.

"Common Shares" means the common stock, par value $0.01 per share, of the Company that may be issued from time to time in accordance with the terms of the Charter and applicable law, as described in Section 5.2(b) hereof.

"Company Property" or "Assets" means any and all Properties, Loans and other Permitted Investments of the Company, real, personal or otherwise, tangible or intangible, which are transferred or conveyed to the Company (including all rents, income, profits and gains therefrom), which are owned or held by, or for the account of, the Company.

"Directors," "Board of Directors" or "Board" means, collectively, the individuals named in Section 2.3 of the Charter so long as they continue in office and all other individuals who have been duly elected and qualify as directors of the Company hereunder.

"Distributions" means any distribution of money or other property, pursuant to Section 5.2(d) hereof, by the Company to owners of Equity Shares, including distributions that may constitute a return of capital for federal income tax purposes.

"Equity Shares" means shares of capital stock of the Company of any class or series (other than Excess Shares). The use of the term "Equity Shares" or any term defined by reference to the term "Equity Shares" shall refer to the particular class or series of capital stock of the Company which is appropriate under the context.

"Excess Shares" means the excess stock, par value $0.01 per share, of the Company, as described in Section 5.7 hereof.

"Joint Ventures" means those joint venture or general partnership arrangements in which the Company is a co-venturer or general partner which are established to acquire Properties and/or make Loans or other Permitted Investments.

"Listing" means the listing of the Common Shares of the Company on a national securities exchange or over-the-counter market.

"Loans" means mortgage loans and other types of debt financing provided by the Company.

"MGCL" means the Maryland General Corporation Law as contained in Titles 1 through 3 of the Corporations and Associations Article of the Annotated Code of Maryland.

"Mortgages" means mortgages, deeds of trust or other security interests on or applicable to Real Property.

"Net Sales Proceeds" means in the case of a transaction described in clause (i)(A) of the definition of Sale, the proceeds of any such transaction less the amount of all real estate commissions and closing costs paid by the Company. In the case of a transaction described in clause (i)(B) of such definition, Net Sales Proceeds means the proceeds of any such transaction less the amount of any legal and other selling expenses incurred in connection with such transaction. In the case of a transaction described in clause (i)(C) of such definition, Net Sales Proceeds means the proceeds of any such transaction actually distributed to the Company from the Joint Venture. In the case of a transaction or series of transactions described in clause (i)(D) of the definition of Sale, Net Sales Proceeds means the proceeds of any such transaction less the amount of all commissions and closing costs paid by the Company. In the case of a transaction described in clause (ii) of the definition of Sale, Net Sales Proceeds means the proceeds of such transaction or series of transactions less all amounts generated thereby and reinvested in one or more Properties within one hundred eighty (180) days thereafter and less the amount of any real estate commissions, closing costs, and legal and other selling expenses incurred by or allocated to the Company in connection with such transaction or series of transactions. Net Sales Proceeds shall also include, in the case of any lease of a Property consisting of a building only, any amounts

from tenants, borrowers or lessees that the Company determines, in its discretion, to be economically equivalent to the proceeds of a Sale. Net Sales Proceeds shall not include, as determined by the Company in its sole discretion, any amounts reinvested in one or more Properties or other assets, to repay outstanding indebtedness, or to establish reserves.

"NYSE" means the New York Stock Exchange.

"Permitted Investments" means all investments that the Company may make or acquire pursuant to the Charter and the Bylaws.

"Person" means an individual, corporation, partnership, estate, trust (including a trust qualified under Section 401(a) or 501(c)(17) of the Code), a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, association, private foundation within the meaning of Section 509(a) of the Code, joint stock company or other entity, or any government or any agency or political subdivision thereof, and also includes a group as that term is used for purposes of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), but does not include an underwriter that participates in a public offering of Equity Shares for a period of sixty (60) days following the initial purchase by such underwriter of such Equity Shares in such public offering, provided that the foregoing exclusion shall apply only if the ownership of such Equity Shares by an underwriter would not cause the Company to fail to qualify as a REIT by reason of being "closely held" within the meaning of Section 856(a) of the Code or otherwise cause the Company to fail to qualify as a REIT.

"Preferred Shares" means any class or series of preferred stock, par value $0.01 per share, of the Company that may be issued from time to time in accordance with the terms of the Charter and applicable law, as described in Section 5.3 hereof.

"Property" or "Properties" means interests in (i) the Real Properties, including the buildings and equipment located thereon, (ii) the Real Properties only, or (iii) the buildings only, including equipment located therein; whether such interest is acquired by the Company, either directly or indirectly through the acquisition of interests in Joint Ventures, partnerships, or other legal entities.

"Real Property" or "Real Estate" means land, rights in land (including leasehold interests), and any buildings, structures, improvements, furnishings, fixtures and equipment located on or used in connection with land and rights or interests in land.

"REIT" means a "real estate investment trust" as defined pursuant to Sections 856 through 860 of the Code.

"REIT Provisions of the Code" means Sections 856 through 860 of the Code

and any successor or other provisions of the Code relating to REITs (including provisions as to the attribution of ownership of beneficial interests therein) and the regulations promulgated thereunder.

"Sale" or "Sales" (i) means any transaction or series of transactions whereby: (A) the Company sells, grants, transfers, conveys or relinquishes its ownership of any Property or portion thereof, including the lease of any Property consisting of the building only, and including any event with respect to any Property which gives rise to a significant amount of insurance proceeds or condemnation awards; (B) the Company sells, grants, transfers, conveys or relinquishes its ownership of all or substantially all of the interest of the Company in any Joint Venture in which it is a co-venturer or partner; (C) any Joint Venture in which the Company as a co-venturer or partner sells, grants, transfers, conveys or relinquishes its ownership of any Property or portion thereof, including any event with respect to any Property which gives rise to insurance claims or condemnation awards; or (D) the Company sells, grants, conveys, or relinquishes its interest in any asset or portion thereof, including any asset which gives rise to a significant amount of insurance proceeds or similar awards, but (ii) shall not include any transaction or series of transactions specified in clause (i)(A), (i)(B), or (i)(C) above in which the proceeds of such transaction or series of transactions are reinvested in one or more Properties within one hundred eighty (180) days thereafter.

"Securities" means Equity Shares, Excess Shares, any other stock, shares or other evidences of equity or beneficial or other interests, voting trust certificates, bonds, debentures, notes or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in, temporary or interim certificates for, receipts for, guarantees of, or warrants, options or rights to subscribe to, purchase or acquire, any of the foregoing.

"Stockholders" means the stockholders of record of any class of the Company's Equity Shares.

ARTICLE II

BOARD OF DIRECTORS

SECTION 2.1 Number. The number of Directors of the Company initially shall be nine (9), which number may be increased or decreased from time to time by the Board of Directors pursuant to the Bylaws or by the affirmative vote of the holders of at least a majority of the Equity Shares then outstanding and entitled to vote thereon; provided, however, that the total number of Directors shall never be less than the minimum number required by the MGCL. No reduction in the number of Directors shall cause the removal of any Director from office prior to the expiration of his term. Any vacancy created by an increase in the number of Directors will be filled, at any regular meeting or at any special meeting of the Board of Directors called for that purpose, by a majority of the entire Board of Directors. Any other vacancy will be filled at any regular meeting or at any special meeting of the Board of Directors called for that

purpose, by a majority of the remaining Directors, whether or not sufficient to constitute a quorum. For the purposes of voting for Directors, at any annual meeting or at any special meeting of the

Stockholders called for that purpose, each Equity Share of stock may be voted for as many individuals as there are directors to be elected and for whose election the Equity Share is entitled to be voted.

SECTION 2.2 Committees. Subject to the MGCL, the Directors may establish such committees as they deem appropriate, in their discretion.

SECTION 2.3 Term; Current Board. Each Director shall hold office for one (1) year, until the next annual meeting of Stockholders and until his successor shall have been duly elected and qualify. Directors may be elected to an unlimited number of successive terms.

The names of the current Directors who shall serve until the next annual meeting of Stockholders and until their successors are duly elected and qualify are:

James M. Seneff, Jr., Chairman of the Board
Robert A. Bourne
Thomas J. Hutchison III
John A. Griswold
James Douglas Holladay
Jack F. Kemp
Craig M. McAllaster
Dianna Morgan
Robert E. Parsons, Jr.

SECTION 2.4 Resignation and Removal. Any Director may resign by written notice to the Board of Directors, effective upon execution and delivery to the Company of such written notice or upon any future date specified in the notice. A Director may be removed from office at any time, but only for cause, and then only at a meeting of the Stockholders by the affirmative vote of the holders of at least two thirds of the Equity Shares then outstanding and entitled to vote in the election of Directors, subject to the rights of the holders of any Preferred Shares to elect or remove one or more Directors. For the purpose of this paragraph, "cause" shall mean, with respect to any particular Director, conviction of a felony or a final judgment of a court of competent jurisdiction holding that such Director caused demonstrable, material harm to the Company through bad faith or active and deliberate dishonesty or gross negligence. The notice of such meeting shall indicate that the purpose, or one of the purposes, of such meeting is to determine if a Director should be removed.

ARTICLE III

POWERS OF DIRECTORS

SECTION 3.1 General. Subject to the express limitations herein or in the Bylaws and to the general standard of care required of directors under the MGCL and other applicable law, (i) the business and affairs of the Company shall be managed under the direction of the Board of Directors and (ii) the Board of Directors shall have full, exclusive and absolute power, control and authority over the Company Property and over the business of the Company as if they, in their own right, were the sole owners thereof, except as otherwise limited by the Charter. The Directors have established the written policies on investments and borrowing set forth in this Article III and shall monitor the administrative procedures, investment operations and performance of the Company to assure that such policies are carried out. The Board of Directors may take any actions that, in their sole judgment and discretion, are necessary or desirable to conduct the business of the Company. The Charter shall be construed with a presumption in favor of the grant of power and authority to the Board of Directors. Any construction of the Charter or determination made in good faith by the Directors concerning their powers and authority hereunder shall

be conclusive. The enumeration and definition of particular powers of the Board of Directors included in this Article III shall in no way be limited or restricted by reference to or inference from the terms of this or any other provision of the Charter or construed or deemed by inference or otherwise in any manner to exclude or limit the powers conferred upon the Board of Directors under the general laws of the State of Maryland as now or hereafter in force.

SECTION 3.2 Specific Powers and Authority. Subject only to the express limitations herein, and in addition to all other powers and authority conferred by the Charter or by law, the Board of Directors, without any vote, action or consent by the Stockholders, shall have and may exercise, at any time or times, in the name of the Company or on its behalf the following powers and authorities:

(a) Investments. To invest in, purchase or otherwise acquire and to hold Company Property of any kind wherever located, or rights or interests therein or in connection therewith, all without regard to whether such Company Property, interests or rights are authorized by law for the investment of funds held by trustees or other fiduciaries, or whether obligations the Company acquires have a term greater or lesser than the term of office of the Directors or the possible termination of the Company, for such consideration as the Board of Directors may deem proper (including cash, property of any kind or Securities of the Company); provided, however, that the Board of Directors shall take such actions as they deem necessary and desirable to comply with any requirements of the MGCL relating to the types of Assets held by the Company.

(b) REIT Qualification and Termination of Status. The Board of Directors shall use its reasonable best efforts to cause the Company to continue to qualify for U.S. federal income tax treatment in accordance with the provisions of the Code applicable to REITs. In furtherance of the foregoing, the

Board of Directors shall use its reasonable best efforts to take such actions as are necessary, and may take such actions as it deems desirable (in its sole discretion) to preserve the status of the Company as a REIT; provided, however, that in the event that the Board of Directors determines, by vote of at least two-thirds (2/3) of the Directors, that it no longer is in the best interests of the Company to continue to qualify as a REIT, the Board of Directors, in accordance with Section 3.2(x) below, may revoke or otherwise terminate the Company's REIT election pursuant to Section 856(g) of the Code.

(c) Sale, Disposition and Use of Company Property. Subject to Section 8.2 hereof, the Board of Directors shall have the authority to sell, rent, lease, hire, exchange, release, partition, assign, mortgage, grant security interests in, encumber, negotiate, dedicate, grant easements in and options with respect to, convey, transfer (including transfers to entities wholly or partially owned by the Company or the Directors) or otherwise dispose of any or all of the Company Property by deeds (including deeds in lieu of foreclosure with or without consideration), trust deeds, assignments, bills of sale, transfers, leases, Mortgages, financing statements, security agreements and other instruments for any of such purposes executed and delivered for and on behalf of the Company or the Board of Directors by one or more of the Directors or by a duly authorized officer, employee, agent or nominee of the Company, on such terms as they deem appropriate; to give consents and make contracts relating to the Company Property and its use or other property or matters; to develop, improve, manage, use, alter or otherwise deal with the Company Property; and to rent, lease or hire from others property of any kind; provided, however, that the Company may not use or apply land for any purposes not permitted by applicable law.

(d) Financings. To borrow or, in any other manner, raise money for the purposes and on the terms they determine, which terms may (i) include evidencing the same by issuance of Securities of the Company and (ii) have such provisions as the Board of Directors determines; to guarantee, indemnify or act as surety with respect to payment or performance of obligations of any Person; to mortgage, pledge, assign, grant security interests in or otherwise encumber the Company Property to secure any such Securities of the Company, contracts or obligations (including guarantees,

indemnifications and suretyships); and to renew, modify, release, compromise, extend, consolidate or cancel, in whole or in part, any obligation to or of the Company or participate in any reorganization of obligors to the Company.

(e) Lending. To lend money or other Company Property on such terms, for such purposes and to such Persons as they may determine.

(f) Issuance of Securities. Subject to the restrictions or limitations, if any, as may be set forth in the Charter or the Bylaws, to create and authorize and direct the issuance (on either a pro rata or a non-pro rata basis) by the Company of shares, units or amounts of one or more types, series

or classes, of Securities of the Company, which may have such preferences, conversions or other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications, or terms or conditions of redemption or other rights as the Board of Directors may determine, without vote of or other action by the Stockholders, to such Persons for such consideration, at such time or times and in such manner and on such terms as the Board of Directors determines (or without consideration in the case of a stock split or stock dividend); to purchase or otherwise acquire, hold, cancel, reissue, sell and transfer any Securities of the Company; and to acquire Excess Shares from the Excess Shares Trust pursuant to Section 5.7(j).

(g) Expenses and Taxes. To pay any charges, expenses or liabilities necessary or desirable, in the sole discretion of the Board of Directors, for carrying out the purposes of the Charter and conducting business of the Company, including compensation or fees to Directors, officers, employees and agents of the Company, and to Persons contracting with the Company, and any taxes, levies, charges and assessments of any kind imposed upon or chargeable against the Company, the Company Property or the Directors in connection therewith; and to prepare and file any tax returns, reports or other documents and take any other appropriate action relating to the payment of any such charges, expenses or liabilities.

(h) Collection and Enforcement. To collect, sue for and receive money or other property due to the Company; to consent to extensions of the time for payment, or to the renewal, of any Securities or obligations; to engage or to intervene in, prosecute, defend, compound, enforce, compromise, release, abandon or adjust any actions, suits, proceedings, disputes, claims, demands, security interests or things relating to the Company, the Company Property or the Company's affairs; to exercise any rights and enter into any agreements and take any other action necessary or desirable in connection with the foregoing.

(i) Deposits. To deposit funds or Securities constituting part of the Company Property in banks, trust companies, savings and loan associations, financial institutions and other depositories, whether or not such deposits will draw interest, subject to withdrawal on such terms and in such manner as the Board of Directors determines.

(j) Allocation; Accounts. To determine whether moneys, profits or other Assets of the Company shall be charged or credited to, or allocated between, income and capital, including whether or not to amortize any premium or discount and to determine in what manner any expenses or disbursements are to be borne as between income and capital (regardless of how such items would normally or otherwise be charged to or allocated between income and capital without such determination); to treat any dividend or other distribution on any investment as, or apportion it between, income and capital; in its discretion to provide reserves for depreciation, amortization, obsolescence or other purposes in respect of any Company Property in such amounts and by such methods as it determines; to determine what constitutes net earnings, profits or surplus; to determine the method or form in which the accounts and records of the Company shall be maintained; and to allocate to the

Stockholders' equity account less than all of the consideration paid for Securities and to allocate the balance to paid-in capital or capital surplus.

(k) Valuation of Property. To determine the value of all or any part of the Company Property and of any services, Securities or other consideration to be furnished to or acquired by the Company, and to revalue all or any part of the Company Property, all in accordance with such appraisals or other information as are reasonable, in its sole judgment.

(l) Ownership and Voting Powers. To exercise all of the rights, powers, options and privileges pertaining to the ownership of any Mortgages, Securities, Real Estate, Loans and other Permitted Investments and other Company Property to the same extent that an individual owner might, including without limitation to vote or give any consent, request or notice or waive any notice, either in person or by proxy or power of attorney, which proxies and powers of attorney may be for any general or special meetings or action, and may include the exercise of discretionary powers.

(m) Officers, Etc.; Delegation of Powers. To elect, appoint or employ such officers for the Company and such committees of the Board of Directors with such powers and duties as the Board of Directors may determine, the Company's Bylaws provide or the MGCL requires; to engage, employ or contract with and pay compensation to any Person (including, subject to Section 7.4 hereof, any Director or Person who is an Affiliate of any Director) as agent, representative, member of an advisory board, employee or independent contractor (including advisors, consultants, transfer agents, registrars, underwriters, accountants, attorneys-at-law, real estate agents, property and other managers, appraisers, brokers, architects, engineers, construction managers, general contractors or otherwise) in one or more capacities, to perform such services on such terms as the Board of Directors may determine; to delegate to one or more Directors, officers or other Persons engaged or employed as aforesaid or to committees of the Board of Directors, the performance of acts or other things (including granting of consents), the making of decisions and the execution of such deeds, contracts, leases or other instruments, either in the names of the Company, the Directors or as their attorneys or otherwise, as the Board of Directors may determine and as may be permitted by Maryland law; and to establish such committees as it deems appropriate.

(n) Associations. To cause the Company to enter into Joint Ventures, general or limited partnerships, participation or agency arrangements or any other lawful combinations, relationships or associations of any kind.

(o) Reorganizations, Etc. Subject to Section 8.2 hereof and the MGCL, to cause to be organized or assist in organizing any Person under the laws of any jurisdiction to acquire all or any part of the Company Property, carry on any business in which the Company shall have an interest or otherwise exercise the powers the Board of Directors deems necessary, useful or desirable to carry on the business of the Company or to carry out the provisions of the Charter, to

merge or consolidate the Company with any Person; to sell, rent, lease, hire, convey, negotiate, assign, exchange or transfer all or any part of the Company Property to or with any Person in exchange for Securities of such Person or otherwise; and to lend money to, subscribe for and purchase the Securities of, and enter into any contracts with, any Person in which the Company holds, or is about to acquire, Securities or any other interests.

(p) Insurance. To purchase and pay for out of Company Property insurance policies insuring the Stockholders, Company and the Company Property against any and all risks, and insuring the Directors of the Company individually (each an "Insured") against all claims and liabilities of every nature arising by reason of holding or having held any such status, office or position or by reason of any action alleged to have been taken or omitted by the Insured in such capacity, whether or not the Company would have the power to indemnify against such claim or liability. Nothing contained herein shall preclude the Company from purchasing and paying for such types of insurance, including extended

coverage liability and casualty and workers' compensation, as would be customary for any Person owning comparable assets and engaged in a similar business, or from naming the Insured as an additional insured party thereunder, provided that such addition does not add to the premiums payable by the Company.

(q) Distributions. To authorize the payment of dividends or other Distributions to Stockholders, subject to the provisions of Section 5.2 hereof.

(r) Discontinue Operations; Bankruptcy. To discontinue the operations of the Company (subject to Article IX hereof); to petition or apply for relief under any provision of federal or state bankruptcy, insolvency or reorganization laws or similar laws for the relief of debtors; to permit any Company Property to be foreclosed upon without raising any legal or equitable defenses that may be available to the Company or the Directors or otherwise defending or responding to such foreclosure; or to take such other action with respect to indebtedness or other obligations of the Directors in their capacities as Directors, the Company Property or the Company as the Board of Directors in its discretion may determine.

(s) Fiscal Year. Subject to the Code, to adopt, and from time to time change, a fiscal year for the Company.

(t) Seal. To adopt and use a seal, but the use of a seal shall not be required for the execution of instruments or obligations of the Company.

(u) Bylaws. To adopt, implement and from time to time alter, amend or repeal the Bylaws of the Company relating to the business and organization of the Company, provided that such amendments are not inconsistent with the provisions of the Charter. The Board of Directors shall have the exclusive power to adopt, alter or repeal any provision of the Bylaws and to make new Bylaws.

(v) Listing of Securities. To cause the listing of any of the Company's Securities on a national securities exchange or for quotation on any automated inter-dealer quotation system.

(w) Further Powers. To do all other acts and things and execute and deliver all instruments incident to the foregoing powers, and to exercise all powers which it deems necessary, useful or desirable to carry on the business of the Company or to carry out the provisions of the Charter, even if such powers are not specifically provided hereby.

(x) Termination of Status. To terminate the status of the Company as a REIT under the REIT Provisions of the Code; provided, however, that the Board of Directors shall take no action to terminate the Company's status as a REIT under the REIT Provisions of the Code until such time as (i) the Board of Directors adopts a resolution recommending that the Company terminate its status as a REIT under the REIT Provisions of the Code, (ii) the Board of Directors presents the resolution at an annual or special meeting of the Stockholders and (iii) such resolution is approved by the holders of a majority of the issued and outstanding Common Shares.

SECTION 3.3 Determinations by Board. The determination as to any of the following matters, made in good faith by or pursuant to the direction of the Board of Directors consistent with the Charter, shall be final and conclusive and shall be binding upon the Company and every holder of shares of capital stock of the Company: the amount of the net income of the Company for any period and the amount of assets at any time legally available for the payment of dividends, redemption of shares of capital stock of the Company or the payment of other distributions on shares of capital stock of the Company; the amount of paid-in surplus, net assets, other surplus, annual or other cash flow, funds from operations, net profit, net assets in excess of capital, undivided profits or excess of profits over losses on sales of assets; the

amount, purpose, time of creation, increase or decrease, alteration or cancellation of any reserves or charges and the propriety thereof (whether or not any obligation or liability for which such reserves or charges shall have been created shall have been paid or discharged); any interpretation of the terms, preferences, conversion or other rights, voting powers or rights, restrictions, limitations as to dividends or distributions, qualifications or terms or conditions of redemption of any class or series of capital stock of the Company; the fair value, or any sale, bid or asked price to be applied in determining the fair value, of any asset owned or held by the Company or of any shares of capital stock of the Company; the number of shares of any class or series of capital stock of the Company; any matter relating to the acquisition, holding and disposition of any assets by the Company; or any other matter relating to the business and affairs of the Company or required or permitted by applicable law, the Charter or Bylaws or otherwise to be determined by the Board of Directors. In determining what is in the best interest of the Company in

connection with a potential acquisition of control, a Director may consider (i) the effect thereof on the Stockholders of the Company, the Company's employees, suppliers, creditors and customers, and the communities in which the offices or Company Properties are located, and (ii) the long-term as well as short-term interests of the Company, including the possibility that these interests may be best served by the continued independence of the Company.

SECTION 3.4 Extraordinary Actions. Except as specifically provided in Article II, Section 2.4 hereof, notwithstanding any provision of law permitting or requiring any action to be taken or approved by the affirmative vote of the holders of shares entitled to cast a greater number of votes, any such action shall be effective and valid if declared advisable by the Board of Directors and taken or approved by the affirmative vote of holders of shares entitled to cast a majority of all the votes entitled to be cast on the matter.

ARTICLE IV

OPERATING RESTRICTIONS

In addition to other operating restrictions imposed by the Board of Directors from time to time, the Company will not operate so as to be classified as an "investment company" under the Investment Company Act of 1940, as amended.

ARTICLE V

SHARES

SECTION 5.1 Authorized Shares. The total number of shares of capital stock which the Company is authorized to issue is three billion six hundred seventy five million (3,675,000,000) shares, consisting of three billion (3,000,000,000) Common Shares, $0.01 par value per share (as described in Section 5.2(b) hereof), seventy five million (75,000,000) Preferred Shares, $0.01 par value per share (as described in Section 5.3 hereof) and six hundred million (600,000,000) Excess Shares, $0.01 par value per share (as described in Section 5.7 hereof). Of the 600,000,000 Excess Shares, 585,000,000 are issuable in exchange for Common Shares and 15,000,000 are issuable in exchange for Preferred Shares. All such shares shall be fully paid and nonassessable when issued. Shares of capital stock of the Company may be issued for such consideration as the Board of Directors determines, or if issued as a result of a stock dividend or stock split, without any consideration.

SECTION 5.2 Common Shares.

(a) Common Shares Subject to Terms of Preferred Shares. The Common Shares shall be subject to the express terms of any series of Preferred Shares.

(b) Description. Common Shares shall have a par value of $0.01 per share and shall entitle the holders to one (1) vote per share on all matters upon which Stockholders are entitled to vote pursuant to Section 6.2 hereof, and shares of a particular class of issued Common Shares shall have equal dividend, distribution, liquidation and other rights, and shall have no preference, cumulative, conversion or exchange rights over other shares of that same particular class. The Board of Directors is hereby expressly authorized, from time to time, to classify or reclassify and issue any unissued Common Shares by setting or changing the number, designation, preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications or terms or conditions of redemption of any such Common Shares and, in such event, the Company shall file for record with the State Department of Assessments and Taxation of Maryland articles supplementary in substance and form as prescribed by the MGCL.

(c) Distribution Rights. The holders of Common Shares shall be entitled to receive such Distributions as may be authorized by the Board of Directors of the Company out of funds legally available therefor.

(d) Dividend or Distribution Rights. The Board of Directors from time to time may authorize the payment to Stockholders of such dividends or Distributions in cash or other property as the Board of Directors in its discretion shall determine. The Board of Directors shall endeavor to authorize the payment of such dividends and Distributions as shall be necessary for the Company to qualify as a REIT under the REIT Provisions of the Code; provided, however, Stockholders shall have no right to any dividend or Distribution unless and until authorized by the Board of Directors and declared by the Company. The exercise of the powers and rights of the Board of Directors pursuant to this section shall be subject to the provisions of any class or series of Equity Shares at the time outstanding. The receipt by any Person in whose name any Equity Shares are registered on the records of the Company or by his duly authorized agent shall be a sufficient discharge for all dividends or Distributions payable or deliverable in respect of such Equity Shares and from all liability to see to the application thereof.

(e) Rights Upon Liquidation. In the event of any voluntary or involuntary liquidation, dissolution or winding up, or any distribution of the assets of the Company, the aggregate assets available for distribution to holders of the Common Shares (including holders of Excess Shares resulting from the conversion of Common Shares pursuant to Section 5.7(a) hereof) shall be determined in accordance with applicable law. Subject to Section 5.7(f) hereof, each holder of Common Shares shall be entitled to receive, ratably with (i) each other holder of Common Shares and (ii) each holder of Excess Shares resulting from the conversion of Common Shares, that portion of such aggregate assets available for distribution to the Common Shares as the number of the outstanding Common Shares or Excess Shares held by such holder bears to the total number of outstanding Common Shares and Excess Shares resulting from the conversion of Common Shares then outstanding.

(f) Voting Rights. Except as may be provided in the Charter, and subject to the express terms of any series of Preferred Shares, the holders of

the Common Shares shall have the exclusive right to vote on all matters at all meetings of the Stockholders of the Company, and shall be entitled to one (1) vote for each Common Share entitled to vote at such meeting.

SECTION 5.3 Preferred Shares. The Board of Directors is hereby expressly authorized, from time to time, to authorize and issue one or more series of Preferred Shares. Prior to the issuance of each such series, the Board of Directors, by resolution, shall fix the number of shares to be included in each series, and the terms, rights, restrictions and qualifications of the shares of each series. The authority of the Board of Directors with respect to each series shall include, but not be limited to, determination of the following:

(a) The designation of the series, which may be by distinguishing number, letter or title.

(b) The dividend rate on the shares of the series, if any, whether any dividends shall be cumulative and, if so, from which date or dates, and the relative rights of priority, if any, of payment of dividends on shares of the series.

(c) The redemption rights, including conditions and the price or prices, if any, for shares of the series.

(d) The terms and amounts of any sinking fund for the purchase or redemption of shares of the series.

(e) The rights of the shares of the series in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company, and the relative rights of priority, if any, of payment of shares of the series.

(f) Whether the shares of the series shall be convertible into shares of any other class or series, or any other security, of the Company or any other corporation or other entity, and, if so, the specification of such other class or series of such other security, the conversion price or prices or rate or rates, any adjustments thereof, the date or dates on which such shares shall be convertible and all other terms and conditions upon which such conversion may be made.

(g) Restrictions on the issuance of shares of the same series or of any other class or series.

(h) The voting rights, if any, of the holders of shares of the series.

(i) Any other relative rights, preferences and limitations on that series.

Subject to the express provisions of any other series of Preferred Shares then outstanding, and notwithstanding any other provision of the Charter, the Board of Directors is hereby expressly authorized, from time to time, to alter the designation or classify or reclassify and issue any unissued shares of a particular series of Preferred Shares of any series by setting or changing in one or more respects, from time to time before issuing the shares, the number, designation, preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications or terms or conditions of redemption of any such Preferred Shares and, in such event, the Company shall file for record with the State Department of Assessments and Taxation of Maryland articles supplementary in substance and form as prescribed by SECTION 2-208 of the MGCL.

Any of the terms of any class or series of stock set or changed pursuant to Sections 5.2 and 5.3 hereof may be made dependent upon facts or events ascertainable outside the Charter (including determinations by the Board of Directors or other facts or events within the control of the Company) and may vary among holders thereof, provided that the manner in which such facts, events or variations shall operate upon the terms of such class or series of stock is clearly and expressly set forth in the articles supplementary or other Charter document.

SECTION 5.4 No Preemptive Rights. Except as may be provided by the Board of Directors in setting the terms of classified or reclassified shares of stock pursuant to Section 5.2(b) or as may otherwise be provided by contract, holders of Equity Shares shall not have any preemptive or other right

to purchase or subscribe for any class of Securities of the Company which the Company may at any time issue or sell.

SECTION 5.5 No Issuance of Share Certificates. The Company shall not issue share certificates except to Stockholders who make a written request to the Company. A Stockholder's investment shall be recorded on the books of the Company. To transfer his or her Equity Shares a Stockholder shall submit an executed form to the Company, which form shall be provided by the Company upon request. Such transfer will also be recorded on the books of the Company. Upon issuance or transfer of shares, the Company will provide the Stockholder with information concerning his or her rights with regard to such stock, in a form substantially similar to Section 5.6(h), and required by the Bylaws and the MGCL or other applicable law.

SECTION 5.6 Restrictions on Ownership and Transfer.

(a) Definitions. For purposes of Sections 5.6 and 5.7 and any other provision of the Charter, the following terms shall have the meanings set forth below:

"Acquire" means the acquisition of Beneficial or Constructive Ownership of

Equity Shares by any means, including, without limitation, the exercise of any rights under any option, warrant, convertible security, pledge or other security interest or similar right to acquire Equity Shares, but shall not include the acquisition of any such rights unless, as a result, the acquiror would be considered a Beneficial Owner or a Constructive Owner. The terms "Acquires" and "Acquisition" shall have correlative meanings.

"Beneficial Ownership," when used with respect to ownership of Equity Shares by any Person, shall mean ownership of Equity Shares which are (i) directly owned by such Person, (ii) indirectly owned by such Person for purposes of Section 542(a)(2) of the Code, taking into account the constructive ownership rules of Sections 544 and 856(h)(3) of the Code, as modified by Section 856(h)(1)(B) of the Code or (iii) beneficially owned by such Person pursuant to Rule 13d-3 under the Exchange Act. Whenever a Person Beneficially Owns Equity Shares that are not actually outstanding (e.g., shares issuable upon the exercise of an option or convertible security) ("Option Shares"), then, whenever the Charter requires a determination of the percentage of outstanding shares of a class of Equity Shares Beneficially Owned by that Person, the Option Shares Beneficially Owned by that Person shall also be deemed to be outstanding. The terms "Beneficial Owner," "Beneficially Owns" and "Beneficially Owned" shall have correlative meanings.

"Beneficiary" shall mean, with respect to any Excess Shares Trust, one or more organizations described in each of Section 170(b)(1)(A) (other than clauses (vii) and (viii) thereof) and Section 170(c)(2) of the Code that are named by the Company as the beneficiary or beneficiaries of such Excess Shares Trust, in accordance with the provisions of Section 5.7(d).

"Business Day" shall mean any weekday that is not an official holiday in the State of California.

"Charter Effective Date" shall mean the date upon which the Charter is accepted for record by the State Department of Assessments and Taxation of Maryland.

"Constructive Ownership" shall mean ownership of Equity Shares by a Person who is or would be treated as a direct or indirect owner of such Equity Shares through the application of Section 318 of the Code, as modified by Section 856(d)(5) of the Code. The terms "Constructive Owner," "Constructively Own," "Constructively Owns" and "Constructively Owned" shall have correlative meanings.

"Excepted Holder" shall mean a Stockholder of the Company for whom an Excepted Holder Limit is created by the Board of Directors of the Company pursuant to Section 5.6(d)(ii) hereof.

"Excepted Holder Limit" shall mean, provided that the affected Excepted Holder agrees to comply with the requirements established by the Board of

Directors of the Company pursuant to Section 5.6(d)(ii), the ownership limit with respect to the Equity Shares of the Company established by the Board of Directors of the Company pursuant to Section 5.6(d)(ii) for or in respect of such holder.

"Excess Shares Trust" shall mean any separate trust created and administered in accordance with the terms of Section 5.7 for the exclusive benefit of any Beneficiary.

"Individual" shall mean (i) an "individual" within the meaning of Section 542(a)(2) of the Code, as modified by Section 544 of the Code and/or (ii) any beneficiary of a "qualified trust" (as defined in Section 856(h)(3)(E) of the Code) which qualified trust is eligible for look-through treatment under Section 856(h)(3)(A) of the Code for purposes of determining whether a REIT is closely held under Section 856(a)(6) of the Code.

"Market Price" means, until the Equity Shares are Listed, the price per Equity Share if Equity Shares have been sold during the prior quarter pursuant to a registration statement filed with the Securities and Exchange Commission and otherwise a price per Equity Share determined on the basis of a quarterly valuation of the Company's assets. Upon Listing, Market Price shall mean the average of the Closing Prices for the ten (10) consecutive Trading Days immediately preceding the day as of which Market Price is to be determined (or those days during such ten (10)-day period for which Closing Prices are available). The "Closing Price" on any date shall mean (i) where there exists a public market for the Company's Equity Shares, the last sale price, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the NYSE or, if the Equity Shares are not listed or admitted to trading on the NYSE, as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the Equity Shares are listed or admitted to trading or, if the Equity Shares are not listed or admitted to trading on any national securities exchange, the last quoted price, or if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the Nasdaq Stock Market, Inc. or, if such system is no longer in use, the principal other automated quotation system that may then be in use or (ii) if no public market for the Equity Shares exists, the Market Price will be determined by a single, independent appraiser selected by the Board of Directors of the Company, which appraiser shall appraise the Market Price for such Equity Shares within such guidelines as shall be determined by the Board of Directors of the Company.

"Non-Transfer Event" shall mean an event other than a purported Transfer that would cause any Person to Beneficially Own or Constructively Own a greater number of Equity Shares than such Person Beneficially Owned or Constructively Owned immediately prior to such event. Non-Transfer Events include, but are not limited to, (i) the granting of any option or entering into any agreement for the sale, transfer or other disposition of shares (or of Beneficial Ownership of shares) of Equity Shares or (ii) the sale, transfer, assignment or other

disposition of interests in any Person or of any securities or rights convertible into or exchangeable for Equity Shares or for interests in any Person that directly or indirectly results in changes in Beneficial Ownership or Constructive Ownership of Equity Shares.

"Ownership Limit" shall mean, with respect to each class or series of Equity Shares, 9.8% (by value) of the outstanding shares of such Equity Shares.

"Permitted Transferee" shall mean any Person designated as a Permitted Transferee in accordance with the provisions of Section 5.7(h).

"Prohibited Owner" shall mean, with respect to any purported Transfer or Non-Transfer Event, any Person who is prevented from becoming or remaining the owner of record title to Equity Shares by the provisions of Section 5.7(a).

"Restriction Termination Date" shall mean the first day on which the Board of Directors of the Company determines that it is no longer in the best interests of the Company to attempt to, or continue to, qualify under the Code as a REIT.

"Subsidiary" shall mean any direct or indirect subsidiary, whether a corporation, partnership, limited liability company or other entity, of the Company, which may be treated as a "pass-through" entity for federal income tax purposes.

"Trading Day" shall mean a day on which the principal national securities exchange on which any of the Equity Shares are listed or admitted to trading is open for the transaction of business or, if none of the Equity Shares are listed or admitted to trading on any national securities exchange, any day other than a Saturday, a Sunday or a day on which banking institutions in the State of New York are authorized or obligated by law or executive order to close.

"Transfer" (as a noun) shall mean any sale, transfer, gift, assignment, devise or other disposition of shares (or of Beneficial Ownership of shares) of Equity Shares (including but not limited to the initial issuance of Common Shares by the Company), whether voluntary or involuntary, whether of record, constructively or beneficially and whether by operation of law or otherwise. "Transfer" (as a verb) shall have the correlative meaning.

"Trustee" shall mean any Person or entity, unaffiliated with both the Company and any Prohibited Owner (and, if different than the Prohibited Owner, the Person who would have had Beneficial Ownership of the Equity Shares that would have been owned of record by the Prohibited Owner), designated by the Company to act as trustee of any Excess Shares Trust, or any successor trustee thereof.

(b) Restriction on Ownership and Transfer.

(i) Subject to Section 5.6(e), except as provided in Section 5.6(d)(i), from and after the Charter Effective Date and until the Restriction Termination Date, any Transfer of Equity Shares that, if effective, would cause the Company to Constructively Own a 10% or greater ownership interest in a tenant of the Company or in a tenant of any direct or indirect Subsidiary of the Company within the meaning of Section 856(d)(2)(B) of the Code (other than a tenant that is a "taxable REIT subsidiary" (within the meaning of Section 856(l) of the Code) of the Company that satisfies one or more of the exceptions set forth in Section 856(d)(8) of the Code), shall be void ab initio as to the Transfer of that number of Equity Shares that would cause the Company to Constructively Own a 10% or greater ownership interest in a tenant of the Company or in a tenant of any direct or indirect Subsidiary within the meaning of Section 856(d)(2)(B) of the Code (other than a tenant that is a "taxable REIT subsidiary" (within the meaning of Section 856(l) of the Code) of the Company that satisfies one or more of the exceptions set forth in Section 856(d)(8) of the Code), and the intended transferee shall acquire no rights in such Equity Shares.

(ii) (A) Except as provided in Section 5.6(d)(ii), from and after the Charter Effective Date and until the Restriction Termination Date, no Person (other than an

Excepted Holder) shall Beneficially Own shares of any class or series of Equity Shares in excess of the Ownership Limit and no Excepted Holder shall Beneficially Own shares of any class or series of Equity Shares in excess of the Excepted Holder Limit for such Excepted Holder.

(B) Subject to Section 5.6(e), except as provided in Section 5.6(d)(ii), from and after the Charter Effective Date and until the Restriction Termination Date, any purported Transfer that, if effective, would result in any Person (other than an Excepted Holder) Beneficially Owning shares of any class or series of Equity Shares in excess of the Ownership Limit shall be void ab initio as to the Transfer of that number of Equity Shares which would be otherwise Beneficially Owned by such Person in excess of the Ownership Limit, and the intended transferee shall acquire no rights in such Equity Shares.

(C) Subject to Section 5.6(e), except as provided in Section 5.6(d)(ii), from and after the Charter Effective Date and until the Restriction Termination Date, any purported Transfer that, if effective, would result in any Excepted Holder Beneficially Owning shares of any class or series of Equity Shares in excess of the applicable Excepted Holder Limit shall be void ab initio as to the Transfer of that number of Equity Shares which would be otherwise Beneficially Owned by such Excepted Holder in excess of the applicable Excepted Holder Limit established for such Excepted Holder by the Board of Directors of the Company pursuant to Section 5.6(d)(ii), and the intended transferee shall acquire no rights in

such Equity Shares.

(D) Notwithstanding anything to the contrary set forth herein, the provisions of this Section 5.6(b)(ii) shall be applied only insofar as may be necessary to accomplish the intents and purposes of the foregoing.

(iii) Subject to Section 5.6(e), from and after the Charter Effective Date and until the Restriction Termination Date, any purported Transfer of Equity Shares that, if effective, would result in the Company being "closely held" within the meaning of Section 856(h) of the Code, or otherwise result in the failure of the Company to qualify as a REIT, shall be void ab initio as to the Transfer of that number of Equity Shares that would cause the Company to be "closely held" within the meaning of Section 856(h) of the Code, or otherwise result in the failure of the Company to qualify as a REIT, and the intended transferee shall acquire no rights in such Equity Shares.

(iv) Subject to Section 5.6(e), from and after the Charter Effective Date and until the Restriction Termination Date, any purported Transfer that, if effective, would result in Equity Shares being beneficially owned by fewer than 100 persons for purposes of Section 856(a)(5) of the Code shall be void ab initio and the intended transferee shall acquire no rights in such Equity Shares.

(v) Subject to Section 5.6(e), except as provided in Section 5.6(d)(i), from and after the Charter Effective Date and until the Restriction Termination Date, any purported Transfer that, if effective, would (A) cause any Person (other than a "taxable REIT subsidiary" (within the meaning of Section 856(l) of the Code) of the Company) who renders or furnishes services to one or more tenants of the Company or a Subsidiary which are not "related" to the Company within the meaning of Section 856(d)(2)(B)(i) of the Code (determined without regard to the provisions of Section 856(d)(8) of the Code), to be other than an "independent contractor" for purposes of Section 856(d)(3) of the Code, or (B) cause any Person who renders or furnishes services to a "taxable REIT subsidiary" of the Company which leases directly or indirectly from the Company a "qualified lodging facility" (within the meaning of Section

856(d)(8)(B) of the Code) to be other than an "eligible independent contractor" within the meaning of Section 856(d)(9) of the Code, shall be void ab initio as to the Transfer of that number of Equity Shares that would cause such Person to be other than an "independent contractor" for purposes of Section 856(d)(3) of the Code or an "eligible independent contractor" within the meaning of Section 856(d)(9) of the Code, as applicable, and the intended transferee shall acquire no rights in such Equity Shares.

(c) Owners Required to Provide Information.

Until the Restriction Termination Date:

(i) Every record owner of more than 5%, or such lower percentages as is then required pursuant to regulations under the Code, of the outstanding shares of any class or series of Equity Shares of the Company shall, no later than January 30 of each year, provide to the Company a written statement or affidavit stating the name and address of such record owner, the number of Equity Shares owned by such record owner, and a description of how such shares are held. Each such record owner shall provide to the Company such additional information as the Company may request in order to determine the effect, if any, of such ownership on the Company's status as a REIT and to ensure compliance with the Ownership Limit.

(ii) Each Person who is a Beneficial Owner of Equity Shares and each Person (including the stockholder of record) who is holding Equity Shares for a Beneficial Owner shall, within thirty (30) days of receiving written request from the Company therefor, provide to the Company a written statement or affidavit stating the name and address of such Beneficial Owner, the number of Equity Shares Beneficially Owned by such Beneficial Owner, a description of how such shares are held, and such other information as the Company may request in order to determine the Company's status as a REIT and to ensure compliance with the Ownership Limit.

(d) Exceptions.

(i) The Board of Directors of the Company, upon receipt of a ruling from the Internal Revenue Service or an opinion of counsel or other evidence or undertakings acceptable to the Board of Directors of the Company, may, in its sole discretion, waive (prospectively or retroactively) the application of Section 5.6(b)(i) or Section 5.6(b)(v) to a Person subject, as the case may be, to any such limitations on Transfer, provided that (A) the Board of Directors of the Company obtains such representations and undertakings from such Person as are reasonably necessary (as determined by the Board of Directors of the Company), if any, to ascertain that such Person's Beneficial Ownership or Constructive Ownership of Equity Shares will not now or in the future result in the Company failing to satisfy the gross income limitations provided for in Sections 856(c)(2) and (3) of the Code and (B) insofar as required by the Board of Directors of the Company, such Person agrees in writing that any violation or attempted violation of (1) such other limitation as the Board of Directors of the Company may establish at the time of such waiver with respect to such Person or (2) such other restrictions and conditions as the Board of Directors of the Company may in its sole discretion impose at the time of such waiver with respect to such Person, will result, as of the time of such violation even if discovered after such violation, in the conversion of such shares in excess of the original limit applicable to such Person into Excess Shares pursuant to Section 5.7(a).

(ii) The Board of Directors of the Company, upon receipt of a ruling from the Internal Revenue Service or an opinion of counsel or other evidence or undertakings acceptable to the Board of Directors of the Company, may, in its sole discretion, waive (prospectively or retroactively) the application of the Ownership Limit to a Person otherwise

subject to any such limit, provided that (A) the Board of Directors of the Company obtains such representations and undertakings from such Person as are reasonably necessary (as determined by the Board of Directors of the Company), if any, to ascertain that such Person's Beneficial Ownership or Constructive Ownership of Equity Shares will not now or in the future (1) result in the Company being "closely held" within the meaning of Section 856(h) of the Code, (2) cause the Company to Constructively Own a 10% or greater ownership interest in a tenant of the Company or a Subsidiary within the meaning of Section 856(d)(2)(B) of the Code (other than a "taxable REIT subsidiary" (within the meaning of Section 856(l) of the Code) of the Company that satisfies one or more of the exceptions set forth in Section 856(d)(8) of the Code) and to fail either the 75% gross income test of Section 856(c)(3) of the Code or the 95% gross income test of Section 856(c)(2) of the Code, (3) result in the Equity Shares of the Company being beneficially owned by fewer than 100 persons within the meaning of Section 856(a)(5) of the Code, or (4) cause the Company to receive "impermissible tenant service income" within the meaning of Section 856(d)(7) of the Code, and (B) such Person provides to the Board of Directors of the Company such representations and undertakings, if any, as the Board of Directors of the Company, may in its sole and absolute discretion, require (including, without limitation, an agreement as to a reduced Ownership Limit or Excepted Holder Limit for such Person with respect to the Beneficial Ownership of one or more other classes of Equity Shares not subject to the exception), and, insofar as required by the Board of Directors of the Company, such Person agrees in writing that any violation or attempted violation of (x) such other limitation as the Board of Directors of the Company may establish at the time of such waiver with respect to such Person or (y) such other restrictions and conditions as the Board of Directors of the Company may in its sole discretion impose at the time of such waiver with respect to such Person, will result, as of the time of such violation even if discovered after such violation, in the conversion of such shares in excess of the original limit applicable to such Person into Excess Shares pursuant to Section 5.7(a).

(iii) The Board of Directors of the Company may only reduce the Excepted Holder Limit for an Excepted Holder (A) with the written consent of such Excepted Holder at any time or (B) pursuant to the terms and conditions of the agreements and undertakings entered into with such Excepted Holder in connection with the establishment of the Excepted Holder Limit for that Excepted Holder. No Excepted Holder Limit shall be reduced to a percentage that is less than the Ownership Limit.

Notwithstanding the foregoing, nothing in this Section 5.6(d)(iii) is intended to limit or modify the restrictions on ownership contained in Section 5.6(b)(ii) and the authority of the Board of Directors of the Company under Section 5.6(d)(i).

(e) Public Market. Notwithstanding any provision to the contrary, nothing in the Charter shall preclude the settlement of any transaction entered into through the facilities of the NYSE or any other national securities exchange or any automated quotation system. In no event, however, shall the existence or application of the preceding sentence have the effect of deterring or preventing the conversion of Equity Shares into Excess Shares as contemplated herein.

(f) Ambiguity. In the case of an ambiguity in the application of any of the provisions of this Section 5.6, including any definition contained in Section 5.6(a) above, the Board of Directors of the Company shall have the power and authority, in its sole discretion, to determine the application of the provisions of this Section 5.6 with respect to any situation based on the facts known to it.

(g) Remedies Not Limited. Except as set forth in Section 5.6(e) above, nothing contained in this Section 5.6 or Section 5.7 shall limit the authority of the Company to take such other action as it deems necessary or advisable to protect the Company and the interests of its stockholders by

preservation of the Company's status as a REIT and to ensure compliance with the Ownership Limit or the Excepted Holder Limit.

(h) Legend; Notice to Stockholders Upon Issuance or Transfer. Each certificate for Equity Shares shall bear substantially the following legend, or upon issuance or transfer of uncertificated Equity Shares, the Company shall provide the recipient with a notice containing information about the shares purchased or otherwise transferred, in lieu of issuance of a share certificate, in a form substantially similar to the following:

"[The securities represented by this certificate] [The securities issued or transferred] are subject to restrictions on transfer and ownership for the purpose of maintenance of the Company's status as a real estate investment trust (a "REIT") under Sections 856 through 860 of the Internal Revenue Code of 1986, as amended (the "Code"). Except as otherwise provided pursuant to the Charter of the Company, no Person may (i) Beneficially or Constructively Own Common Shares of the Company in excess of 9.8% (by value), (or such greater percent as may be determined by the Board of Directors of the Company) of the outstanding Common Shares; (ii) Beneficially or Constructively Own shares of any series of Preferred Shares of the Company in excess of 9.8% (by value), (or such greater percent as may be determined by the Board of Directors of the Company) of the

outstanding shares of such series of Preferred Shares; or (iii) Beneficially or Constructively Own Common Shares or Preferred Shares (of any class or series) which would result in the Company being "closely held" under Section 856(h) of the Code or which otherwise would cause the Company to fail to qualify as a REIT. Any Person who has Beneficial or Constructive Ownership, or who Acquires or attempts to Acquire Beneficial or Constructive Ownership, of Common Shares and/or Preferred Shares in excess of the above limitations must immediately notify the Company in writing or, in the event of a proposed or attempted Transfer or Acquisition or purported change in Beneficial or Constructive Ownership, must give written notice to the Company at least 15 days prior to the proposed or attempted Transfer, transaction or other event. Any purported Transfer of Common Shares and/or Preferred Shares which results in violation of the ownership or transfer limitations set forth in the Company's Charter shall be void ab initio and the intended transferee shall not have or acquire any rights in such Common Shares and/or Preferred Shares. If the transfer and ownership limitations referred to herein are violated and notwithstanding such violation, shares of any class of Equity Shares would be Beneficially or Constructively Owned by a Person in violation of such ownership or transfer limitations, the Common Shares or Preferred Shares represented hereby will be automatically converted into Excess Shares to the extent of violation of such limitations, and such Excess Shares will be automatically transferred to an Excess Shares Trust, all as provided by the Charter of the Company. All defined terms used in this legend have the meanings identified in the Company's Charter, as the same may be amended from time to time, a copy of which, including the restrictions on transfer, will be sent without charge to each Stockholder who so requests."

SECTION 5.7 Excess Shares.

(a) Conversion into Excess Shares.

(i) If, notwithstanding the other provisions contained in the Charter, from and after the Charter Effective Date and prior to the Restriction Termination Date, there is a purported Transfer or Non-Transfer Event such that any Person (other than an Excepted Holder) would Beneficially Own shares of any class or series of Equity Shares in excess of the Ownership Limit, or such that any Person that is an Excepted Holder would Beneficially Own shares of any class or series of Equity Shares in excess of the applicable Excepted Holder Limit, then, except as otherwise provided in Section 5.6(d), (A) the purported transferee shall be deemed to be a Prohibited Owner and shall acquire no right or interest (or, in the case of a Non-Transfer Event, the Person holding record title to the Equity Shares Beneficially Owned by such Beneficial Owner shall cease to own any right or interest) in such number of Equity Shares the

ownership of which by a Beneficial Owner would cause (1) a Person to Beneficially Own shares of any class or series of Equity Shares in excess of the Ownership Limit or (2) an Excepted Holder to Beneficially Own shares of any class or series of Equity Shares in excess of the applicable Excepted Holder Limit, as the case may be, (B) such number of Equity Shares in excess of the Ownership Limit or the applicable Excepted Holder Limit, as the case may be (rounded up to the nearest whole share), shall be automatically converted into an equal number of Excess Shares and transferred to an Excess Shares Trust in accordance with Section 5.7(d) and (C) the Prohibited Owner shall submit the certificates, if any, representing such number of Equity Shares to the Company, accompanied by all requisite and duly executed assignments of transfer thereof, for registration in the name of the Trustee of the Excess Shares Trust. If the Equity Shares that are converted into Excess Shares are not shares of Common Shares, then the Excess Shares into which they are converted shall be deemed to be a separate series of Excess Shares with a designation and title corresponding to the designation and title of the shares that have been converted into the Excess Shares, followed by the words "Excess Shares" in the designation thereof. Such conversion into Excess Shares and transfer to an Excess Shares Trust shall be effective as of the close of trading on the Business Day prior to the date of the purported Transfer or Non-Transfer Event, as the case may be, even though the certificates, if any, representing the Equity Shares so converted may be submitted to the Company at a later date.

(ii) If, notwithstanding the other provisions contained in the Charter, (A) from and after the Charter Effective Date and prior to the Restriction Termination Date there is a purported Transfer or Non-Transfer Event that, if effective, would result in the Company being "closely held" within the meaning of Section 856(h) of the Code, or otherwise result in the failure of the Company to qualify as a REIT, (B) from and after the Charter Effective Date and prior to the Restriction Termination Date, there is a purported Transfer or Non-Transfer Event that, if effective, would cause the Company to Constructively Own a 10% or greater ownership interest in a tenant of the Company or in a tenant of a Subsidiary for purposes of Section 856(d)(2)(B) of the Code (other than a tenant that is a "taxable REIT Subsidiary" (within the meaning of Section 856(l) of the Code) of the Company that satisfies one or more of the exceptions set forth in Section 856(d)(8) of the Code), (C) from and after the Charter Effective Date and prior to the Restriction Termination Date, there is a purported Transfer or Non-Transfer Event, that, if effective, would result in the Equity Shares being beneficially owned by fewer than 100 persons for purposes of Section 856(a)(5) of the Code, or (D) from and after the Charter Effective Date and prior to the Restriction Termination Date, there is a purported Transfer or Non-Transfer Event that, if effective, would (1) cause any Person (other than a "taxable REIT subsidiary" (within the meaning of Section 856(l) of the Code) of the Company) who renders or furnishes services to one or more tenants of the Company or tenants of a Subsidiary which are not "related"

to the Company within the meaning of Section 856(d)(2)(B)(i) of the Code (determined without regard to the provisions of Section 856(d)(8) of the Code), to be other than an "independent contractor" for purposes of Section 856(d)(3) of the Code, or (2) cause any Person who renders or furnishes services to a "taxable REIT subsidiary" of the Company which leases, directly or indirectly from the Company, a "qualified lodging facility" within the meaning of Section 856(d)(8)(B) of the Code, to be other than an "eligible independent contractor" within the meaning of Section 856(d)(9) of the Code, then, except to the extent a waiver was obtained with respect to such restriction pursuant to Section 5.6(d), (X) the purported transferee shall be deemed to be a Prohibited Owner and shall acquire no right or interest (or, in the case of a Non-Transfer Event, the Person holding record title of the Equity Shares with respect to which such Non-Transfer Event occurred shall cease to own any right or interest) in such number of Equity Shares, the ownership of which by such purported transferee or record holder would (AA) result in the Company being "closely held" within the meaning of Section 856(h) of the Code, or otherwise result in the failure of the Company to qualify as a REIT, (BB) cause the Company to Constructively Own a 10% or greater ownership interest in a tenant of the Company or in a tenant of a Subsidiary for purposes of Section 856(d)(2)(B) of the Code (other than a "taxable REIT Subsidiary" (within the meaning of Section 856(l) of the Code) of the Company that satisfies one or more of the exceptions set forth in Section 856(d)(8) of the Code), (CC) result in the Equity Shares being beneficially owned by fewer than 100 persons for purposes of Section 856(a)(5) of the Code, or (DD)(1) cause any Person (other than a "taxable REIT subsidiary" (within the meaning of Section 856(l) of the Code) of the Company) who renders or furnishes services to one or more tenants of the Company or tenants of a Subsidiary which are not "related" to the Company within the meaning of Section 856(d)(2)(B)(i) of the Code (determined without regard to the provisions of Section 856(d)(8) of the Code), to be other than an "independent contractor" for purposes of Section 856(d)(3) of the Code, or (2) cause any Person who renders or furnishes services to a "taxable REIT subsidiary" of the Company which leases from the Company, directly or indirectly, a "qualified lodging facility" within the meaning of Section 856(d)(8)(B) of the Code, to be other than an "eligible independent contractor" within the meaning of Section 856(d)(9) of the Code, (Y) such number of Equity Shares (rounded up to the nearest whole share) shall be automatically converted into an equal number of Excess Shares and transferred to an Excess Shares Trust in accordance with Section 5.7(d) and (Z) the Prohibited Owner shall submit certificates, if any, representing such number of Equity Shares to the Company, accompanied by all requisite and duly executed assignments of transfer thereof, for registration in the name of the Trustee of the Excess Shares Trust. If the Equity Shares that are converted into Excess Shares are not Common Shares, then the Excess Shares into which they are converted shall be deemed to be a separate series of Excess Shares with a designation and title corresponding to the designation and title of the shares that have been

converted into the Excess Shares, followed by the words "Excess Shares" in the designation thereof. Such conversion into Excess Shares and transfer to an Excess Shares Trust shall be effective as of the close business on the Business Day prior to the date of the purported Transfer or Non-Transfer Event, as the case may be, even though the certificates, if any, representing the Equity Shares so converted may be submitted to the Company at a later date.

(iii) Upon the occurrence of a conversion of Equity Shares into an equal number of Excess Shares, without any action required by any Person, including the Board of Directors of the Company, such Equity Shares shall be restored to the status of authorized but unissued shares of the particular class or series of Equity Shares that was converted into Excess Shares and may be reissued by the Company as that particular class or series of Equity Shares.

(b) Remedies for Breach. If the Company, or its designees, shall at any time determine in good faith that a Transfer has taken place in violation of Section 5.6(b) or that a Person

intends to Acquire or has attempted to Acquire Beneficial Ownership or Constructive Ownership of any Equity Shares in violation of Section 5.6(b), the Company shall take such action as it deems advisable to refuse to give effect to or to prevent such Transfer or Acquisition, including, but not limited to, refusing to give effect to such Transfer on the stock transfer books of the Company or instituting proceedings to enjoin such Transfer or Acquisition, but the failure to take any such action shall not affect the automatic conversion of Equity Shares into Excess Shares and their transfer to an Excess Shares Trust in accordance with Section 5.7(a) and Section 5.7(d).

(c) Notice of Restricted Transfer. Any Person who Acquires or attempts to Acquire Equity Shares in violation of Section 5.6(b), or any Person who owned Equity Shares that were converted into Excess Shares and transferred to an Excess Shares Trust pursuant to Sections 5.7(a) and 5.7(d), shall immediately give written notice to the Company, or, in the event of a proposed or attempted Transfer, Acquisition or purported change in Beneficial Ownership or Constructive Ownership, shall give at least fifteen (15) days prior written notice to the Company, of such event and shall provide to the Company such other information as the Company, in its sole discretion, may request in order to determine the effect, if any, of such Transfer, Acquisition, or Non-Transfer Event, as the case may be, on the Company's status as a REIT.

(d) Ownership in Excess Shares Trust. Upon any purported Transfer, Acquisition, or Non-Transfer Event that results in Excess Shares pursuant to Section 5.7(a), such Excess Shares shall be automatically and by operation of law transferred to one or more Trustees as trustee of one or more Excess Shares Trusts to be held for the exclusive benefit of one or more Beneficiaries. Any conversion of Equity Shares into Excess Shares and transfer to an Excess Shares

Trust shall be effective as of the close of business on the Business Day prior to the date of the purported Transfer, Acquisition or Non-Transfer Event that results in the conversion. Excess Shares so held in trust shall remain issued and outstanding shares of capital stock of the Company.

(e) Dividend Rights. Each Excess Share shall be entitled to the same dividends and distributions (as to both timing and amount) as may be authorized by the Board of Directors of the Company with respect to shares of the same class and series as the Equity Shares that were converted into such Excess Shares. The Trustee, as record holder of the Excess Shares, shall be entitled to receive all dividends and distributions and shall hold all such dividends and distributions in trust for the benefit of the Beneficiary. The Prohibited Owner with respect to such Excess Shares shall repay to the Excess Shares Trust the amount of any dividends or distributions received by it (i) that are attributable to any Equity Shares that have been converted into Excess Shares and (ii) which were distributed by the Company to stockholders of record on a record date which was on or after the date that such shares were converted into Excess Shares. The Company shall have the right to take all measures that it determines reasonably necessary to recover the amount of any such dividend or distribution paid to a Prohibited Owner, including, if necessary, withholding any portion of future dividends or distributions payable on Equity Shares Beneficially Owned by the Person who, but for the provisions of Sections 5.6 and 5.7, would Constructively Own or Beneficially Own the Equity Shares that were converted into Excess Shares; and, as soon as reasonably practicable following the Company's receipt or withholding thereof, shall pay over to the Excess Shares Trust for the benefit of the Beneficiary the dividends so received or withheld, as the case may be.

(f) Rights upon Liquidation. In the event of any voluntary or involuntary liquidation of, or winding up of, or any distribution of the Assets of, the Company, each holder of Excess Shares shall be entitled to receive, ratably with each holder of Equity Shares of the same class and series as the shares which were converted into such Excess Shares and other holders of such Excess Shares, that portion of the assets of the Company that is available for distribution to the holders of such Equity Shares. The Excess Shares Trust shall distribute to the Prohibited Owner the amounts received upon such

liquidation, dissolution, winding up or distribution; provided, however, that the Prohibited Owner shall not be entitled to receive amounts in excess of the lesser of, in the case of a purported Transfer or Acquisition in which the Prohibited Owner gave value for Equity Shares and which Transfer or Acquisition resulted in the conversion of the shares into Excess Shares, the product of (i) the price per share, if any, such Prohibited Owner paid for the Equity Shares and (ii) the number of Equity Shares which were so converted into Excess Shares and held by the Excess Shares Trust, and, in the case of a Non-Transfer Event or purported Transfer or Acquisition in which the Prohibited Owner did not give value for such shares (e.g., if the shares were received through a gift or devise) and which Non-Transfer Event or purported Transfer or Acquisition, as

the case may be, resulted in the conversion of the shares into Excess Shares, the product of (x) the price per share equal to the Market Price for the shares that were converted into such Excess Shares on the date of such Non-Transfer Event or purported Transfer or Acquisition and (y) the number of Equity Shares which were so converted into Excess Shares. Any remaining amount in such Excess Shares Trust shall be distributed to the Beneficiary; provided, however, that in the event of any voluntary or involuntary liquidation of, or winding up of, or any distribution of the Assets of, the Company that occurs during the period in which the Company has the right to accept the offer to purchase Excess Shares under Section 5.7(j) hereof (but with respect to which the Company has not yet accepted such offer), then (i) the Company shall be deemed to have accepted such offer immediately prior to the time at which the liquidating distribution is to be determined for the holders of Equity Shares of the same class and series as the shares which were converted into such Excess Shares (or such earlier time as is necessary to permit such offer to be accepted) and to have simultaneously purchased such shares at the price per share set forth in Section 5.7(j), (ii) the Prohibited Owner with respect to such Excess Shares shall receive in connection with such deemed purchase the compensation amount set forth Section 5.7(i) (as if such shares were purchased by the Company directly from the Excess Shares Trust), (iii) the amount, if any, by which the deemed purchase price exceeds such compensation amount shall be distributed to the Beneficiary and (iv) accordingly, any amounts that would have been distributed with respect to such Excess Shares in such liquidation, winding-up or distribution (if such deemed purchase had not occurred) in excess of the deemed purchase price shall be distributed to the holders of the Equity Shares and holders of Excess Shares resulting from the conversion of such Equity Shares entitled to such distribution.

(g) Voting Rights. The holders of Excess Shares shall not be entitled to voting rights with respect to such shares. Any vote by a Prohibited Owner as a purported holder of Equity Shares prior to the discovery by the Company that such Equity Shares have been converted into Excess Shares shall, subject to applicable law, be rescinded and shall be void ab initio with respect to such Excess Shares; provided, however, that if the Company has already taken irreversible corporate action, then the Trustee shall not have the authority to rescind such vote.

(h) Designation of Permitted Transferee.

(i) As soon as practicable after the Trustee acquires Excess Shares, but in an orderly fashion so as not to materially adversely affect the price of Common Shares, the Trustee shall designate one or more Persons as Permitted Transferees and sell to such Permitted Transferees any Excess Shares held by the Trustee; provided, however, that (A) any Permitted Transferee so designated purchases for valuable consideration (whether in a public or private sale) the Excess Shares and (B) any Permitted Transferee so designated may acquire such Excess Shares without violating any of the restrictions set forth in Section 5.6(b) (assuming for this purpose the automatic conversion of such Excess Shares into Equity Shares pursuant to clause (ii) below) and without such acquisition resulting in the re-conversion of the Equity Shares underlying the Excess

Shares so acquired into Excess Shares and the transfer of such shares to an Excess Shares Trust pursuant to Sections 5.7(a) and 5.7(d). The Trustee shall have the exclusive and absolute right to designate Permitted Transferees of any and all Excess Shares. Prior to any

transfer by the Trustee of Excess Shares to a Permitted Transferee, the Trustee shall give not less than five (5) Business Days' prior written notice to the Company of such intended transfer to enable the Company to determine whether to exercise or waive its purchase rights under Section 5.7(j). No such transfer by the Trustee of Excess Shares to a Permitted Transferee shall be consummated unless the Trustee has received a written waiver of the Company's purchase rights under Section 5.7(j).

(ii) Upon the designation by the Trustee of a Permitted Transferee and compliance with the provisions of this Section 5.7(h), the Trustee shall cause to be transferred to the Permitted Transferee the Excess Shares acquired by the Trustee pursuant to Section 5.7(d). Upon such transfer of Excess Shares to the Permitted Transferee, such Excess Shares shall be automatically converted into an equal number of Equity Shares of the same class and series as the Equity Shares which were converted into such Excess Shares. Upon the occurrence of such a conversion of Excess Shares into an equal number of Equity Shares, such Excess Shares, without any action required by the Board of Directors of the Company, shall thereupon be restored to the status of authorized but unissued Excess Shares and may be reissued by the Company as Excess Shares. The Trustee shall (A) cause to be recorded on the stock transfer books of the Company that the Permitted Transferee is the holder of record of such number of Equity Shares, and (B) distribute to the Beneficiary any and all amounts held with respect to such Excess Shares after making payment to the Prohibited Owner pursuant to Section 5.7(i).

(iii) If the Transfer of Excess Shares to a purported Permitted Transferee would or does violate any of the transfer restrictions set forth in Section 5.6(b) (assuming for this purpose the automatic conversion of such Excess Shares into Equity Shares pursuant to clause (ii) above), such Transfer shall be void ab initio as to that number of Excess Shares that cause the violation of any such restriction when such shares are converted into Equity Shares (as described in clause (ii) above) and the purported Permitted Transferee shall be deemed to be a Prohibited Owner and shall acquire no rights in such Excess Shares or Equity Shares. Such Equity Shares shall be automatically re-converted into Excess Shares and transferred to the Excess Shares Trust from which they were originally Transferred. Such conversion and transfer to the Excess Shares Trust shall be effective as of the close of trading on the Business Day prior to the date of the Transfer to the purported Permitted Transferee and the provisions of this Section 5.7 shall apply to such shares, including, without limitation, the provisions of Sections 5.7(h) through 5.7(j) with respect to any future Transfer of such shares by the

Excess Shares Trust.

(i) Compensation to Record Holder of Equity Shares That Are Converted into Excess Shares. Any Prohibited Owner shall be entitled (following acquisition of the Excess Shares and subsequent designation of and sale of Excess Shares to a Permitted Transferee in accordance with Section 5.7(h) or following the acceptance of the offer to purchase such shares in accordance with Section 5.7(j)) to receive from the Trustee following the sale or other disposition of such Excess Shares the lesser of (i)(A) in the case of a purported Transfer or Acquisition in which the Prohibited Owner gave value for Equity Shares and which Transfer or Acquisition resulted in the conversion of such shares into Excess Shares, the product of (1) the price per share, if any, such Prohibited Owner paid for the Equity Shares and (2) the number of Equity Shares which were so converted into Excess Shares and (B) in the case of a Non-Transfer Event or purported Transfer or Acquisition in which the Prohibited Owner did not give value for such shares (e.g., if the shares were received through a gift or devise) and which Non-Transfer Event or purported Transfer or Acquisition, as the case may be, resulted in the conversion of such shares into Excess Shares, the product of (1) the price per share equal to the Market Price for the shares that were converted into such Excess Shares on the date of such Non-Transfer Event or purported Transfer or Acquisition and (2) the number of Equity Shares which were so converted into Excess Shares, (ii) the proceeds received by the Trustee from the sale or other disposition of such Excess Shares in accordance

with Section 5.7(h) or Section 5.7(j) or (iii) the pro-rata amount of such Prohibited Owner's initial capital investment in the Company properly allocated to such Excess Shares (determined by multiplying the Prohibited Owner's total initial capital investment in the Company by a fraction, the numerator of which is the number of shares of the Prohibited Owner's Equity Shares converted into such Excess Shares and the denominator of which is the total number of Equity Shares held (or purported to be held) by the Prohibited Owner immediately prior to such conversion (including the shares so converted)). Any amounts received by the Trustee in respect of such Excess Shares that is in excess of such amounts to be paid to the Prohibited Owner pursuant to this Section 5.7(i) shall be distributed to the Beneficiary. Each Beneficiary and Prohibited Owner shall be deemed to have waived and, if requested, shall execute a written confirmation of the waiver of, any and all claims that it may have against the Trustee and the Excess Shares Trust arising out of the disposition of Excess Shares, except for claims arising out of the gross negligence or willful misconduct of such Trustee or any failure to make payments in accordance with this Section 5.7 by such Trustee.

(j) Purchase Right in Excess Shares. Excess Shares shall be deemed to have been offered for sale to the Company or its designee, at a price per share equal to the lesser of (i) the price per share of Equity Shares in the transaction that created such Excess Shares (or, in the case of a Non-Transfer Event, Transfer or Acquisition in which the Prohibited Owner did not give value

for the shares (e.g., if the shares were received through a gift or devise), the Market Price for the shares that were converted into such Excess Shares on the date of such Non-Transfer Event, Transfer or Acquisition or (ii) the Market Price for the shares that were converted into such Excess Shares on the date the Company, or its designee, accepts such offer. The Company shall have the right to accept such offer for a period of ninety (90) days following the later of (x) the date of the Acquisition, Non-Transfer Event or purported Transfer which results in such Excess Shares or (y) the first to occur of (A) the date the Board of Directors of the Company first determined that an Acquisition, Transfer or Non-Transfer Event resulting in Excess Shares has occurred and (B) the date that the Company received a notice of such Acquisition, Transfer or Non-Transfer Event pursuant to Section 5.7(c).

(k) Nothing in this Section 5.7 shall limit the authority of the Board of Directors of the Company to take such other action as it deems necessary or advisable to protect the Company and the interests of its Stockholders in preserving the Company's status as a REIT.

SECTION 5.8 Severability. If any provision of this Article V or any application of any such provision is determined to be void, invalid or unenforceable by any court having jurisdiction over the issue, the validity and enforceability of the remaining provisions of this Article V shall not be affected and other applications of such provision shall be affected only to the extent necessary to comply with the determination of such court.

SECTION 5.9 Waiver. The Company shall have authority at any time to waive the requirements that Excess Shares be issued or be deemed outstanding in accordance with the provisions of this Article V if the Company determines, based on an opinion of nationally recognized tax counsel, that the issuance of such Excess Shares or the fact that such Excess Shares are deemed to be outstanding, would jeopardize the status of the Company as a REIT (as that term is defined in Section 1.5).

SECTION 5.10 Enforcement. The Company is authorized specifically to seek equitable relief, including injunctive relief, to enforce the provisions of this Article V.

ARTICLE VI

STOCKHOLDERS

SECTION 6.1 Meetings of Stockholders. There shall be an annual meeting of the Stockholders, to be held at such time and place as shall be determined by or in the manner prescribed in the Bylaws, at which the Directors shall be elected and any other proper business may be conducted. A plurality of all the votes cast at a meeting of Stockholders duly called and at which a quorum is present shall be sufficient to elect a Director. A quorum shall be the holders of 50% or more of the then outstanding Equity Shares entitled to vote. Special meetings of

Stockholders may be called in the manner provided in the Bylaws. If there are no Directors, the officers of the Company shall promptly call a special meeting of the Stockholders entitled to vote for the election of successor Directors. Any meeting may be adjourned and reconvened as the Directors determine or as provided by the Bylaws.

SECTION 6.2 Voting Rights of Stockholders. Subject to the provisions of any class or series of Equity Shares then outstanding and the mandatory provisions of any applicable laws or regulations, the Stockholders shall be entitled to vote only on the following matters: (a) election or removal of Directors as provided in Sections 6.1, 2.3 and 2.4 hereof; (b) amendment of the Charter as provided in Section 8.1 hereof; (c) dissolution of the Company as provided in Article IX hereof; (d) merger, consolidation or sale or other disposition of all or substantially all of the Company Property, as provided in Section 8.2 hereof; and (e) termination of the Company's status as a REIT under the REIT Provisions of the Code, as provided in Section 3.2(x) hereof. Except with respect to the foregoing matters, no action taken by the Stockholders at any meeting shall in any way bind the Directors.

SECTION 6.3 Right of Inspection. Stockholders or their designated representatives shall be permitted access to the Company's records in accordance with Sections 2-512 and 2-513 of the MGCL.

SECTION 6.4 Reports. The Directors shall take reasonable steps to ensure that the Company shall cause to be prepared and mailed or delivered to each Stockholder as of a record date after the end of the fiscal year and each holder of other publicly held securities of the Company an annual report for each fiscal year in accordance with the requirements of the Securities and Exchange Commission.

ARTICLE VII

LIMITATION OF STOCKHOLDER LIABILITY; INDEMNIFICATION; EXPRESS EXCULPATORY CLAUSES IN INSTRUMENTS; TRANSACTIONS WITH AFFILIATES

SECTION 7.1 Limitation of Stockholder Liability. No Stockholder shall be liable for any debt, claim, demand, judgment or obligation of any kind of, against or with respect to the Company by reason of his being a Stockholder, nor shall any Stockholder be subject to any personal liability whatsoever, in tort, contract or otherwise, to any Person in connection with the Company Property or the affairs of the Company by reason of his being a Stockholder.

SECTION 7.2 Indemnification. The Company shall be obligated, to the maximum extent permitted by Maryland law in effect from time to time, to indemnify, and to pay or reimburse reasonable expenses in advance of final disposition of a proceeding to: (a) any individual who is a present or former director or officer of the Company or (b) any individual who, while a director or officer of the Company and at the request of the Company, serves or has served as a director, officer, partner or trustee of another corporation, REIT, partnership, joint venture, trust, employee benefit plan or any other enterprise from and against any claim or liability to which such person may become subject

or which such person may incur by reason of his or her service in such capacity. The Company shall have the power, with the

approval of the Board of Directors, to provide such indemnification and advancement of expenses to a person who served a predecessor of the Company in any of the capacities described in (a) or (b) above and to any employee or agent of the Company or a predecessor of the Company.

SECTION 7.3 Express Exculpatory Clauses In Instruments. Neither the Stockholders nor the Directors, officers, employees or agents of the Company shall be liable under any written instrument creating an obligation of the Company by reason of their being Stockholders, Directors, officers, employees or agents of the Company, and all Persons shall look solely to the Company Property for the payment of any claim under or for the performance of that instrument. The omission of the foregoing exculpatory language from any instrument shall not affect the validity or enforceability of such instrument and shall not render any Stockholder, Director, officer, employee or agent liable thereunder to any third party, nor shall the Directors or any officer, employee or agent of the Company be liable to anyone as a result of such omission.

SECTION 7.4 Transactions with Affiliates. The Company may engage in transactions with any Affiliates, subject to any express restrictions adopted by the Directors in the Bylaws or by resolution, and further subject to the disclosure and ratification requirements of Section 2-419 of the MGCL and other applicable law.

ARTICLE VIII

AMENDMENT; MERGER, CONSOLIDATION OR SALE OF COMPANY PROPERTY

SECTION 8.1 Amendment.

(a) Except for amendments to those provisions of Article II, Section 2.4 of the Charter requiring a vote of at least two-thirds (2/3) of the Equity Shares entitled to vote in the election of directors to remove a director, and except for those amendments permitted to be made without stockholder approval under Maryland law or by specific provisions of the Charter, any amendment to the Charter shall be valid only if declared advisable by the Board of Directors and approved by the affirmative vote of a majority of all the votes entitled to be cast on the matter.

(b) The Board of Directors, by a majority vote of the entire Board and without any action by the Stockholders of the Company, may amend the Charter from time to time to increase or decrease the aggregate number of authorized Equity Shares or the number of shares of stock of any class or series that the Company has authority to issue. The Board of Directors, by a majority vote, may amend provisions of the Charter from time to time as necessary to enable the Company to continue to qualify as a REIT under the REIT Provisions of the Code.

In addition, the Board of Directors may amend the Charter by a majority vote and without any action by the Stockholders to the fullest extent so provided by the MGCL including, but not limited to, Section 2-605 of the MGCL.

SECTION 8.2 Merger, Consolidation or Sale of Company Property. Subject to the provisions of any class or series of Equity Shares at the time outstanding, the Board of Directors shall have the power to (i) merge the Company with or into another entity, (ii) consolidate the Company with one (1) or more other entities into a new entity, (iii) sell or otherwise dispose of all or substantially all of the Company Property, or (iv) dissolve or liquidate the Company; provided, however, that such action shall have been approved, at a meeting of the Stockholders called for that purpose, by the affirmative vote of the holders of not less than a majority of the Equity Shares then outstanding and entitled to vote thereon.

ARTICLE IX

DURATION OF COMPANY

SECTION 9.1 The Company automatically will terminate and dissolve on December 31, 2007, will undertake orderly liquidation and Sales of Company assets and will distribute any Net Sales Proceeds to Stockholders, unless Listing occurs, in which event the Company shall continue perpetually unless dissolved pursuant to the provisions contained herein or pursuant to any applicable provision of the MGCL.

SECTION 9.2 Dissolution of the Company by Stockholder Vote. Subject to applicable law, the Company may be dissolved at any time, provided that such action has been approved by the affirmative vote of the holders of at least a majority of the outstanding Equity Shares entitled to vote thereon.

ARTICLE X

LIMITATION OF LIABILITY

To the maximum extent that Maryland law in effect from time to time permits limitation of the liability of directors and officers of a corporation, no present or former director or officer of the Company shall be liable to the Company or its Stockholders for money damages. Neither the amendment nor repeal of this Article X, nor the adoption or amendment of any other provision of the Charter or Bylaws inconsistent with this Article X, shall apply to or affect in any respect the applicability of the preceding sentence with respect to any act or failure to act which occurred prior to such amendment, repeal or adoption.

ARTICLE XI

MISCELLANEOUS

SECTION 11.1 Governing Law. These Articles of Amendment and Restatement are executed by the undersigned Directors and delivered in the State of Maryland with reference to the laws thereof, and the rights of all parties and the validity, construction and effect of every provision hereof shall be subject to and construed according to the laws of the State of Maryland without regard to conflicts of laws provisions thereof.

SECTION 11.2 Reliance by Third Parties. Any certificate shall be final and conclusive as to any persons dealing with the Company if executed by an individual who, according to the records of the Company or of any recording office in which the Charter may be recorded, appears to be the Secretary or an Assistant Secretary of the Company or a Director, and if certifying to: (i) the number or identity of Directors, officers of the Company or Stockholders; (ii) the due authorization of the execution of any document; (iii) the action or vote taken, and the existence of a quorum, at a meeting of the Directors or Stockholders; (iv) a copy of the Charter or of the Bylaws as a true and complete copy as then in force; (v) an amendment to the Charter; (vi) the dissolution of the Company; or (vii) the existence of any fact or facts which relate to the affairs of the Company. No purchaser, lender, transfer agent or other person shall be bound to make any inquiry concerning the validity of any transaction purporting to be made on behalf of the Company by the Directors or by any duly authorized officer, employee or agent of the Company.

SECTION 11.3 Provisions in Conflict with Law or Regulations.

(a) The provisions of the Charter are severable, and if the Board of Directors shall determine that any one or more of such provisions are in conflict with the REIT Provisions of the Code, or other applicable federal or state laws, the conflicting provisions shall be deemed never to have constituted a part of the Charter, even without any amendment of the Charter pursuant to Section 8.1 hereof; provided, however, that such determination by the Board of Directors shall not affect or impair any of the remaining provisions of the Charter or render invalid or improper any action taken or omitted prior to such determination.

(b) If any provision of the Charter shall be held invalid or unenforceable in any jurisdiction, such holding shall not in any manner affect or render invalid or unenforceable such provision in any other jurisdiction or any other provision of the Charter in any jurisdiction.

SECTION 11.4 Construction. In the Charter, unless the context otherwise requires, words used in the singular or in the plural include both the plural and singular and words denoting any gender include both genders. The title and headings of different parts are inserted for convenience and shall not affect the meaning, construction or effect of the Charter.

SECTION 11.5 Recordation. The Charter and any amendment hereto shall be

filed for record with the State Department of Assessments and Taxation of Maryland and may also be filed or recorded in such other places as the Directors deem appropriate, but failure to file for record the Charter or any amendment hereto in any office other than in the State of Maryland shall not affect or impair the validity or effectiveness of the Charter or any amendment hereto. A restated Charter shall, upon filing, be conclusive evidence of all amendments contained therein and may thereafter be referred to in lieu of the original Declaration of Trust and the various amendments thereto.

* * * * * * * * * *

THIRD: The amendment to and restatement of the Charter as hereinabove set forth have been duly advised by the Board of Directors and approved by the Stockholders of the Company as required by law.

FOURTH: The current address of the principal office of the Company in the State of Maryland and the name and address of the Company's current registered agent are as set forth in Article I, Section 1.2 of the foregoing amendment and restatement of the Charter.

FIFTH: The number of Directors of the Company and the names of those currently in office are as set forth in Article II, Section 2.3 of the foregoing amendment and restatement of the Charter.

SIXTH: THE UNDERSIGNED, Chief Executive Officer of CNL Hotels & Resorts, Inc., hereby acknowledges the foregoing Articles of Amendment and Restatement to be the corporate act of said Company and as to all matters or facts required to be verified under oath, the undersigned Chief Executive Officer acknowledges, that, to the best of his knowledge, information and belief, these matters and facts are true in all material respects, and that this statement is made under the penalties for perjury.

IN WITNESS WHEREOF, the Company has caused these Articles of Amendment and Restatement to be signed in its name and on its behalf by its Chief Executive Officer and attested to by its Secretary on this day of , 2006.

ATTEST:

Greerson G. McMullen
Secretary

CNL HOTELS & RESORTS, INC.

By:

Thomas J. Hutchison III
Chief Executive Officer

Exhibit 10.4

EXHIBIT C

FORM OF REGISTRATION RIGHTS AGREEMENT

FORM OF REGISTRATION RIGHTS AGREEMENT

THIS REGISTRATION RIGHTS AGREEMENT (the "Agreement") is dated as of _____ 2006, by and among CNL REAL ESTATE GROUP, INC., a Florida corporation, FIVE ARROWS REALTY SECURITIES II L.L.C., a Delaware limited liability company ("Five Arrows"), JAMES M. SENEFF, JR., ROBERT A. BOURNE, C. BRIAN STRICKLAND, THOMAS J. HUTCHISON, III, JOHN A. GRISWOLD, BARRY A. N. BLOOM and MARCEL VERBAAS (collectively, the "Stockholders"), and CNL HOTELS & RESORTS, INC., a Maryland corporation (the "Company").

RECITALS

WHEREAS, pursuant to an Amended and Restated Agreement and Plan of Merger among the Company, CNL Hotels & Resorts Acquisition, LLC, a Florida limited liability company all of the membership interests of which are owned by the Company ("CHPAC"), CNL Hospitality Properties Acquisition Corp., a Florida corporation, CNL Hospitality Corp., a Florida corporation (the "Advisor"), CNL Financial Group, Inc., a Florida corporation, and the Stockholders, entered into as of April 3, 2006 (the "Merger Agreement"), the Stockholders received 3,600,000 shares of Common Stock (defined below) (the "Common Shares"), in exchange for all of the outstanding shares of capital stock of the Advisor;

WHEREAS, in connection with the Merger Agreement, the Stockholders, other than Five Arrows, have each entered into a Lock-Up Agreement (defined below) dated the date hereof with the Company with respect to the shares of Common Stock;

WHEREAS, the Company desires to grant to the Stockholders certain registration rights with respect to the Common Shares, subject to the terms and conditions contained herein and in the Lock-Up Agreement; and

WHEREAS, the Company and the Stockholders desire to set forth the rights and obligations of the parties with respect to such registration rights.

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

AGREEMENT

1. Certain Definitions. As used in this Agreement, the following terms shall have the following meanings:

"Common Shares" shall have the meaning set forth in the first paragraph of the Recitals.

"Common Stock" shall mean common shares, $0.01 par value per share, of the Company.

"Company" shall mean CNL Hotels & Resorts, Inc., a Maryland corporation.

"Demand Registration Request" shall have the meaning set forth in Section 4.1.

"Demand Registration Rights" shall mean the rights of the Holders to request registration of their Registrable Securities in accordance with the provisions of Section 4.

"Demanding Holders" shall have the meaning set forth in Section 4.1.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Filing Notice" shall have the meaning set forth in Section 3.1.

"Holders" shall mean the Stockholders or any Permitted Transferee of a Stockholder, and, with respect to a Permitted Transferee, only if such Stockholder has granted rights under this Agreement to such Permitted Transferee; and "Holder" shall mean any one of them.

"Listing" means the actual listing of the Company's Common Shares on The New York Stock Exchange, Inc., any other national securities exchange or U.S. inter-dealer quotation system.

"Lock-Up Agreement" means the letter agreement, dated as of the date hereof, by and between each of the Stockholders (other than FARS) and the Company, substantially in the form attached hereto as Annex I, whereby each of the Stockholders (other than FARS) has agreed to certain restrictions on the sale and transfer of the shares of Common Stock.

"Merger" shall mean the merger of the Advisor with and into CHPAC, with CHPAC as the surviving entity in the merger, upon the terms and subject to the conditions of the Merger Agreement and in accordance with the Florida Business Corporation Act and the Florida Limited Liability Company Act.

"Permitted Transferee" shall have the meaning set forth in Section 2.

"Piggyback Registration Rights" shall mean the rights of the Holders, in accordance with the provisions of Section 3, to have their Registrable Securities included in any Registration Statement filed by the Company with

respect to the sale of Common Shares or filed by any other shareholders of the Company.

"Prospectus" means the prospectus included in any Registration Statement, as amended or supplemented by any prospectus supplement with respect to the terms of the offering of any of the Registrable Securities covered by such Registration Statement and by all other amendments and supplements to the prospectus, including post-effective amendments and all material incorporated by reference in such prospectus.

"Registrable Securities" means all of the Common Shares and shall include all shares of Common Stock received by the Holders with respect to the Common Shares pursuant to a stock split, stock dividend or distribution or other recapitalization of the Company. For the purposes of this Agreement, such shares of Common Stock shall cease to be Registrable Securities on the Rule 144 Eligibility Date or, if earlier, on such date on which (a) a Registration

Statement covering such shares has been declared effective and such shares have been disposed of pursuant to such effective Registration Statement, or (b) all of the Registrable Securities are eligible for sale (other than pursuant to Rule 904 of the Securities Act), in the opinion of counsel to the Company, in a single transaction or multiple transactions exempt from the registration and prospectus delivery requirements of the Securities Act, so that all transfer restrictions with respect to such shares and all restrictive legends with respect to the certificates evidencing such shares are or may be removed upon the consummation of such sale.

"Registration Period" shall mean the period commencing on the date the Merger is effective and ending at the earlier of (i) such time as no Holder owns any Registrable Securities or (ii) the Rule 144 Eligibility Date, provided that nothing herein shall affect the Stockholders' obligations to comply with the terms of the Lock-Up Agreement.

"Registration Statement" means any registration statement filed by the Company under the Securities Act that covers any of the Registrable Securities, including the Prospectus, any amendments and supplements to such registration statement, including post-effective amendments, and all exhibits thereto and all material incorporated by reference in such registration statement.

"Rule 144 Eligibility Date" means the three-month anniversary of the date on which all Common Shares issued by the Company to the Stockholders in the Merger and the other Common Shares defined as Registrable Securities herein first become permitted to be sold under Rule 144 of the Securities Act by each Holder within the volume limitations of Rule 144(e) of the Securities Act or without limitation pursuant to Rule 144(k) of the Securities Act.

"SEC" shall mean the Securities and Exchange Commission.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Selling Holder Information" shall mean information either furnished in writing by or on behalf of a Selling Holder for use in the Registration Statement or Prospectus.

"Selling Holders" when used with respect to a Registration Statement shall mean those Holders whose Registrable Securities are included in a Registration Statement pursuant to an exercise by such Holders of their Piggyback Registration Rights or their Demand Registration Rights.

"Stockholders" shall have the meaning set forth in the Preamble hereof.

"Underwriter(s)" shall mean any one or more investment banking or brokerage firms to or through which the Holders or the Company, as the case may be, may offer and sell Registrable Securities pursuant to a transaction requiring the filing of a Registration Statement under the Securities Act, including one or more of such firms who shall manage such public offering through such Underwriters and that are referred to herein as "Managing Underwriter(s)."

2. Permitted Transferees.

2.1 Subject to Section 12.6, any Stockholder may transfer any of the Registrable Securities held by such Stockholder (i) to the spouse, siblings or issue or spouses of siblings or issue of such Stockholder, (ii) to a trust or custodial account for the sole benefit of such Stockholder or the spouse, siblings or issue or spouses of siblings or issue of such Stockholder, (iii) to a partnership, limited liability company or other entity, the majority and controlling equity owners of which are a Stockholder or the spouse, siblings or issue or spouses of siblings or issue of such Stockholder or any trust referred to in clause (ii) above, (iv) to the personal representative of a Stockholder upon the death of such Stockholder for the purposes of administration of such Stockholder's estate or upon the incompetency of such Stockholder for the purposes of the protection and management of such Stockholder's assets, but such personal representative may not transfer such Registrable Securities other than as permitted under this Agreement, (v) to a charitable foundation (subject to receipt by the Stockholder of written approval from the Company, such approval not to be unreasonably withheld), (vi) to the Company, or (vii) to any other Stockholder or to any of the transferees referred to in clause (i), (ii) or (iii) above for the benefit of such other Stockholder.

2.2 Five Arrows shall be permitted to assign or otherwise transfer any

of the Registrable Securities held by it, and any of its rights hereunder with respect to such Registrable Securities, to one or more persons, provided that such assignments or transfers are made in accordance with all agreements to which both the Company and Five Arrows are parties and the applicable provisions of Section 12.6 of this Agreement.

2.3 Any person to whom a transfer of Registrable Securities is made pursuant to, or otherwise in accordance with, Section 2.1 or Section 2.2 of this Agreement shall be a "Permitted Transferee."

3. Piggyback Registration Rights.

3.1. If the Company proposes to file a registration statement under the Securities Act with respect to any proposed public offering of Common Stock by the Company or by any holders of Common Stock (i) prior to the Registration Period, and the Company reasonably expects such registration statement to be declared effective during the Registration Period, or (ii) during the Registration Period, the Company shall, not later than 30 days prior to the proposed date of filing of such registration statement with the SEC under the Securities Act, give written notice (a "Filing Notice") of the proposed filing to each Holder, which notice shall describe in reasonable detail the proposed registration and distribution (including those jurisdictions where registration under the securities or blue sky laws is intended). During the Registration Period, each Holder may elect, by written notice to the Company (which notice shall specify the aggregate number of Registrable Securities proposed to be offered and sold by such Holder pursuant to such Registration Statement, the identity of the proposed seller thereof, and a general description of the manner in which such person intends to offer and sell such Registrable Securities) given within 15 days after receipt of the Filing Notice from the Company, to have any or all of the Registrable Securities owned by such Holder included in such Registration Statement, and the Company shall include such Registrable Securities in such Registration Statement. If the Managing Underwriter(s) or Underwriters (in the case of an underwritten registration) or the Company (in the case of a non-underwritten registration covering a primary

offering by the Company) should reasonably object to the exercise of the Piggyback Registration Rights with respect to such Registration Statement, then in the discretion of the Company, either:

(a) the Registrable Securities of the Selling Holders shall nevertheless be included in such Registration Statement subject to the condition that the Selling Holders may not offer or sell their Registrable Securities included therein for a period of up to 90 days after the initial effective date of such Registration Statement, whereupon the Company shall be obligated to file one or more post-effective amendments to such Registration Statement to permit the

lawful offer and sale of such Registrable Securities for a reasonable period thereafter beginning at the end of such lock-up period and continuing for such period, not exceeding 120 days, as may be necessary for the Selling Holders, Underwriters and selling agents to dispose of such Registrable Securities; or

(b) if the Managing Underwriter(s) (in the case of an underwritten registration) or the Company (in the case of a non-underwritten registration covering a primary offering by the Company) should reasonably determine that the inclusion of such Registrable Securities, notwithstanding the provisions of the preceding clause (a), would adversely affect the offering contemplated in such Registration Statement, and based on such determination recommends including in such Registration Statement fewer or none of the Registrable Securities of the Holders, then (x) if the Managing Underwriter(s) or the Company, as applicable, recommends the inclusion of fewer Registrable Securities, the number of Registrable Securities of the Holders included in such Registration Statement shall be reduced pro-rata among such Holders (based upon the number of Registrable Securities requested to be included in the registration), or (y) if the Managing Underwriter(s) or the Company, as applicable, recommends the inclusion of none of such Registrable Securities, none of the Registrable Securities of the Holders shall be included in such Registration Statement.

3.2. Unless otherwise required by law, rule or regulation, if Registrable Securities owned by Holders who have made the election provided in Section 3.1 are included in such Registration Statement, the Company shall bear and pay all fees, costs, and expenses incident to such inclusion, including, without limitation, registration fees, exchange listing fees and expenses, legal fees of Company counsel (including blue sky counsel), printing costs and costs of any regular audits or accounting fees. Each Selling Holder shall pay all underwriting discounts and commissions with respect to its Registrable Securities included in the Registration Statement, as well as fees or disbursements of counsel, accountants or other advisors for the Selling Holder and all internal overhead and other expenses of the Selling Holder or transfer taxes.

3.3. The rights of the Holders under this Section 3 are solely piggyback in nature, and nothing in this Section 3 shall prevent the Company from reversing a decision to file a Registration Statement or from withdrawing any such Registration Statement before it has become effective.

3.4. The Holders shall have the right, at any time during the Registration Period, to exercise their Piggyback Registration Rights pursuant to the provisions of this Section 3 on any number of occasions that the Company

shall determine to file a registration statement under the Securities Act.

3.5. The Piggyback Registration Rights granted pursuant to this Section 3 shall not apply to (a) a registration relating solely to employee stock option, purchase or other employee plans, (b) a registration related solely to a dividend or distribution reinvestment plan or (c) a registration on Form S-4 or Form S-8 or any successor Forms thereto.

3.6. In the event that there is a reduction in the number of Registrable Securities to be included in a Registration Statement to which Holders have exercised Piggyback Registration Rights, the Company shall so advise all Holders participating that the number of Registrable Securities that may be included in the registration shall be reduced pro rata among such Holders (based on the number of Registrable Securities requested to be included in the registration); provided, however, that the percentage of the reduction of such Registrable Securities shall be no greater than the percentage reduction of securities of other selling securityholders who also have exercised piggyback registration rights pursuant to agreements other than this Agreement, as such percentage reductions shall be determined in the good faith judgment of the Company, which determination shall be based on the advice of the Managing Underwriter of the offering to the extent the offering is an underwritten offering. If Holders have exercised Piggyback Registration Rights with respect to a Registration Statement which is being filed as a result of the exercise of demand registration rights by other securityholders, the securityholders exercising their demand registration rights shall have the right, in the event of any reduction of securities covered by such Registration Statement, to have all of their registrable securities included in such Registration Statement before inclusion of any Registrable Securities of Holders exercising their Piggyback Registration Rights. Notwithstanding the foregoing, prior to any reduction of the number of Registrable Securities of Holders exercising Piggyback Registration Rights hereunder, the Company shall first exclude securities held by persons not having any contractual registration rights.

3.7. The underwriter in any registration referred to in this Section 3 shall be chosen by the Company in its sole discretion, except in the case of any registration made at the request of a third party holding demand registration rights, in which case the underwriter will be selected as provided in any agreement relating to such demand registration rights.

4. Demand Registration Rights.

4.1. In addition to, and not in lieu of, the Piggyback Registration Rights set forth under Section 3, at any time after the Effective Time (as defined in the Merger Agreement) and during the Registration Period, any Holder may deliver to the Company a written request (a "Demand Registration Request") that the Company register any or all of the Registrable Securities owned by such Demanding Holders (as hereinafter defined) (provided that the aggregate offering price of all such Registrable Securities actually included in the Demand Registration equals $10.0 million or more), and any other Holders that may elect to be included pursuant to Section 4.2, under the Securities Act and the state securities or blue sky laws of any jurisdiction designated by such Selling

Holders (subject to Section 9), subject to the provisions

of this Section 4. The requisite Holders making such demand are sometimes referred to herein as the "Demanding Holders." The Company shall, as soon as practicable following the Demand Registration Request, prepare and file a Registration Statement (on the then appropriate form or, if more than one form is available, on the appropriate form selected by the Company) with the SEC under the Securities Act, covering such number of the Registrable Securities as the Selling Holders request to be included in such Registration Statement and to take all necessary steps to have such Registrable Securities qualified for sale under state securities or blue sky laws. The Company shall use its commercially reasonable best efforts to file such Registration Statement no later than 90 days following the Demand Registration Request. Further, the Company shall use its commercially reasonable efforts to have such Registration Statement declared effective (within the meaning of the Securities Act) by the SEC as soon as practicable thereafter and shall take all necessary action (including, if required, the filing of any supplements or post-effective amendments to such Registration Statement) to keep such Registration Statement effective to permit the lawful sale of such Registrable Securities included thereunder for the period set forth in Section 6, subject, however, to the further terms and conditions hereof.

4.2. No later than 10 days after the receipt of the Demand Registration Request, the Company shall notify all Holders who have not joined in such request of the proposed filing, and such Holders may, if they desire to sell any Registrable Securities owned by them, by notice in writing to the Company given within 15 days after receipt of such notice from the Company, elect to have all or any portion of their Registrable Securities included in the Registration Statement.

4.3. The Holders, in the aggregate, may only exercise the Demand Registration Rights granted pursuant to this Section 4 two times. The Company shall only be required to file one Registration Statement (as distinguished from supplements or pre-effective or post-effective amendments thereto) in response to the exercise by the Demanding Holders of their Demand Registration Rights pursuant to the provisions of this Section 4.

4.4. In the event that preparation of a Registration Statement is commenced by the Company in response to the exercise by the Demanding Holders of the Demand Registration Right, but such Registration Statement is not filed with the SEC, either at the request of the Company or at the request of the Demanding Holders, for any reason, the Demanding Holders shall not be deemed to have exercised a Demand Registration Right pursuant to this Section 4, except that, if such Registration Statement is not filed after the commencement of preparation thereof at the request of the Demanding Holders, then the Selling Holders whose Registrable Securities were proposed to be included therein shall

be required to bear the fees, expenses and costs incurred in connection with the preparation thereof.

4.5. In the event that any Registration Statement filed by the Company with the SEC pursuant to the provisions of this Section 4 is withdrawn prior to the completion of the sale or other disposition of the Registrable Securities included thereunder, then the following provisions, whichever are applicable, shall govern:

(a) If such withdrawal is effected at the request of the Company for any reason other than the failure of all the Selling Holders to comply with their obligations hereunder with respect to such registration, then the filing thereof by

the Company shall be excluded in determining whether the Holders have exercised their Demand Registration Rights hereunder with respect to the filing of such Registration Statement.

(b) If such withdrawal is effected at the request of the Selling Holders, then the filing thereof by the Company shall be deemed an exercise of a Demand Registration Right with respect to the filing of such Registration Statement.

4.6. The Company shall bear and pay all fees, costs and expenses incident to such Registration Statement and incident to keeping it effective and in compliance with all federal and state securities laws, rules, and regulations for the period set forth in Section 6 (including, without limitation, registration fees, blue sky qualification fees (subject to Section 9), exchange listing fees and expenses, legal fees of Company counsel (including blue sky counsel), printing costs, costs of any regular audits and accounting fees). Each Selling Holder shall pay fees and disbursements of counsel, accountants and other advisors for the Selling Holder and any underwriting discounts and commissions with respect to its Registrable Securities and any internal, overhead and other expenses of the Selling Holders and transfer taxes.

4.7. Whenever a decision or election is required to be made hereunder by the Demanding Holders or the Selling Holders, such decision or election shall be made by a vote of holders of a majority of the Registrable Securities owned by such Demanding Holders or Selling Holders, as the case may be.

4.8. (a) If the Managing Underwriter(s) in the case of an underwritten registration should reasonably determine that the inclusion of all Registrable Securities requested to be included in any Registration Statement would materially and adversely affect the offering contemplated in a Registration Statement, and based on such determination recommends inclusion in such Registration Statement of fewer or none of the Registrable Securities of the

Holders, then (x) if the Managing Underwriter(s) recommends the inclusion of fewer Registrable Securities, the number of Registrable Securities of the Holders included in such Registration Statement shall be reduced pro-rata among such Holders (based upon the number of Registrable Securities requested to be included in the registration), or (y) if the Managing Underwriter(s) recommends the inclusion of none of such Registrable Securities, none of the Registrable Securities of the Holders shall be included in such Registration Statement (and the request for registration shall not count for purposes of Section 4.3).

(b) In the event that there is a reduction in the number of Registrable Securities to be included in a Registration Statement to which Holders have exercised Demand Registration Rights, the Company shall so advise all Holders participating that the number of Registrable Securities that may be included in the registration shall be reduced pro rata among such Holders (based on the number of Registrable Securities requested to be included in the registration); provided, however, that the percentage of the reduction of such Registrable Securities shall be no greater than the percentage reduction of securities of other selling securityholders who also have exercised demand registration rights pursuant to agreements other than this Agreement, as such percentage reductions shall be

determined in the good faith judgment of the Company based on the advice of the Managing Underwriter of the offering in the case of any underwritten offering.

(c) In the event that there is a limitation on the number of securities which may be covered by such Registration Statement, the Selling Holders shall have the right, with respect to any such Registration Statement filed as a result of their Demand Registration Request, to include their Registrable Securities prior to the inclusion of the Company (in the case of any inclusion of shares of Common Stock for sale for its own account) and any other securityholder exercising piggyback registration rights.

4.9 The Company shall have the right, with respect to any Registration Statement to be filed as a result of a Demand Registration Request, to determine whether such registration shall be underwritten or not and to select, subject to the consent of the Selling Holders (which consent shall not be unreasonably withheld), any such underwriter.

5. Information to be Furnished. In the event any of the Registrable Securities are to be included in a Registration Statement under Sections 3 or 4, the Selling Holders and the Company shall furnish the following information and documents:

5.1. The Selling Holders shall furnish to the Company all information required by the Securities Act to be furnished by sellers of securities for inclusion in the Registration Statement, together with all such other information which the Selling Holders have or can reasonably obtain and which may reasonably be required by the Company in order to have such Registration Statement become effective and such Registrable Securities qualified for sale under applicable state securities laws.

5.2. The Company, before filing a Registration Statement, amendment or supplement thereto (including all exhibits), will furnish copies of such documents to legal counsel selected by the Selling Holders. In addition, the Company shall make available for inspection by any Selling Holder or by any Underwriter, attorney or other agent of any Selling Holder or Underwriter all information reasonably requested by such persons. All non-publicly available information provided to any Selling Holder, Underwriter or any attorney or agent of any Selling Holder or Underwriter shall be kept strictly confidential by such Selling Holder, Underwriter or attorney or agent of such Selling Holder or Underwriter so long as such information remains nonpublic.

5.3. The Company shall promptly notify each Selling Holder and each Selling Holder shall promptly notify the Company, upon discovery by the Company or such Selling Holder, as the case may be, of the occurrence of any event which renders any Prospectus then being circulated among prospective purchasers misleading because such Prospectus contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements made, in light of the circumstances in which they were made, not misleading, and the Company will amend or supplement the Prospectus so that it does not contain any material misstatements or omissions and deliver the number of copies of such amendments or

supplements to each Selling Holder as each Selling Holder may reasonably request. Until such time as such Prospectus is so amended or supplemented, each Selling Holder shall cease use thereof.

6. Registration to Be Kept Effective. In connection with any registration of Registrable Securities pursuant to this Agreement, the Company shall, at its expense, keep effective and maintain such registration and any related qualification of Registrable Securities under state securities laws for such period not exceeding 120 days or such shorter period as may be necessary for the Selling Holders, Underwriters and selling agents to dispose of such Registrable Securities, from time to time to amend or supplement the Prospectus used in connection therewith to the extent necessary to comply with applicable laws, and to furnish to such Selling Holders such number of copies of the Registration Statement, the Prospectus constituting a part thereof, and any amendment or supplement thereto as such Selling Holders may reasonably request in order to facilitate the disposition of the registered Registrable Securities.

7. Conditions to Company's Obligations. The obligations of the Company to cause the Registrable Securities owned by the Holders to be registered under the Securities Act are subject to each of the following limitations, conditions and qualifications:

(a) The Company shall not be required to fulfill any registration obligations under this Agreement, including any obligation with respect to the Stockholders' Piggyback Registration Rights or the Demand Registration Rights, until one hundred eighty (180) days after such time as there has been a Listing.

(b) The Company shall be entitled to postpone for a reasonable period of time not to exceed four (4) months the filing of any Registration Statement otherwise required to be prepared and filed by it pursuant to Section 4, if, in the good faith opinion of the Company's Board of Directors, the Company determines that such registration and offering would materially interfere with any proposal or plan to engage in any financing, acquisition, corporate reorganization or other material transaction involving the Company or any of its subsidiaries, and the Company promptly gives the Holders written notice including a general explanation of such determination; provided that the Company shall not delay such action pursuant to this sentence more that once in any 12-month period. If the Company shall so postpone the filing of a Registration Statement, the Selling Holders shall have the right to withdraw the Demand Registration Request by giving written notice to the Company within 30 days after receipt of the notice of postponement (and, in the event of such withdrawal, such Demand Registration Request shall not be counted for purposes of the Demand Registration Requests to which the Holders are entitled pursuant to Section 4.3).

(c) The Company shall not be required to file any Registration Statement pursuant to this Agreement in connection with a Demand Registration Request made less than 90 days after the effective date of any Registration Statement filed by the Company (other than a registration filed on Form S-8 or any successor form thereto.

(d) The Company may require, as a condition to fulfilling its obligations to register the Registrable Securities under Sections 3 or 4, that the Selling Holders execute reasonable and customary indemnification agreements for the benefit of the Underwriters of the registration; provided, however, a Selling Holder shall not be required to indemnify the Underwriters except with respect to Selling Holder information.

(e) The Company shall not be required to fulfill any registration obligations under this Agreement, if the Company provides the Holders with an opinion of counsel reasonably acceptable to such Holders stating that the Holders are free to sell in the manner proposed by them all of the Registrable Securities that they desired to register without registering such Registrable Securities or such Registrable Securities can be sold under Rule 144 of the Securities Act, or otherwise without registration in the open market in compliance with the Securities Act.

(f) The Company shall not be obligated to file any Registration Statement pursuant to this Agreement in connection with a Demand Registration Request at any time if the Company would be required to include financial statements audited as of any date other than the end of its fiscal year, unless the Selling Holder(s) agree to pay the cost of any such additional audit.

8. Exchange Listing. In the event any Registrable Securities are included in a Registration Statement under Sections 3 or 4, the Company will exercise commercially reasonable efforts to cause all such Registrable Securities to be listed on the New York Stock Exchange or listed on any other exchange(s) on which the shares of Common Stock are then listed or quoted in any U.S. inter-dealer quotation system in which the shares of Common Stock are then quoted.

9. Registration Under State Securities Laws. The Company shall use its commercially reasonable efforts to register or qualify any Registrable Securities included in a Registration Statement pursuant to Sections 3 or 4 under state "blue sky" or similar securities laws in such jurisdictions as the Selling Holders reasonably request and to take such other action as may be reasonably necessary to enable the Selling Holders to sell their shares of Registrable Securities in the jurisdictions where such registration or qualification was made, provided that the Company shall not be required to qualify to do business in any jurisdiction in which it is not so qualified or to execute a general consent to service of process in any jurisdiction in which it has not executed such a consent.

10. Indemnification.

10.1. The Company shall indemnify and hold each Selling Holder, its partners, officers, directors and agents (including sales agents and Underwriters) and each person, if any, who controls (within the meaning of the Securities Act or the Exchange Act) the Selling Holder or any of the foregoing, harmless to the maximum extent permitted by law, from and against any loss, claim, liability, damage or expense (including reasonably documented attorneys' fees and disbursements of only one firm of counsel selected by the Selling Holders) resulting from a

claim that any Registration Statement, Prospectus or amendment thereof or supplement thereto, which includes Registrable Securities to be sold by such Selling Holder, contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, unless such claim is based upon Selling Holder Information or resulting from the Selling Holder's failure to deliver a current Prospectus as required under the Securities Act; and each such Selling Holder will indemnify and hold harmless the Company, its directors, officers and agents and each person, if any, who controls (within the meaning of the Securities Act or the Exchange Act) the Company against any loss, claim, liability, damage or expense (including reasonably documented attorneys' fees and disbursements) resulting from any such claim relating to Selling Holder Information.

10.2. Promptly after receipt by an indemnified party under this Section 10 of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under this Section 10, notify the indemnifying party in writing of the commencement thereof; but the omission so to notify the indemnifying party shall not relieve it from any liability which it may have to any indemnified party under this Section 10 or otherwise to the extent such omission did not actually and materially prejudice the indemnifying party. In case any such action is brought against any indemnified party, and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate therein, and to the extent that it may elect by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party; provided, however, if the defendants in any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there exists a conflict of interest between the indemnifying party and any indemnified party or that there may be legal defenses available to it and/or other indemnified parties which are different from or additional to, and inconsistent or in conflict with, those available to the indemnifying party, the indemnified party or parties shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such indemnified party or parties. Upon receipt of notice from the indemnifying party to such indemnified party of its election so to assume the defense of such action and approval by the indemnified party of counsel, the indemnifying party will not be liable to such indemnified party under this Section 10 for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof unless (i) the indemnified party shall have employed separate counsel in accordance with the proviso to the preceding sentence, (ii) the indemnifying party shall not have employed counsel reasonably satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of commencement of action, or (iii) the indemnifying party has authorized the employment of counsel for the indemnified party at the expense of the indemnifying party; and except that, if clause (i) or (iii) is applicable, such liability shall be only in respect of the counsel referred to in such clause (i) or (iii). No settlement of an action against any party under this

Section 10 shall bind the other party unless such other party agrees in writing to the terms of such settlement (which agreement will not be unreasonably withheld).

10.3. The obligation of the indemnifying party to indemnify the indemnified party under this Section 10 shall, in each case, be in addition to any liability which the indemnifying party may otherwise have hereunder or otherwise at law or in equity.

10.4. If the indemnification provided for in this Section 10 from the indemnifying party is applicable in accordance with its terms but for any reasons is held to be unavailable to an indemnified party hereunder in respect of any losses, claims, damages, liabilities or expenses referred to therein, then the indemnifying party, in lieu of indemnifying such indemnified party, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages, liabilities or expenses in such proportion as is appropriate to reflect the relative faults of the indemnifying party and indemnified party in connection with the actions which resulted in such losses, claims, damages, liabilities or expenses, as well as any other relevant equitable considerations. The relative faults of such indemnifying party and indemnified party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact, has been made by, or relates to information supplied by, such indemnifying party or indemnified party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action. The amount paid or payable by a party as a result of the losses, claims, damages, liabilities and expenses referred to above shall be deemed to include, subject to the limitations set forth in Sections 10.1 and 10.2, any legal or other fees or expenses reasonably incurred by such party in connection with any investigation or proceeding.

The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 10.4 were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in the immediately preceding paragraph. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person.

11. Rule 144. The Company covenants that it shall use its reasonable best efforts to file any reports required to be filed by it under the Exchange Act and the rules and regulations adopted by the SEC thereunder, and that it shall take such further action as any Holder of Registrable Securities may reasonably request, all to the extent required from time to time to enable such Holder to sell the Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by (a) Rule 144 under the

Securities Act, as such rule may be amended from time to time, or (b) any similar rule or regulation adopted by the SEC. The Company shall, upon the request of any holder of Registrable Securities, deliver to such Holder a written statement as to whether it has complied with such requirements.

12. Miscellaneous.

12.1. Amendments and Waivers. Subject to Section 12.2, this Agreement may be modified or amended only by a writing signed by the Company and each of the Stockholders, and, to the extent a permitted transfer has occurred pursuant to Section 2, its Permitted Transferee.

12.2. Third Party Beneficiaries. Subject to the next sentence of this Section 12.2, there shall be no third party beneficiaries of the rights and benefits of this Agreement, which rights and benefits shall accrue only to the benefit of the parties hereto. Any Permitted Transferee shall be a third party beneficiary or intended beneficiary to the agreement made hereunder by a Stockholder so long as such transfer of rights under this Agreement to the Permitted Transferee is made in compliance with Section 12.6.

12.3. No Waiver. No failure to exercise and no delay in exercising, on the Company's or the Holders' part, of any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

12.4. Survival of Agreements. All agreements, representations and warranties contained herein or made in writing by or on behalf of the Company in connection with the transactions contemplated hereby shall survive the execution and delivery of this Agreement.

12.5. Limitation of Registration Rights. Nothing contained in this Agreement shall create any obligation on behalf of the Company to register under the Securities Act any securities which are not shares of Common Stock.

12.6. Binding Effect and Benefits. This Agreement shall be binding upon and shall inure to the benefit of the Company and the Holders and their respective successors and permitted assigns. Without limiting the generality of the foregoing, each Holder's registration rights granted hereunder shall be transferable to and exercised by any Permitted Transferee of Registrable Securities; provided, however, that no Holder may transfer or assign this Agreement or any of its rights hereunder unless (a) such transfer or assignment is effected in accordance with applicable securities laws, (b) such transferee or assignee (other than the Company) agrees in writing to be bound by this

Agreement and the Lock-Up Agreement (other than, with respect to the Lock-Up Agreement, Permitted Transferees of Five Arrows), and (c) the Company is given prior written notice by such Holder of such transfer or assignment, stating the name and address of the transferee or assignee, and identifying the Registrable Securities with respect to which such rights are being transferred or assigned.

12.7. Entire Agreement. This Agreement, together with the Lock-Up Agreement, constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and thereof and supersedes any prior understandings, agreements or representations by or among the parties, written or oral, to the extent they relate in any way to such subject matter.

12.8. Separability of Provisions. In case any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

12.9. Notices. All notices, requests, consents and other communications hereunder shall be in writing and shall be by telecopy, facsimile transmission (confirmed by U.S.

mail), telegraph, hand delivery or mailed by certified or registered mail postage prepaid, returned receipt requested, to the addresses set forth below or to such other address as any party may advise the other parties in a written notice given in accordance with this Section.

If to the Company: CNL Hotels & Resorts, Inc.
CNL Center II at City Commons
420 South Orange Avenue
Orlando, FL 32801
Attn.: Thomas J. Hutchison, III

With a copy (which shall not constitute notice pursuant to this Section 12.9) to:

Greenberg Traurig, LLP
The MetLife Building
200 Park Avenue
New York, NY 10166
Attention: Judith D. Fryer, Esq.
Facsimile: (212) 805-9330

Hogan & Hartson, L.L.P.
555 Thirteenth Street, N. W.
Washington, D. C. 20004
Attn: J. Warren Gorrell, Jr., Esq.

Facsimile: (202) 637-5910

If to the Holders: To the respective addresses set forth in the records of the Company

Any notice, request or other communication so addressed and so mailed shall be deemed to have been given when duly delivered or sent.

12.10. Governing Law; Construction. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to the conflict of laws provisions thereof. The descriptive headings of the several sections and subsections hereof are for convenience only and shall not control or affect the meaning of construction of any of the provisions hereof.

12.11. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute a single original instrument.

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

THE COMPANY:

CNL HOTELS & RESORTS, INC.

By: ----------

Title: ----------

STOCKHOLDERS:

CNL REAL ESTATE GROUP, INC.

By: ----------

Title: ----------

FIVE ARROWS REALTY SECURITIES II L.L.C.

By: _____

Title: _____

_____
JAMES M. SENEFF, JR.

_____
ROBERT A. BOURNE

_____
C. BRIAN STRICKLAND

_____
THOMAS J. HUTCHISON, III

_____
JOHN A. GRISWOLD

_____
BARRY A. N. BLOOM

_____
MARCEL VERBAAS

ANNEX I

FORM OF LOCKUP LETTER

CNL HOTELS & RESORTS, INC.

Common Stock

[Name of Stockholder]

_____

_____

_____

_____

_____, 2006

Dear _____:

This Lock-Up Letter Agreement is being delivered to you pursuant to that certain Registration Rights Agreement (the "Registration Rights Agreement") by and among CNL Real Estate Group, Inc., a Florida corporation, Five Arrows Realty Securities II L.L.C., a Delaware limited liability company, and James M. Seneff, Jr., Robert A. Bourne, C. Brian Strickland, Thomas J. Hutchison, III, John A. Griswold, Barry A. N. Bloom and Marcel Verbaas (collectively, the "Stockholders"), and CNL Hotels & Resorts, Inc., a Maryland corporation (the "Company"). Capitalized terms used in this letter but not defined have the meanings assigned to such terms in the Registration Rights Agreement.

1. Lock-Up and Transfer Limitation. The undersigned Stockholder shall not directly or indirectly Transfer (as defined in paragraph 3 of this letter agreement), contract or agree to Transfer or publicly announce any intention to Transfer any shares of Common Stock or any securities convertible into or exercisable or exchangeable for shares of Common Stock or warrants, options or other rights to purchase or otherwise acquire shares of Common Stock it may now or later own of record or beneficially (collectively, "Stockholder Shares") at any time prior to the six (6) month anniversary of the date of the Registration Rights Agreement. In addition, the undersigned Stockholder shall not directly or indirectly Transfer, contract or agree to Transfer or publicly announce any intention to Transfer any Stockholder Shares in excess of 50% of the total number of its Common Shares received under the Merger Agreement between such six (6) month anniversary and the one (1) year anniversary of the date of the Registration Rights Agreement. The lock-up and transfer limitations described in this paragraph 1 are in addition to any other restrictions on transfer of the Stockholder Shares that may apply under the Registration Rights Agreement, the Pledge and Security Agreement entered into as of _____, 2006 between certain Stockholders, the Company and CNL Hotels & Resorts Acquisition, LLC (the "Pledge Agreement"), or this Lock-Up Letter Agreement.

2. General Holdback. In addition to and not in lieu of the restrictions on Transfer of the Stockholder Shares set forth in paragraph 1 above, the undersigned Stockholder shall not, for a period of 14 days prior to and 90 days after the date of any final prospectus relating to an

effective registration statement filed by the Company with the SEC (or such longer periods as the applicable underwriter or the Company may reasonably request) (collectively, the "Holdback Period"), directly or indirectly Transfer, contract or agree to Transfer or publicly announce any intention to Transfer any Stockholder Shares, any securities convertible into or exercisable or exchangeable for shares of Common Stock and any warrants or other rights to purchase or otherwise acquire shares of Common Stock. The foregoing sentence shall not apply to (a) the registration of or sale of any Common Stock pursuant to a Registration Statement filed in accordance with the Registration Rights

Agreement, (b) bona fide gifts of such securities, provided that the recipient thereof agrees in writing with the underwriters or the Company, as applicable, to be bound by the terms of this letter agreement or (c) dispositions to any trust for the direct or indirect benefit of the undersigned Stockholder and/or the immediate family of the undersigned Stockholder, provided that the trustee agrees in writing with the Company to be bound by the terms of this letter agreement and otherwise if a permitted transferee of the subject securities. If (i) the Company issues an earnings release or material news, or a material event relating to the Company occurs, during the last 17 days of the Holdback Period, or (ii) prior to the expiration of the Holdback Period, the Company announces that it will release earnings results during the 16-day period beginning on the last day of the Holdback Period, the restrictions imposed by this paragraph 2 shall continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event; provided, however, that this sentence shall not apply if any research published or distributed by any underwriter of the Company would be compliant under Rule 139 of the Securities Act and the Company's securities are actively traded as defined in Rule 101(c)(1) of Regulation M of the Exchange Act. The Stockholders hereby authorize the Company during the term of this letter agreement to cause any transfer agent for the Stockholder Shares to decline to transfer, and to note stop transfer restrictions on the stock register and other records relating to, the Stockholder Shares for which the Stockholders are the record holders and, in the case of the Stockholder Shares for which the Stockholders are the beneficial but not the record holder, agrees during the term of this letter agreement to cause the record holder to cause the relevant transfer agent to decline to transfer, and to note stop transfer restrictions on the stock register and other records relating to, such Stockholder Shares, in each case if the Company reasonably determines in good faith that such Transfer would, if made, be inconsistent with paragraph 1 of this letter agreement.

3. Definition of Transfer. For all purposes of this letter agreement, "Transfer" shall mean (i) any sale, offer to sell, transfer, assignment, exchange, redemption, hypothecation, grant of an option to purchase or acquire and any other disposition of any securities; (ii) establishing or increasing a put equivalent position or liquidating or decreasing a call equivalent position within the meaning of Section 16 of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder, with respect to any securities; and (iii) entering into any swap, derivative or other transaction or arrangement that transfers to another, in whole or in part, any economic consequences of ownership of any securities, whether any such transaction is to be settled by delivery of such securities or other securities, in cash or otherwise; provided, however, that the term "Transfer" shall not mean any (a) Transfer to a Permitted Transferee in accordance with the terms of the Registration Rights Agreement or (b) bona fide pledge, assignment or grant of a security interest in any of the Stockholder Shares or any other bona fide pledge, assignment or grant of a security interest in any of the Stockholder Shares.

4. Authority. The Stockholders hereby severally, but not jointly, represent and warrant that they have full power and authority to enter into this Agreement and will execute any additional documents necessary in connection with enforcement hereof.

5. Term. This letter agreement shall automatically expire and be of no further force and effect one (1) year after the date of the Registration Rights Agreement.

6. Counterparts. This letter agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute a single original instrument.

7. Incorporation of Miscellaneous Provisions of the Registration Rights Agreement. The provisions of Sections 12.2, 12.3 and 12.6 through 12.10 of the Registration Rights Agreement are hereby incorporated by reference into this letter agreement as if set forth at length herein.

[SIGNATURE PAGE FOLLOWS]

If the terms of this Lock-Up Letter Agreement reflect your understanding of our agreements with respect to its subject matter, please indicate your agreement and acceptance of the same by countersigning this letter agreement in the space below and returning the signed copy to the Company.

Yours very truly,

CNL HOTELS & RESORTS, INC.

By: ----------

Name: ----------

Title: ----------

Accepted and agreed as of the date
first written above:

[Stockholder]

Exhibit 10.5

EXHIBIT D

FORM OF PLEDGE AND SECURITY AGREEMENT

FORM OF PLEDGE AND SECURITY AGREEMENT

THIS PLEDGE AND SECURITY AGREEMENT (this "Agreement") is entered into as of _____, 2006 by and among CNL REAL ESTATE GROUP, INC., a Florida corporation ("CREG"), JAMES M. SENEFF, JR., a resident of the State of Florida, ROBERT A. BOURNE, a resident of the State of Florida, C. BRIAN STRICKLAND, a resident of the State of Florida, THOMAS J. HUTCHISON, III, a resident of the State of Florida, JOHN A. GRISWOLD, a resident of the State of Florida, BARRY A.N. BLOOM, a resident of the State of Florida, and MARCEL VERBAAS, a resident of the State of Florida (each of the foregoing parties are referred to individually herein as an "Individual Pledgor," and collectively, "Pledgors"), CNL HOTELS & RESORTS, INC., a Maryland corporation ("CHR"), and CNL HOTELS & RESORTS ACQUISITION, LLC, a Florida limited liability company (together with CHR and their successors and assigns, "Secured Parties").

WHEREAS, Secured Parties and Pledgors, among other parties, have entered into an Amended and Restated Agreement and Plan of Merger, entered into as of April 3, 2006 (the "Merger Agreement"), pursuant to which Pledgors have agreed, on a several basis, to indemnify Secured Parties on the terms and conditions set forth in the Merger Agreement;

WHEREAS, pursuant to Section 8.20 of the Merger Agreement, Pledgors are required to execute and deliver this Agreement and to pledge and grant a continuing security interest in the Collateral (as defined herein) as additional security for the Secured Obligations (as defined herein); and

WHEREAS, all capitalized terms used herein which are not herein defined shall have the meanings ascribed to them in the Merger Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. DEFINITIONS

For the purposes of this Agreement:

(a) "Collateral" means (i) an aggregate of 750,000 common shares, $.01 par value per share, of CHR owned by Pledgors ("Stock") in the proportions set forth on Schedule A on the date hereof, (ii) any dividends or distributions, distributions in property, returns of capital or other distributions made on or

with respect to any of the foregoing shares, and (iii) all proceeds of the foregoing.

(b) "Event of Default" means (i) any failure by an Individual Pledgor to fully and punctually pay or perform one or more of its obligations pursuant to Section 9.8 or Article 12 of the Merger Agreement (collectively, the "Secured Obligations"), as determined by at least a majority of all of CHR's disinterested directors who are non-employee directors, regardless of whether either of the Secured Parties has exercised its rights under Section 13.2 of the Merger Agreement, (ii) the unenforceability of Secured Parties' security interest in the Collateral with

the priority set forth herein for any reason whatsoever, or (iii) any breach by an Individual Pledgor of any of its obligations under this Agreement that is not cured within five (5) business days after such Individual Pledgor's receipt of Secured Parties' written notice thereof.

2. PLEDGE OF COLLATERAL

(a) As additional security for the payment and performance by Pledgors of all of the Secured Obligations and all of their obligations under this Agreement, each Individual Pledgor hereby pledges, assigns and grants to Secured Parties a first priority security interest in all of its or his right, title and interest in and to the Collateral and the proceeds thereof (the "Pledge").

(b) In the event the shares of Stock included in the Collateral are certificated:

(i) simultaneously with the execution and delivery of this Agreement, each Individual Pledgor is delivering to Secured Parties certificates representing the shares of Collateral described in clause (i) of Section 1(a) and according to the listing of shares of Collateral set forth in the attached Schedule A, and will deliver to Secured Parties all certificates relating to the Collateral described in clause (ii) of Section 1(a) within five (5) days after each Individual Pledgor's acquisition thereof, all of which certificates shall be registered in the name of the appropriate Individual Pledgor, duly endorsed in blank or accompanied by stock powers duly executed by the appropriate Individual Pledgor in blank, together with any documentary tax stamps and any other documents necessary to cause Secured Parties to have a good, valid and perfected first pledge of, lien on and security interest in the Collateral, free and clear of any mortgage, pledge, lien, security interest, hypothecation, assignment, charge, right, encumbrance or restriction (individually, "Encumbrance," and collectively, "Encumbrances"), but subject to restrictions set forth in state and federal securities laws or restrictions set forth in the Registration Rights Agreement and accompanying Lock-Up Agreement executed in connection with the Closing (as defined in the Merger Agreement). At any time following an Event of Default, any or all of the shares of the Collateral held by Secured Parties hereunder may, at the option of Secured Parties exercised in accordance with Sections 3(b) and 5(c), be registered in the names of Secured

Parties or in the name of their nominee; and

(ii) Secured Parties hereby confirm receipt of the certificates representing the Collateral described in clause (i) of Section 1(a) and agree to hold such certificates in accordance with the terms of this Agreement.

(c) In the event the shares of Stock included in the Collateral are uncertificated, each Individual Pledgor agrees to take such actions and execute, deliver and file such instruments and documents, including without limitation, one or more financing statements, as the Secured Parties may request to perfect the Secured Parties' interest in the Collateral pursuant to this Agreement.

3. RIGHTS OF PLEDGORS WITH RESPECT TO THE COLLATERAL

(a) So long as no Event of Default shall have occurred and be continuing:

(i) Each Individual Pledgor shall be entitled to exercise any and all voting and/or consensual rights and powers relating or pertaining to such Individual Pledgor's portion of the Collateral, subject to the terms hereof, including any and all rights under the Registration Rights Agreement.

(ii) Each Individual Pledgor shall be entitled to receive and retain cash dividends or distributions payable on such Individual Pledgor's portion of the Collateral; provided, however, that all other dividends or distributions (including, without limitation, stock and liquidating dividends or distributions), distributions in property, returns of capital and other distributions made on or in respect of the Collateral, whether resulting from a subdivision, combination or reclassification of the outstanding capital stock of CHR or received in exchange for the Collateral or any part thereof or as a result of any merger, consolidation, acquisition or other exchange of assets to which CHR may be a party or otherwise, and any and all cash and other property received in exchange for or redemption of any of the Collateral, shall be retained by Secured Parties, or, if delivered to Pledgors, shall be held in trust for the benefit of Secured Parties and forthwith delivered to Secured Parties within five (5) days of the acquisition thereof and shall be considered as part of the Collateral for all purposes of this Agreement.

(iii) Secured Parties shall execute and deliver (or cause to be executed and delivered) to Pledgors all such proxies, powers of attorney, dividend or distribution orders, and other instruments as Pledgors may reasonably request for the purpose of enabling each Individual Pledgor to exercise its or his voting and/or consensual rights and powers which such Individual Pledgor is entitled to exercise pursuant to Section 3(a)(i) above and/or to receive the dividends or distributions which such Individual Pledgor is authorized to receive and retain pursuant to Section 3(a)(ii), and each

Individual Pledgor shall execute and deliver to Secured Parties such instruments as may be required or may be requested by Secured Parties to enable Secured Parties to receive and retain the dividends or distributions, distributions in property, returns of capital and other distributions it is authorized to receive and retain pursuant to Section 3(a)(ii).

(b) Upon the occurrence and during the continuance of an Event of Default, all rights of each Individual Pledgor to exercise the voting and/or consensual rights and powers which such Individual Pledgor is entitled to exercise pursuant to Section 3(a)(i) and/or to receive the dividends or distributions which such Individual Pledgor is authorized to receive and retain pursuant to Section 3(a)(ii) shall cease, at the option of Secured Parties, on not less than one (1) day's written notice to Pledgors, and all such rights shall thereupon become vested in Secured Parties, who shall have the sole and exclusive right and authority to exercise such voting and/or consensual rights and powers and/or to receive and retain such dividends or distributions. In such case, each Individual Pledgor shall execute and deliver such documents as Secured Parties may request to enable Secured Parties to exercise such rights and receive such dividends or distributions. In addition, Secured Parties are hereby appointed the attorney-in-fact of each Individual Pledgor, with full power of substitution, which appointment as attorney-in-fact is irrevocable and coupled with an interest, to take all such actions after the occurrence and during the continuance of an Event of Default, whether in the name of Secured Parties or an Individual Pledgor, as Secured Parties may consider necessary or desirable for the purpose of exercising such rights and receiving such dividends or distributions. Any and all money and other property paid over to or received by Secured Parties pursuant to the provisions of this Section 3(b) shall

be retained by Secured Parties as part of the Collateral and shall be applied in accordance with the provisions hereof.

4. SUBSTITUTION OF COLLATERAL

Provided that no Event of Default shall then have occurred and be continuing, any Individual Pledgor may at any time propose that Secured Parties accept substitute collateral and/or credit support (e.g., an irrevocable standby letter of credit) in lieu of any of such Individual Pledgor's portion of the Collateral as may be specified in writing by such Individual Pledgor. If, in the sole judgment of Secured Parties, such proposed substitute collateral or credit support (hereinafter referred to as "Replacement Assurances") is satisfactory in form and comfort to Secured Parties and affords Secured Parties protection at least equivalent to the protection afforded by such Individual Pledgor's portion of the Collateral, then the Individual Pledgor and Secured Parties shall cooperate, at the Individual Pledgor's sole cost and expense, to effect the substitution of such Replacement Assurances for such Individual Pledgor's portion of the Collateral, including (i) the preparation, execution, delivery

and filing of such agreements and other documents as may be requested by Secured Parties in order to create and perfect in favor of Secured Parties a perfected first-priority security interest in the proposed substitute collateral and/or to establish Secured Parties' recourse to the proposed credit support, and (ii) execution and delivery of such documents as may be necessary to release the Secured Parties' security interest in such Collateral.

5. REMEDIES OF DEFAULT

(a) If at any time an Event of Default shall have occurred and be continuing, then, in addition to having the right to exercise any right or remedy of a secured party upon default under the Uniform Commercial Code as then in effect in the jurisdiction in which the Collateral is held by Secured Parties and the right to exercise any right or remedy of Secured Parties under the Merger Agreement or otherwise, Secured Parties shall, to the extent permitted by law, without being required to give any notice to Pledgors except as provided below:

(i) Apply any cash held by them hereunder in the manner provided in Section 5(g);

(ii) If there shall be no such cash or if the cash so applied shall be insufficient to pay in full the items specified in Sections 5(g)(i) and (ii), collect, receive, appropriate and realize upon the Collateral or any part thereof, and/or sell, assign, contract to sell or otherwise dispose of and deliver the Collateral or any part thereof, in its entirety or in portions, at public or private sale or at any broker's board, on any securities exchange or at any of Secured Parties' places of business or elsewhere, for cash, upon credit or for future delivery, and at such price or prices as Secured Parties may deem best, and Secured Parties may (except as otherwise provided by law) be the purchaser of any or all of the Collateral so sold and thereafter may hold the same, absolutely, free from any right or claim of whatsoever kind, but shall in each case be subject to the terms and conditions of the Lock-Up Agreement; and

(iii) Upon the occurrence of an Event of Default, Secured Parties or their nominee shall have the right, upon not less than one (1) day's notice to Pledgors, to exercise

any and all rights of conversion, exchange, subscription or any other rights, privileges or options pertaining to any shares of the Collateral as if it were the absolute owner thereof, including, without limitation, the right to exchange, at their discretion, any or all of the Collateral upon the merger, consolidation, reorganization, recapitalization or other readjustment of CHR, or upon the exercise by CHR of any right, privilege or option pertaining to any such shares of the Collateral, and, in connection therewith, to deposit and

deliver any and all of the Collateral with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as Secured Parties may determine.

(b) In the event of a sale as aforesaid, Secured Parties are authorized to, at any such sale, if they deem it advisable to do so, restrict the number of prospective bidders or purchasers and/or further restrict such prospective bidders or purchasers to persons who will represent and agree that they meet such suitability standards as Secured Parties may deem appropriate, are purchasing for their own account, for investment, and not with a view to the distribution or resale of the Collateral, and may otherwise require that such sale be conducted subject to restrictions as to such other matters as Secured Parties may deem necessary in order that such sale may be effected in such manner as to comply with all applicable state and federal securities laws. Upon any such sale, Secured Parties shall have the right to deliver, assign and transfer to the purchaser thereof the Collateral so sold.

(c) Notwithstanding anything to the contrary contained herein, in the event Secured Parties exercise any of their remedies hereunder against any portion of the Collateral representing less than all of the Collateral, Secured Parties agree to do so on a pro-rata basis according to each Individual Pledgor's proportionate share of the Collateral.

(d) (i) Pledgors hereby acknowledge that, notwithstanding that a higher price might be obtained for the Collateral at a public sale than at a private sale or sales, the making of a public sale of the Collateral may be subject to registration requirements under applicable securities laws and similar other legal restrictions, compliance with which would require such actions on the part of Pledgors, would entail such expenses, and would subject Secured Parties, any underwriter through whom the Collateral may be sold and any controlling person of any of the foregoing to such liabilities, as would make a public sale of the Collateral impractical or inadvisable. Accordingly, Pledgors hereby agree that private sales made by Secured Parties in good faith in accordance with the provisions of Sections 5(a) or (b) may be at prices and on other terms less favorable to the seller than if the Collateral were sold at public sale, and that Secured Parties shall not have any obligation to take any steps in order to permit the Collateral to be sold at public sale, a private sale being considered or deemed to be a sale in a commercially reasonable manner.

(ii) Each purchaser at any such sale shall hold the property sold, absolutely, free from any claim or right of whatsoever kind, including any equity or right of redemption of any Individual Pledgor, each of whom hereby specifically waives all rights of redemption, stay or appraisal which any Individual Pledgor has or may have under any rule of law or statute now existing or hereafter adopted. Secured Parties shall give Pledgors not less than five (5) days' written notice of its intention to make any such public or private sale. Such notice, in case of a public sale, shall state the time and place fixed for such sale, and, in case of a sale at broker's board, on a securities exchange, at one or more of Secured Parties' places of

business or elsewhere, shall state the board, exchange or other location at which such sale is to be made and the day on which the Collateral, or that portion thereof so being sold, will first be offered for sale at such location. Such notice, in case of a private sale, shall state only the date on or after which such sale may be made. Any such notice given as aforesaid shall be deemed to be reasonable notification. Notwithstanding the above, all sales of the Collateral shall be subject to applicable state and federal securities laws.

(iii) Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as Secured Parties may fix in the notice of such sale. At any sale the Collateral may be sold in one lot as an entirety or in parts, as Secured Parties may determine, but in all cases subject to Section 5(c). Secured Parties shall not be obligated to make any sale pursuant to any such notice. Secured Parties may, without notice or publication, adjourn any sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for the sale, and such sale may be made at any time or place to which the same may be so adjourned. In case of any sale of all or any part of the Collateral on credit or for future delivery, the Collateral so sold may be retained by Secured Parties until the selling price is paid by the purchaser thereof, but Secured Parties shall not incur any liability in case of the failure of such purchaser to take up and pay for the Collateral so sold and, in case of any such failure, such Collateral may again be sold upon like notice.

(iv) On any sale of the Collateral, Secured Parties are hereby authorized to comply with any limitation or restriction in connection with such sale that it may be advised by counsel is necessary in order to avoid any violation of applicable law or in order to obtain any required approval of the purchaser or purchasers by any governmental regulatory authority or officer or court.

(v) Subject to Section 5(c), it is expressly understood and agreed by Pledgors that Secured Parties may proceed against all or any portion or portions of the Collateral and all other collateral securing the Secured Obligations in such order and at such time as Secured Parties, in their sole discretion, see fit, and Pledgors hereby expressly waive any rights under the doctrine of marshalling of assets.

(vi) Compliance with the foregoing procedures shall result in such sale or disposition being considered or deemed to have been made in a commercially reasonable manner.

(e) Secured Parties, instead of exercising the power of sale herein conferred upon them, may proceed by a suit or suits at law or in equity to foreclose their lien or security interest arising from this Agreement and sell the Collateral, or any portion thereof in a manner consistent with Section 5(c),

under a judgment or decree of a court or courts of competent jurisdiction.

(f) Each of the rights, powers, and remedies provided herein or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for herein or therein or now or hereafter existing at law or in equity or by statute or otherwise. The exercise of any such right, power or remedy shall not preclude the simultaneous or later exercise of any or

all other such rights, powers or remedies, including under the Merger Agreement, except there shall be no duplication of recovery. No notice to or demand on Pledgors in any case shall entitle Pledgors to any other notice or demand in similar or other circumstances.

(g) The proceeds of any collection, recovery, receipt, appropriation, realization or sale as aforesaid shall be applied by Secured Parties in the following order:

(i) First, to the payment of all costs and expenses of every kind incurred by Secured Parties in connection therewith or incidental to the care, safekeeping or otherwise of any of the Collateral, including, without limitation, reasonable attorneys' fees and expenses;

(ii) Second, to the payment of all other Secured Obligations; and

(iii) Finally, to the payment to Pledgors of any surplus then remaining from such proceeds unless otherwise required by law or directed by a court of competent jurisdiction. The payment of any such surplus to Pledgors shall be made in proportion to each Individual Pledgor's share of the Collateral.

6. REPRESENTATIONS, WARRANTIES AND COVENANTS OF PLEDGORS

(a) Each Individual Pledgor, severally, but not jointly, represents, warrants and covenants that:

(i) CREG is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Florida and has the full legal power and authority to own the Collateral.

(ii) Each Individual Pledgor has all requisite capacity, power and authority, being under no legal restriction, limitation or disability, to own the Collateral.

(iii) Each Individual Pledgor has full power and authority to execute and deliver this Agreement and to perform its or his obligations

hereunder. The execution, and delivery of this Agreement has been duly and validly authorized by the Board of Directors of CREG. No other corporate proceedings on the part of CREG are necessary to authorize the consummation of the transactions contemplated hereby on behalf of CREG. This Agreement has been duly and validly executed and delivered by each Individual Pledgor and constitutes the valid and legally binding obligation of each Individual Pledgor, enforceable against each Individual Pledgor in accordance with its terms and conditions. No consents, approvals, orders or authorizations of, or registration, declaration or filing with, any government or governmental agency is required by or with respect to any Individual Pledgor in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

(iv) Each Individual Pledgor is or, with respect to the Collateral described in clause (ii) of Section 1(a), not later than the time of each Individual Pledgor's acquisition thereof will be, the direct record and beneficial owner of each share of the Individual Pledgor's portion of the Collateral. Each Individual Pledgor has and will have good, valid and

marketable title thereto, free and clear of all Encumbrances other than the security interest created by this Agreement.

(v) The Collateral is and will be duly and validly pledged to Secured Parties in accordance with law, and Secured Parties have a good, valid, and perfected first lien on and security interest in the Collateral and the proceeds thereof.

(vi) Neither the execution and the delivery of this Agreement, nor the consummation of the transactions contemplated hereby, by Pledgors, will (A) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental agency, or court to which any Individual Pledgor is subject or any provision of its articles of incorporation, certificate of formation, by-laws, limited liability company agreement or other organizational documents, as applicable, or (B) result in a breach of, constitute a default under, result in the acceleration of, create in any person the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which any Individual Pledgor is a party or by which it or he is bound or to which any of its or his assets is subject.

(vii) There is no action, claim, suit, proceeding or investigation pending, or to the knowledge of Pledgors, threatened or reasonably anticipated, against or affecting any Individual Pledgor, this Agreement, or the transactions contemplated hereby, before or by any court, arbitrator or governmental authority which might adversely affect any Individual Pledgor's

ability to perform its obligations under this Agreement or might adversely affect the value of the Collateral.

(b) Until all Secured Obligations have been paid and performed in full or until all of the Collateral is returned to Pledgors pursuant to Section 8 hereof, Pledgors hereby covenant that, unless Secured Parties otherwise consent in advance in writing:

(i) Each Individual Pledgor shall (A) at the request of Secured Parties, execute, deliver and file any and all financing statements, continuation statements, stock powers, instruments, and other documents necessary or desirable, in Secured Parties' opinion, to create, perfect, preserve, validate or otherwise protect the pledge of the Collateral to Secured Parties and Secured Parties' lien on and security interest in the Collateral and the first priority thereof, (B) maintain or cause to be maintained at all times the pledge of the Collateral to Secured Parties and Secured Parties' lien on and security interest in the Collateral and the first priority thereof, and (C) defend the Collateral and Secured Parties' lien on and security interest therein and the first priority thereof against all claims and demands of all persons at any time claiming the same or any interest therein adverse to Secured Parties, and pay pro rata all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) in connection with such defense.

(ii) No Individual Pledgor shall sell, transfer, pledge, assign or otherwise dispose of any of the Collateral or any interest therein, and no Individual Pledgor shall create, incur, assume or suffer to exist any Encumbrance with respect to such Individual Pledgor's portion of the Collateral or any interest therein (except pursuant hereto).

(iii) No Individual Pledgor shall take any action in connection with the Collateral or otherwise which would impair the value of the interests or rights of such Individual Pledgor therein or which would impair the interests or rights of Secured Parties therein or with respect thereto.

7. RESPONSIBILITIES OF SECURED PARTIES IN POSSESSION OF THE COLLATERAL

(a) Secured Parties shall have no duty with respect to the Collateral other than the duty to use reasonable care in the custody and preservation of the Collateral.

(b) Secured Parties shall be protected in acting upon any written notice, request, waiver, consent, certificate, receipt, authorization, power of attorney or other paper or document which Secured Parties in good faith believe to be genuine.

8. RETURN OF COLLATERAL

Upon the later of (i) the fourth (4th) anniversary of the date first written above or (ii) the resolution of all Events of Default or CHP Indemnity Claims asserted prior to the date set forth in the immediately preceding clause (i), if any, this Agreement shall terminate and the Collateral then held by Secured Parties shall promptly be returned to Pledgors at the address of Pledgors set forth herein or at such other address as Pledgors may direct in writing. Secured Parties shall not be deemed to have made any representation or warranty with respect to any Collateral so returned, except that such Collateral is free and clear, on the date of such return, of any and all liens, charges and encumbrances arising from Secured Parties' own acts.

9. ADDITIONAL ACTIONS AND DOCUMENTS

Each Individual Pledgor hereby agrees to take or cause to be taken such further actions (including, without limitation, the delivery of certificates for all of CHR's shares hereafter acquired by such Pledgor), to execute, deliver and file or cause to be executed, delivered and filed such further documents and instruments, and to obtain such consents as may be necessary or desirable, in the opinion of Secured Parties, in order to fully effectuate the purposes, terms and conditions of this Agreement, whether before, at or after the occurrence of an Event of Default.

10. SURVIVAL

It is the express intention and agreement of the parties hereto that all covenants, agreements, statements, representations, warranties and indemnities made by Pledgors herein shall survive the execution and delivery of this Agreement.

11. ENTIRE AGREEMENT

This Agreement and the Merger Agreement constitutes the entire agreement between the parties hereto and supersedes all prior understandings, agreements, or representations by or among the parties hereto, written or oral.

12. NOTICES

All notices, demands, requests, claims and other communications hereunder will be in writing. Any notice, demand, request, claim or other communication hereunder shall be deemed duly given if (and then effective three business days after) it is sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to the intended recipient as set forth below:

If to an Individual Pledgor:

c/o James M. Seneff, Jr.
CNL Center at City Commons
450 South Orange Avenue, 14th Floor
Orlando, Florida 32801
Telecopy: (407) 650-1011

With copy to:

Lowndes, Drosdick, Doster, Kantor & Reed, P.A.
450 South Orange Avenue, Suite 800
Orlando, Florida 32801
Attn: Richard Davidson, Esq.
Telecopy: (407) 843-4444

If to Secured Parties:

Audit Committee of the Board of Directors
CNL Hotels & Resorts, Inc.
CNL Center II at City Commons
420 South Orange Avenue
Orlando, Florida 32801
Telecopy: (407) 835-3229
Attn: Chairman of the Audit Committee

With copy to:

Greenberg Traurig, LLP
The MetLife Building
200 Park Avenue
New York, NY 10166
Attn: Judith D. Fryer, Esq.
Telecopy: (212) 801-6400

Hogan & Hartson L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
Attn: J. Warren Gorrell, Jr., Esq.
Telecopy: (202) 637-5910

Any party hereto may send any notice, demand, request, claim, or other communication hereunder to the intended recipient at the address set forth above using any other means (including personal delivery, expedited courier, messenger service, telecopy, ordinary mail, or electronic mail), but no such notice, demand, request, claim, or other communication shall be deemed to have been duly given unless and until it actually is received by the intended recipient. Any

party hereto may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other parties hereto notice in the manner herein set forth.

13. AMENDMENT AND WAIVERS

This Agreement may not be amended except by an instrument in writing signed by the parties hereto. No waiver by any party hereto of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence. No delay or failure on the part of Secured Parties in exercising any right, power or privilege under this Agreement or under any other instruments given in connection with or pursuant to this Agreement shall impair any such right, power or privilege or be construed as a waiver of any default or any acquiescence therein. No single or partial exercise of any such right, power or privilege shall preclude the further exercise of such right, power or privilege, or the exercise of any other right, power or privilege. No waiver shall be valid against any party hereto unless made in writing and signed by such party, as the case may be, and then only to the extent expressly specified therein.

14. SUCCESSION AND ASSIGNMENT

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. This Agreement may not be assigned by any Individual Pledgor without the prior written consent of CHR or by a Secured Party without the prior written consent of CREG.

15. SEVERABILITY

Any term or provision of this Agreement or any other agreement, document or writing given pursuant to or in connection with this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

16. GOVERNING LAW

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE DOMESTIC LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO ANY CHOICE OR CONFLICT OF LAW PROVISION OR RULE (WHETHER OF THE STATE OF NEW YORK OR ANY OTHER JURISDICTION)

THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF NEW YORK.

17. PRONOUNS

All pronouns and any variations thereof in this Agreement shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identity of the person or entity may require.

18. HEADINGS

The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

19. COUNTERPARTS

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

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, each of the parties hereto has duly executed and delivered this Agreement, or has caused this Agreement to be duly executed on its behalf, as of the day and year first above written.

PLEDGORS:

CNL REAL ESTATE GROUP, INC.

By: ----------

Name: ----------

Title: ----------

James M. Seneff, Jr.

Robert A. Bourne

C. Brian Strickland

Thomas J. Hutchison, III

John A. Griswold

Barry A.N. Bloom

Marcel Verbaas

SECURED PARTIES:

CNL HOTELS & RESORTS, INC.

By: ---

Name: ---

Title: ---

CNL HOTELS & RESORTS ACQUISITION, LLC

By: ---

Name: ---

Title: ---

SCHEDULE A

<TABLE>
<CAPTION>

PLEDGOR	NUMBER OF SHARES PLEDGED	PROPORTIONATE SHARE OF COLLATERAL
<S>	<C>	<C>
CNL Real Estate Group, Inc.	477,299.00	63.6399%
James M. Seneff, Jr.	56,062.00	7.4749%
Robert A. Bourne	100,079.00	13.3438%
C. Brian Strickland	31,483.00	4.1977%
Thomas J. Hutchison, III	52,316.00	6.9755%
John A. Griswold	20,831.00	2.7775%
Barry A.N. Bloom	7,764.00	1.0352%
Marcel Verbaas	4,166.00	0.5555%
TOTAL:	750,000.00	100.00%

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