# EXHIBIT A

Execution Copy

# CONSTRUCTION LOAN AGREEMENT

**for a loan in the aggregate amount of up to**

**$370,000,000**

**MADE BY AND BETWEEN**

**KAPALUA BAY, LLC,**
**a Delaware limited liability company,**
**as Borrower**

**and**

**LEHMAN BROTHERS HOLDINGS INC.,**
**a Delaware corporation,**
**as Lender**

Dated as of July 14, 2006

"Residences at Kapalua Bay"

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# CONSTRUCTION LOAN AGREEMENT

Project commonly known as

"Residences at Kapalua Bay"

THIS CONSTRUCTION LOAN AGREEMENT (this "Agreement") is made as of July 14, 2006, by and between KAPALUA BAY, LLC, a Delaware limited liability company, ("Borrower"), and LEHMAN BROTHERS HOLDINGS INC., a Delaware corporation (together with its successors and/or assigns, "Lender").

## RECITALS

A. Borrower is the fee owner of that certain tract of land located in Lahaina, Maui, Hawaii, and being more fully described in Exhibit A-1 attached hereto (the "Development Land").

B. Borrower is the owner of a leasehold interest in that certain tract of land located in Lahaina, Maui, Hawaii, and being more fully described in Exhibit A-2 attached hereto (the "Spa Land"; and collectively with the Development Land, the "Land").

C. Borrower intends to develop a residential development on the Development Land and has submitted the Development Land to a condominium property regime which includes for-sale Residential Condominium Units and Fractional Ownership Units. The Spa Land will be developed as a Spa for the benefit of the guests and residents of the Project. The Land, the Spa, the Improvements and Personal Property (each as hereinafter defined) located thereon are collectively sometimes referred to as the "Project".

D. Borrower has applied to Lender for a construction loan in an aggregate principal amount of up to Three Hundred Seventy Million and 00/100 Dollars ($370,000,000.00) (the "Loan"). The Loan shall be used to fund costs of Construction and such other costs as are set forth in the Construction Budget (each as hereinafter defined).

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

## ARTICLE I
## INCORPORATION OF RECITALS AND EXHIBITS

Section 1.1 Incorporation of Recitals.

The foregoing preambles and all other recitals set forth herein are made a part hereof by this reference.

Section 1.2 Incorporation of Exhibits.

The Exhibits to this Agreement are incorporated in this Agreement and expressly made a part hereof by this reference.

## ARTICLE II
## DEFINITIONS

Section 2.1 Defined Terms.

The following terms as used herein shall have the following meanings:

Adjusted LIBOR Rate: A rate per annum equal to the LIBOR Rate (determined as herein set forth) plus two hundred twenty (220) basis points (2.2%).

Adjusted Prime Rate: A rate per annum equal to the sum of (a) the Prime Rate Margin and (b) the greater of (i) the Prime Rate and (ii) one percent (1%) in excess of the Federal Funds Effective Rate. Any change in the Adjusted Prime Rate shall be effective immediately from and after a change in the Prime Rate (or the Federal Funds Effective Rate, as applicable).

Affiliate: With respect to a specified Person, any Person which, directly or indirectly, through one or more intermediaries, Controls or is Controlled by or is under common Control with such Person, including, without limitation, any limited liability company in which such Person is a member.

Agreement: This Construction Loan Agreement.

Applicable Rate: A rate per annum equal to either the Adjusted LIBOR Rate or the Adjusted Prime Rate, as determined in accordance with the provisions of Article V hereof.

Appraisal: An MAI-certified appraisal of the Project, performed, at Borrower's expense, in accordance with FIRREA and Lender's appraisal requirements by an appraiser selected and retained by Lender.

Architect: WCIT Architecture, or such other licensed, reputable architect as Borrower selects and Lender, acting reasonably, approves. In making the determination as to whether to approve an architect other than WCIT Architecture, Lender may take into account any prior dealings it or its co-lenders may have had with the proposed architect.

Architect's Agreement: That certain Agreement dated December 10, 2004, by and between Borrower and Architect, for the design of the Improvements, as same may be amended from time to time, subject to Lender's reasonable prior approval.

Architect's Certificate: A certificate by Architect, substantially in the form attached hereto as Exhibit I, in favor of Lender to the effect that the Project complies with Laws, and as to such other matters as Lender shall reasonably require.

Assignment of Leases and Rents: The Assignment of Leases and Rents, dated as of the date hereof, by Borrower in favor of Lender.

Assignment of Purchase Contracts: The Assignment of Purchase Contracts, dated as of the date hereof, by Borrower in favor of Lender, assigning all of Borrower's rights under

Contracts of Sale and Contract Deposits in connection with a sale of any Unit or any portion of the Project, in existence as of the Effective Date, and subsequent thereto.

Authorized Representative: Ryan Churchill and/or Adele Sumida.

Available Contract Deposit: A Contract Deposit that is permitted and available to be applied to Hard Costs and Soft Costs in accordance with applicable Laws, the applicable Contract of Sale, and against which there are no pending or threatened claims, actions, proceedings.

Bankruptcy Code: Title 11 of the United States Code, entitled "Bankruptcy", as now or hereafter in effect, or any successor thereto or any other present or future bankruptcy or insolvency statute.

Beach Club CA: As defined in the Condominium Documents.

Bond: A payment and performance bond, in a form approved by Lender, with the General Contractor or Subcontractor (as applicable), as principal, and a surety company acceptable to Lender and licensed to do business in the State, as surety, with a dual obligee rider in favor of Lender.

Borrower: As defined in the opening paragraph of this Agreement.

Breakage Costs: As defined in Section 5.1(g).

Budget Line Item(s): As defined in Section 11.2(a).

Business Day: Any day other than a Saturday, Sunday or day on which banks are required or authorized to be closed in New York, New York, or Honolulu, Hawaii.

Certificate of Occupancy: A temporary or permanent certificate issued by the appropriate Governmental Authority certifying that a Unit or Units, as constructed, may be legally occupied.

Change Order: Any change in the Plans and Specifications (other than minor field changes involving no extra cost).

Completion Date: The Initial Maturity Date.

Completion Guaranty: The Completion Guaranty, dated as of the date hereof, by Guarantor in favor of Lender.

Condominium Act: Means Chapter 514A, Hawaii Revised Statutes, as amended.

Condominium Declaration: The condominium declaration creating the Residential Condominium.

Condominium Documents: All documents, as required by the Condominium Act and otherwise, relating to the submission of the Condominium Project and the Units to be located on the two fee simple parcels, Tax map Key Nos. (2) 4-2-4-28 and 29 to the provisions of said

Condominium Act or to the regulation, operation, administration or sale thereof after such submission, including, but not limited to, a declaration of condominium, offering circular, articles of incorporation, if applicable, by-laws and rules and regulations of a condominium association, management agreement, plats and the contracts of sale and deed forms to be used in connection with the sale of Units.

Condominium Opinion: As defined in Section 14.1(l).

Condominium Deposit Account: A deposit account opened and maintained by Borrower with First American Title Insurance Company, to be utilized in the manner set forth in Section 15.1(b) hereof.

Condominium Project: Means the "Kapalua Bay Condominium" project, created by the Declaration of Condominium Property Regime dated April 18, 2006, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2006-083256.

Condominium Release Payment Account: A deposit account opened and maintained by Borrower with Depositary Bank, on behalf of Lender, to be utilized in the manner set forth in Section 15.4(h) hereof.

Construction: The construction of the Improvements in accordance with the Plans and Specifications.

Construction Budget: A budget for the Project, satisfactory to Lender, specifying the categories of all costs and expenses to be incurred by Borrower in connection with the Project prior to the completion of the Construction, including Hard Costs and Soft Costs, together with the changes or modifications thereto hereafter made by Borrower with Lender's prior written approval. The Construction Budget in effect as of the date hereof, which has been reviewed and approved by Lender, is annexed hereto as Exhibit G.

Construction Commencement Date: Means October 31, 2006.

Construction Contracts: All contracts between General Contractor and third parties for the design, engineering and construction of the Project.

Construction Contracts Effectiveness Schedule:

- Construction Contracts representing 55% of all costs anticipated in the General Contract shall be binding and in effect by no later than the Construction Commencement Date, inclusive of all Construction Contracts for steel/reinforcing, site work, mechanical work, framing and drywall, electrical, formwork, tile and flooring, finished carpentry, and elevators.

- Construction Contracts representing 85% of all costs anticipated in the General Contract shall be binding and in effect by no later than December 31, 2006.

- Construction Contracts representing 100% of all costs anticipated in the General Contract shall be in effect by no later than February 28, 2007.

The foregoing schedule shall not include those Construction Contracts related to the Spa Improvements. Construction Contracts for the Spa Improvements shall be in effect by no later than August 1, 2007.

Construction Schedule: A schedule, reasonably satisfactory to Lender, establishing a timetable for completion of the Construction, showing, on a monthly basis, the anticipated progress of the Construction, and confirming that the Improvements can be completed on or before the Completion Date, as same may be amended from time to time, subject to Lender's approval. The initial approved Construction Schedule is attached hereto as Exhibit H.

Contingency Reserve: As defined in Section 11.3.

Contract Deposit: A deposit (including a reservation deposit) or down payment under a Contract of Sale.

Contract of Sale: An executed contract of purchase and sale pursuant to which Borrower agrees to sell any Unit (or any part thereof, including interval, fractional ownership interests) (collectively, "Contracts of Sale").

Control: As such term is used with respect to any Person, including the correlative meanings of the terms "controlled by" and "under common control with", the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

Debt: The outstanding principal balance of the Note from time to time, together with all accrued and unpaid interest thereon, and all other sums now or hereafter due under the Loan Documents.

Default or default: Any event, circumstance or condition, which, if it were to continue uncured, would, with notice or lapse of time or both, constitute an Event of Default.

Default Rate: A rate per annum equal to five hundred (500) basis points in excess of the Applicable Rate, but not at any time in excess of the highest rate permitted by law.

Deficiency Deposit: As such term is defined in Section 12.1.

Depositary Bank: Bank of Hawaii or another bank reasonably acceptable to Lender.

Determination Date: With respect to any Interest Period, the day which is two (2) LIBOR Business Days prior to the Business Day on which such Interest Period commences.

Development Documents: As defined in Section 8.1

Development Items: As defined in Section 8.1.

Development Land: As defined in the Recitals.

Development Obligations: As defined in Section 8.1.

Development Property: Collectively, the Development Land and the Improvements thereon.

Disclosure Document: As defined in Section 25.6(a).

Effective Date: The date hereof.

Engineers: Any electrical, civil, structural, mechanical, plumbing and other engineers engaged by Borrower to perform material engineering services for the Project.

Entitlements: A discretionary approval by a Governmental Authority that provides the right for the Project to proceed with the permitting and construction process. The Entitlements for the project are: the Special Management Area Use Permit, Shoreline Setback Variance and Planned Development Approval. Entitlements provide evidence that Project is in substantial compliance with zoning and land-use law, and that Borrower has a legal right to construct the Project subject to applicable law and the conditions of the Entitlements.

Environmental Indemnity: The Environmental Indemnity dated as of the date hereof by Borrower and Guarantors in favor of Lender.

Environmental Proceedings: Any environmental proceedings, whether civil (including actions by private parties), criminal, or administrative proceedings, relating to the Project.

Environmental Report: An environmental report prepared at Borrower's expense by an environmental consultant approved by Lender, dated not more than six (6) months prior to the Effective Date and addressed to Lender (or subject to a separate "reliance letter").

Equity Requirement: The requirement that Borrower contribute One Hundred Thirty One Million Two Hundred Sixty Thousand and 00/100 Dollars ($131,260,000.00) of equity to the Project, which shall be contributed pursuant to Sections 9.1 and 13.1. The Equity Requirement shall not include equity provided by Borrower to keep the Loan In Balance, the Contingency Reserve, or sums provided by any Guarantor under the Completion Guaranty. The Equity Requirement calculation does, however, include certain contributions made by Borrower prior to the Effective Date and more particularly set forth on Schedule D hereto.

ER Purchase Agreement: As defined in Section 8.1.

ERISA: The Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder from time to time.

Event of Default: As such term is defined in Article XX.

Exchange Act: As defined in Section 25.6(a).

Exclusive Resorts: Shall mean Exclusive Resorts, LLC, a Delaware limited liability company.

Extension Notice: As defined in Section 4.3(b)(i).

Extension Period: As defined in Section 4.3(b).

Facility: Shall mean each of (i) the Spa and Borrower's leasehold interest in the Spa Land; (ii) the Beach Club CA; and (iii) the Kapalua General Store (collectively, the "Facilities").

Federal Funds Effective Rate: Shall mean, for any day, the rate per annum (rounded upward to the nearest one one-hundredth of one percent (1/100 of 1%)) announced by the Federal Reserve Bank of New York on such day as being the weighted average of the rates on overnight federal funds transactions arranged by federal funds brokers on the previous trading day, as computed and announced by such Federal Reserve Bank in substantially the same manner as such Federal Reserve Bank computes and announces the weighted average it refers to as the "Federal Funds Effective Rate."

FIRREA: The Financial Institutions Reform, Recovery And Enforcement Act of 1989, as amended from time to time.

Fitch: Fitch, Inc.

Force Majeure Delays: Delays due to strike, governmental restrictions, unavailability or shortage of labor and/or materials, enemy or terrorist action, hurricane, civil commotion, fire or other causes beyond the control of Borrower, provided, however, that (i) the aggregate of all such time periods shall not exceed one hundred fifty (150) days, and an additional one hundred twenty (120) days permitted with respect to a tropical storm or hurricane and (ii) neither the failure of Borrower to qualify for an advance hereunder nor the lack of Borrower's own funds shall constitute a Force Majeure Delay. In no event shall Force Majeure Delays be deemed to extend the Completion Date beyond the Initial Maturity Date of the Loan.

Fractional Interest: Means a fraction of ownership interest in a Fractional Ownership Unit and the corresponding use rights associated therewith.

Fractional Ownership Act: Means Chapter 514E, Hawaii Revised Statutes, as amended.

Fractional Ownership Declaration: Means The Kapalua Bay Vacation Ownership Project Declaration of Covenants, Conditions and Restrictions creating the Fractional Ownership Units.

Fractional Ownership Documents: Means all documents, as required by the Fractional Ownership Act relating to the registration of the Fractional Ownership Units and to the regulations, operation and administration or sale thereof after such registration, including, but not limited to, a disclosure statement, declaration of covenants, conditions and restrictions, contract with the plan manager, articles of incorporation and by-laws of the fractional ownership association, rules and regulations for the fractional ownership plan, and form of sales contract and apartment deed to be used in connection with the sale of the Fractional Ownership Units.

Fractional Ownership Units: Means the 62 fractional ownership units operated as a "Ritz-Carlton Club" to be sold in 1/12 intervals identified in the Condominium Documents as "Club Units" which have been submitted to a timeshare plan pursuant to the Fractional Ownership Act, together with the undivided percentage ownership interests in the common elements of the condominium project.

General Contract: A guaranteed maximum price general contract, between Borrower and General Contractor, for the construction of the Improvements, in such form as Lender shall approve in its sole discretion, as same may be amended from time to time. Such general contract shall require completion of the Improvements prior to the Completion Date.

General Contractor: Nordic/PCL Construction or such other licensed, reputable general contractor as Borrower selects and Lender, acting reasonably, approves. In making the determination as to whether to approve a general contractor other than Nordic/PCL Construction, Lender may take into account any prior dealings it or its co-lenders may have had with such proposed general contractor.

Governmental Approvals: All consents, licenses, permits, and other authorizations or approvals required from any Governmental Authority for the Construction, including, without limitation, the Entitlements and Permits.

Governmental Authority: Any federal, state, county or municipal governmental authority, agency, department, commission, board, bureau or instrumentality having jurisdiction over the Project.

Gross Sales Price: The purchase price for each Unit, as well as special assessments (including any items contained in the Construction Budget referenced as "Hospitality Start-Up Recovery"), amounts allocable to personal property, and all amounts paid for extras and the like.

Ground Lease: Means that certain Ground Lease dated August 31, 2004, by and between Maui Land & Pineapple Company, Inc., a Hawaii corporation, as ground lessor, and Borrower, as ground lessee, as amended by the Ground Lessor Consent, Estoppel Certificate and Amendment.

Ground Lessor Consent, Estoppel Certificate and Amendment: Means that certain Ground Lessor Consent, Estoppel Certificate and Amendment dated as of the date hereof by and among Maui Land & Pineapple Company, Inc, as ground lessor under the Ground Lease, Borrower, as ground lessee, and Lender.

Guarantor: Each of Maui Land & Pineapple Company, Inc., a Hawaii corporation; The Ritz-Carlton Development Company, Inc., a Delaware corporation; and Exclusive Resorts Development Company, LLC, a Delaware limited liability company, severally.

Hard Costs: All costs for labor, materials or equipment supplied to or incorporated in the Project.

Hazardous Material: Any hazardous or toxic material, substance or waste (including, without limitation, gasoline, petroleum, asbestos-containing materials and radioactive materials)

which is regulated under any Law of any Governmental Authority, including: (i) any "hazardous substance" as defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. § 9601(14), or any so called "superfund" or "superlien" Law, including the judicial interpretation thereof; (ii) any "pollutant or contaminant" as defined in 42 U.S.C.A. § 9601(33); (iii) any material now defined as "hazardous waste" pursuant to 40 C.F.R. Part 260; (iv) any petroleum, including crude oil or any fraction thereof; (v) natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel; (vi) any "hazardous chemical" as defined pursuant to 29 C.F.R. Part 1910; and (vii) any other toxic substance or contaminant that is subject to any other Law or other past or present requirement of any Governmental Authority.

Improvements: Improvements for the Project as more particularly described in the Plans and Specifications, which consist generally of a mixed use condominium development consisting of (i) 84 (unbranded) whole ownership Residential Condominium Units (28 of which shall be purchased by Exclusive Resorts, its Affiliates and their permitted assigns), (ii) 62 fractional ownership units operated as a "Ritz-Carlton Club" to be sold in 1/12 intervals under a fractional ownership plan in accordance with the Fractional Ownership Act, (iii) the Facilities and improvements and amenities contemplated to be located thereon, and (iv) certain additional common facilities, amenities, appurtenances, fixtures, equipment, entry and exit areas, parking areas and other areas for the benefit of the Condominium Project, including the Fractional Ownership Units.

In Balance: As defined in Section 12.1.

Indemnified Party: As defined in Section 16.1(v).

Independent Director: As defined in Section 16.3(p).

Initial Advance: Forty Million One Hundred Twenty-Nine Thousand One Hundred Forty-Five and 76/100 Dollars ($40,129,145.76).

Initial Equity Requirement: The requirement, as a condition to the disbursement of the Initial Advance, that Borrower contribute $54,194,781 of equity to the Project.

Initial Maturity Date: August 1, 2009, or such earlier date on which the final payment of the principal of the Note becomes due and payable as therein or herein provided, whether at such stated maturity date, by acceleration or otherwise.

Institutional Lender: Shall mean any one or more of the following other entities, provided that for any such other entity to qualify as an Institutional Lender hereunder, such other entity, together with its affiliates, must have total assets of at least One Billion and 00/100 Dollars ($1,000,000,000.00) and stockholders' equity or net worth of at least Two Hundred Fifty Million and 00/100 Dollars ($250,000,000.00) (or, in either case, the equivalent thereof in a foreign currency) as of the date the loan is made: a savings bank, a savings and loan association, a commercial bank or trust company, an insurance company subject to regulation by any governmental authority or body, a real estate investment trust, a union, a governmental or secular employees' welfare, benefit, pension or retirement fund, a pension fund property unit trust (whether authorized or unauthorized), an investment company or trust, a merchant or investment

bank or any other entity generally viewed as an institutional lender. In each of the foregoing cases, such affiliate or other entity shall constitute an Institutional Lender whether (1) acting for itself or (2) as trustee, as a general partner of a partnership, in a fiduciary, management or advisory capacity or, in the case of a bank, as agent bank, for any number of lenders, so long as in the case of clause (2) the day-to-day management decisions relating to the loan are either exercised by or recommended by such Institutional Lender and, during the life of the loan, such Institutional Lender shall only be removed from its clause (2). Notwithstanding the first sentence of this paragraph, a real estate investment trust that invests primarily in mortgage loans and investment securities, is taxed as a real estate investment trust and, if unaffiliated, has total assets of at least Six Hundred Fifty Million and 00/100 Dollars ($650,000,000.00) and a net worth of at least One Hundred Million and 00/100 Dollars ($100,000,000.00), shall qualify as an Institutional Lender despite its failure to meet the total asset and net worth tests set forth in such first sentence.

Insurance Escrow Fund: As defined in Section 16.1(m).

Insurance Premiums: As defined in Section 16.2(b).

Interest Period: A period of 30, 60, 90 or 180 days, to the extent deposits with such maturities are available to Lender, commencing on a LIBOR Business Day as selected by Borrower in accordance with Section 5.1(c); provided, however, that (i) any Interest Period that would otherwise end on a day that is not a LIBOR Business Day shall continue to and end on the next succeeding LIBOR Business Day, unless the result would be that such LIBOR Rate Interest Period would be extended to the next succeeding calendar month, in which case such LIBOR Rate Interest Period shall end on the next preceding LIBOR Business Day, and (ii) no Interest Period may extend beyond the Maturity Date. The initial Interest Period shall commence on the date hereof and end on July 31, 2006, and the last Interest Period shall commence on the day following the expiration of the last full calendar month occurring during the term of the Loan and end on the Maturity Date.

Interest Reserve: As defined in Section 11.4.

Internal Revenue Code: The Internal Revenue Code of 1986, as amended from time to time.

Issued Entitlements: Shall be defined as the Special Management Area Use Permit, Shoreline Setback Variance and Planned Development Approval which provide the right to construct the Project.

Kapalua General Store: As defined in the Condominium Documents.

Keep Whole Letters: Those certain "Keep Whole Letters" by each of ML&P, Exclusive Resorts and MII, respectively, each dated the date hereof concerning the funding of their respective Affiliates in order to meet their funding requirements under the Guaranties contemplated hereunder and to enable such Affiliates to comply with their equity obligations under the Limited Liability Operating Agreement of Member.

Land: As such term is defined in the Recitals to this Agreement.

Laws: All federal, state and local laws, statutes, codes, ordinances, orders, rules and regulations.

Leases: All leases, licenses and occupancy agreements (including any licenses for parking spaces or storage spaces) affecting the Project or any part thereof now or hereafter existing.

Lehman: As defined in Section 25.6(b).

Lehman Group: As defined in Section 25.6(b).

Lender: As defined in the opening paragraph of this Agreement.

Lender's Consultant: An independent consulting architect, inspector, and/or engineer designated by Lender in Lender's sole discretion.

Liabilities: As defined in Section 25.6(b).

LIBOR Business Day: A Business Day on which dealings in U.S. dollars are conducted in the London interbank market.

LIBOR Rate: For any Interest Period, the rate (expressed as a percentage per annum and rounded upward, if necessary, to the next nearest 1/1000 of 1%) for deposits in U.S. dollars, for a one-month period, that appears on Telerate Page 3750 (or the successor thereto) as of 11:00 a.m., London time, on the related Determination Date. If such rate does not appear on Telerate Page 3750 as of 11:00 a.m., London time, on such Determination Date, LIBOR shall be the arithmetic mean of the offered rates (expressed as a percentage per annum) for deposits in U.S. dollars for the number of days of the applicable Interest Period that appear on the Reuters Screen Libor Page as of 11:00 a.m., London time, on such Determination Date, if at least two such offered rates so appear. If fewer than two such offered rates appear on the Reuters Screen Libor Page as of 11:00 a.m., London time, on such Determination Date, Lender shall request the principal London office of any four major reference banks in the London interbank market selected by Lender to provide such bank's offered quotation (expressed as a percentage per annum) to prime banks in the London interbank market for deposits in U.S. dollars for the number of days of the applicable Interest Period as of 11:00 a.m., London time, on such Determination Date for the amounts of not less than U.S. $1,000,000.00. If at least two such offered quotations are so provided, LIBOR shall be the arithmetic mean of such quotations. If fewer than two such quotations are so provided, Lender shall request any three major banks in New York City selected by Lender to provide such bank's rate (expressed as a percentage per annum) for loans in U.S. dollars to leading European banks for the number of days of the applicable Interest Period as of approximately 11:00 a.m., New York City time on the applicable Determination Date for amounts of not less than U.S. $1,000,000.00. If at least two such rates are so provided, LIBOR shall be the arithmetic mean of such rates. LIBOR shall be determined by Lender, which determination shall be binding and conclusive absent manifest error.

Lien: shall mean any mortgage, deed of trust, lien, pledge, hypothecation, assignment, security interest, or any other encumbrance, charge or transfer of, on or affecting the Property, or any portion thereof, or Borrower, including, without limitation, any conditional sale or other title

retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and mechanic's, materialmen's and other similar liens and encumbrances against the Project or any portion thereof or Borrower.

Loan: As defined in the Recitals to this Agreement.

Loan Fee: As defined in Section 4.1(f).

Loan Documents: Collectively, this Agreement, the documents and instruments listed in Section 4.2 and all other documents and instruments entered into by Borrower and/or Guarantor from time to time which evidence or secure the Debt.

Loan-to-Value Ratio: The ratio obtained by dividing the outstanding principal balance due on the Loan by the fair market value of the Project, as determined by an Appraisal.

Major Contract: A Construction Contract which provides for a contract price equal to or greater than Two Million Five Hundred Thousand and 00/100 Dollars ($2,500,000.00).

Marketing Agreements: Collectively, (i) Marketing and Sales Services Agreement, dated August 31, 2004, between Borrower and Ritz-Carlton; (ii) Marketing and Sales Services Agreement, dated June 19, 2006, by and between Borrower, Ritz-Carlton and ML&P; and (iii) Marketing and Sales Services Agreement, dated June 19, 2006, by and between Borrower and Kapalua Realty Company, Ltd., a Hawaii corporation.

Material Adverse Change or material adverse change: If, in Lender's reasonable determination, the business prospects, operations or financial condition of a Person or property has changed in a manner which actually impairs the value of Lender's security for the Loan, prevent timely repayment of the Loan or otherwise prevent the applicable Person from timely performing any of its obligations under the Loan Documents.

Maturity Date: The Initial Maturity Date; provided, however, that if Borrower exercises its right to extend the term of the Loan for the Extension Period and, in accordance with the terms of this Agreement, the term of the Loan is so extended, from and after such extension of the term of the Loan "Maturity Date" shall mean the first day of the twelfth ($12^{th}$) month following the Initial Maturity Date (the "First Extension Maturity Date"), the first day of the twelfth ($12^{th}$) month following the First Extension Maturity Date (the "Second Extension Maturity Date"), as the case may be, or such earlier date on which the final payment of principal of the Note becomes due and payable as therein or herein provided, whether at such stated maturity date, by acceleration, or otherwise.

Member: Kapalua Bay Holdings, LLC, a Delaware limited liability company.

MII: Marriot International, Inc., a Delaware corporation.

ML&P: Maui Land & Pineapple Company, Inc., a Hawaii corporation.

ML&P Agreements: Collectively, that certain: (i) Agreement of Purchase and Sale dated as of June 19, 2006, between Borrower and ML&P (the "Spa Agreement") for the purchase by

ML&P of the Spa Land and Spa; (ii) Agreement of Purchase and Sale dated as of June 19, 2006, between Borrower and ML&P (the "Beach Club Agreement") for the purchase by ML&P of the Beach Club CA (as defined in the Condominium Documents); and (iii) Agreement of Purchase and Sale dated as of June 19, 2006, between Borrower and ML&P (the "General Store Agreement") for the purchase by ML&P of the Kapalua General Store (as defined in the Condominium Documents).

ML&P Consent Agreement: That certain Consent to Assignment of Agreements dated as of the date hereof, by ML&P.

Moody's: Moody's Investors Service, Inc.

Mortgage: The Fee and Leasehold Mortgage, Security Agreement and Fixture Filing, dated as of the date hereof, by Borrower in favor of Lender securing the payment of the Debt and constituting a first priority mortgage lien against the Project.

Net Sale Proceeds: In respect of the sale of a Unit, the Gross Sales Price, less Transaction Costs and any portion of the Contract Deposit related to a particular Unit that was utilized in accordance with applicable Laws and the Loan Documents to develop the Unit, as determined by Lender acting reasonably.

Non-Consolidation Opinion: An opinion letter by DLA Piper Rudnick Gray Cary US LLP, dated as of the Effective Date, in form and substance satisfactory to Lender.

Note: a promissory note, dated as of the date hereof, by Borrower to the order of Lender, in the principal amount of Three Hundred Seventy Million and 00/100 Dollars ($370,000,000.00) as may be amended from time to time.

OFAC: Office of Foreign Asset Control of the Department of the Treasury of the United States of America.

Office: Department of Commerce and Consumer Affairs in Hawaii and the Bureau of Conveyances of the State of Hawaii, as the case may be.

Operating Account: A deposit account opened and maintained by Borrower with Depositary Bank, on behalf of Lender, to be utilized in the manner set forth in Section 4.1(g).

Outstanding Entitlements: As defined in Section 16.1(a).

Payment Date: The first (1st) day of each calendar month (or such other day of a calendar month selected by Lender to collect debt service payments under loans which it makes and securitizes) or, if such day is not a Business Day, the immediately preceding Business Day.

PDP: As defined in Section 8.1(i).

Permits: An administrative approval by a government agency that the Project complies with law and Entitlements, which allow the Project to proceed with certain specific scopes of

work; which includes any building permit, excavation permit, foundation permit, environmental permit, utility permit, or other permit required in respect of the Construction or the Project.

Permitted Exceptions: The matters listed on Exhibit C annexed hereto.

Permitted Transfers: The following transfers shall be deemed "Permitted Transfers" and Borrower shall not be required to obtain Lender's prior written consent to such transfers: (i) a transfer made in accordance with the buy-sell provisions of the Member's Limited Liability Company Agreement approved by Lender; (ii) a transfer of direct or indirect interests in Member or in any entity owning a direct or indirect interest in Member; provided the transferee shall be a MII/MLP Affiliate; (iii) a transfer of direct or indirect interests in Member or in any entity owning a direct or indirect interest in Member in connection with a public offering or a "privatization," including, without limitation, interests in ML&P or MII in connection with a publicly traded stock or any public offering of equity ownership interests; and (iv) a one-time transfer of the managing member interest in Borrower to an entity that is a MII/MLP Affiliate or to another Person provided that the other Person has financial capability and creditworthiness comparable to the financial capability and creditworthiness of Member, as reasonably determined by Lender and each Rating Agency (if applicable). For purposes hereof, the term "MII/MPL Affiliate" shall mean an entity in which MII and/or ML&P manages, directly or indirectly, the affairs and decisions of the MII/MLP Affiliate, including, without limitation, the day-to-day and major management and operations decisions.

Person: Any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

Personal Property: All personal property, fixtures and equipment required or beneficial for the operation of the Land or the Improvements.

Plans and Specifications: The sets of design plans and specifications for the Project prepared by the Architect and its consultants that have been reviewed and approved by Lender in connection with making the Initial Advance, and if and when in effect on which the Construction Contract is based. The term also includes (a) any material modification of any of those plans, maps, sketches, diagrams, surveys, drawings, specifications or lists of materials that Lender has previously reviewed and approved if the modification is in writing and is initialed by the Lender and the Borrower or the Architect, and (b) any plans, maps, sketches, diagrams, surveys, drawings, specifications or lists of materials to be utilized for development of the Project that are created subsequent to the Initial Advance that have been reviewed and approved by Lender.

Pledge of Accounts, Security Agreement and Rights to Payment: Means that certain Pledge of Accounts, Security Agreement and Rights to Payment dated as of the date hereof by and between Borrower, as debtor, and Lender.

Policy: As defined in Section 15.2(b).

Pre-Development Costs: The pay off of existing debt which is secured by the Development Land, pre-development Soft Costs, Pre-Development Hard Costs, interest expenses, and closing costs associated with the Loan.

Pre-Development Hard Costs: Hard Costs that Lender agrees may be funded as a Pre-Development Cost and with respect to which Borrower has delivered a fully executed copy of the General Contract and fully executed copies all Construction Contracts required in connection with such Hard Cost.

Prime Rate: The interest rate per annum publicly announced by Citibank, N.A. in New York City as its base rate, as such rate shall change from time to time. If Citibank, N.A. ceases to announce a base rate, "Prime Rate" shall mean the interest rate per annum published in the *Wall Street Journal* from time to time as the "Prime Rate". If more than one "Prime Rate" is published in the *Wall Street Journal* for a day, the average of such "Prime Rates" shall be used, and such average shall be rounded up to the nearest one-eighth of one percent (0.125%). If the *Wall Street Journal* ceases to publish a "Prime Rate", Lender shall select an equivalent publication that publishes a "Prime Rate", and if a "Prime Rate" is no longer generally published or are limited, regulated or administered by a governmental or quasi-governmental body, then Lender shall select a comparable interest rate index.

Prime Rate Margin: In respect of each portion of the Loan bearing interest at an Adjusted Prime Rate, the difference (expressed as the number of basis points) between (a) the Adjusted LIBOR Rate on the date the Adjusted LIBOR Rate was last applicable to such portion of the Loan and (b) the Prime Rate on the date that the Adjusted LIBOR Rate was last applicable to the Loan.

Proceeding: As defined in Section 22.11.

Proceeds: As defined in Section 17.1.

Project: The collective reference to (i) the Land, (ii) the Facilities, (iii) the Improvements and (iv) the Personal Property, excluding such portion of the Project that has been released pursuant to the terms of this Agreement.

Provided Information: As defined in Section 25.1.

Public Report: Condominium Public Report of Kapalua Bay Condominium prepared by Borrower and designated Registration No. 5900.

PUD: As defined in Section 8.1(i).

Qualifying Contract of Sale: A legally enforceable Contract of Sale between Borrower and an unaffiliated third-party purchaser for the sale and purchase of an individual Unit. Each Qualifying Contract of Sale must (i) require the payment upon execution of a Contract Deposit equal to no less than ten percent (10%) of the Purchase Price, (ii) require the payment of a Gross Sales Price which will yield Net Sale Proceeds not less the applicable Release Price, (iii) be expressly subordinate to the lien of the Mortgage, (iv) comply with the requirements of Section 15.1(a) hereof, (v) comply with all Laws and (vi) be subject to no contingencies, so that, other

than by reason of a default by Borrower thereunder, the purchaser thereunder may not rescind the same without forfeiting its Contract Deposit. A Qualifying Contract of Sale may be assigned by such a purchaser to a third-party purchaser who is not an Affiliate of Borrower, Guarantor, Member, ML&P, MII , an MLP/MII Affiliate or otherwise under the Control of any such entity.

Rating Agencies: Each of S&P, Moody's and Fitch or any other nationally recognized statistical rating agency which has been approved by Lender.

Recourse Guaranty: The Guaranty, dated as of the date hereof, by Guarantor in favor of Lender, pursuant to which Guarantor guarantees to Lender the payment of the Recourse Obligations.

Recourse Obligations: As defined in the Note.

Registration Statement: As defined in Section 25.6(b).

Related Parties: As defined in Section 16.3(d).

Release Payment: Any payment required to be made under Section 15.4(h) or Section 15.5(e) (such payments shall collectively be referred to as "Release Payments").

Release Price: In respect of each Unit and each Facility, the amount set forth on Schedule A attached hereto.

Requisition: A requisition, in the form of Exhibit D annexed hereto, for disbursement of a portion of the Loan.

Reserve Percentage: For any Interest Period, that percentage which is specified on the Determination Date by the Board of Governors of the Federal Reserve System (or any successor) or any other governmental authority with jurisdiction over Lender for determining the maximum reserve requirement (including, but not limited to, any marginal reserve requirement) for the holder of the Note with respect to liabilities constituting or including Eurocurrency liabilities in an amount equal to that portion of the Loan affected by such Interest Period and with a maturity equal to such Interest Period.

Residential Condominium: As defined in Section 15.2(a).

Residential Condominium Unit: Each individual condominium unit (including, but not limited to, any appurtenant interest in the common elements) in the Residential Property created by the submission thereof to the provisions of the Condominium Act (all such condominium units shall be referred to collectively as the "Residential Condominium Units").

Residential Property: That portion of the Development Land designated in the Plans and Specifications for the Residential Condominium and the Improvements to be constructed thereon.

Ritz-Carlton: The Ritz-Carlton Development Company, Inc., a Delaware corporation.

Ritz-Carlton Consent Agreement: That certain Consent to Assignment of Agreements dated as of the date hereof, by Ritz-Carlton.

S&P: Standard & Poor's Ratings Group, a division of McGraw-Hill, Inc.

Securities: As defined in Section 25.1.

Securities Act: As defined in Section 25.6(a).

Securitization: As defined in Section 25.1.

Servicer: As defined in Section 19.1.

Servicing Agreement: As defined in Section 19.1.

Servicing Fees: As defined in Section 19.1.

Soft Costs: All costs, other than Hard Costs, to be incurred in respect of the Project prior to completion of Construction, including, without limitation, sales and marketing costs and expenses, architects' fees, engineers' fees, interest on the Note, real estate taxes, insurance premiums and bond fees.

Spa: The improvements and amenities intended to be constructed on the Spa Land.

Spa Land: As such term is defined in the Recitals to this Agreement.

SPC Party: As defined in Section 16.3(o).

Standard Consent: means a consent that Borrower is required to receive from Lender in the Loan Documents but that relate strictly to de minimis matters that are operational in nature and not material to the Project (examples of matters that would be too material for application of a "deemed consent" include among, among other things, matters that would effect: the Budget, completion by the Completion Date, insurance coverage or settlement, eminent domain, the Ground Lease, the Development Documents, environmental matters, zoning or other land use entitlement, or rights of purchasers under Contracts of Sale that could lead to a right of rescission or other action concerning same).

State: The State of Hawaii.

Subordinate Loan: As defined in Section 25.5.

Subcontractor: Any party furnishing labor, services or materials to the Project under a Construction Contract.

Tax Escrow Fund: As defined in Section 16.1(m).

Tax and Insurance Escrow Fund: As defined in Section 16.1(m).

Tax and Insurance Reserve: As defined in Section 11.5.

Title Insurer: First American Title Insurance Company and Fidelity Title Insurance Company.

Title Policy: An ALTA Mortgagee's Loan Title Insurance Policy, issued by Title Insurer, insuring the first lien priority of the Mortgage, subject only to the Permitted Exceptions, and otherwise in form satisfactory to Lender.

Transaction Costs: Out-of-pocket costs payable by Borrower in respect of a sale of a Unit or Fractional Interest, including brokerage fees, sales commissions, royalty fees, any fees payable to Ritz-Carlton (excluding if payable to Ritz-Carlton any items contained in the Construction Budget referenced as "Hospitality Start-Up Recovery"), any fees payable to Kapalua Realty Company, Ltd., membership deposits for the Kapalua Club payable to Kapalua Land Company, Ltd. (all such fees paid to Affiliates as expressly provided in the Affiliate Agreements referenced in Schedule B and as in effect as of the date hereof), and customary closing costs (whether customarily payable by either seller or purchaser) not to exceed in the aggregate two percent of the Gross Sales Price of the Unit or Fractional Interest, and other costs approved by Lender.

Transfer: Any sale, transfer, lease, conveyance, alienation, pledge, assignment, mortgage, encumbrance, hypothecation or other disposition of (i) all or any portion of the Project, (ii) all or any portion of Borrower's right, title and interest (legal or equitable) in and to the Project or (iii) any interest in Borrower or any Controlling interest in any member in Borrower and which is not a Permitted Transfer. Notwithstanding the foregoing, the sale of any Unit or Facility in accordance with the terms of Article XV hereof shall not constitute Transfers hereunder.

Underwriter Group: As defined in Section 25.6(b).

Unit: Any individual condominium unit created at the Project, including, without limitation, Residential Condominium Unit or Fractional Ownership Unit (all such condominium units shall collectively be referred to as the "Units").

## ARTICLE III
## REPRESENTATIONS AND WARRANTIES

### Section 3.1 Representations and Warranties.

To induce Lender to execute this Agreement and perform its obligations hereunder, Borrower hereby represents and warrants to Lender as of the Effective Date (and as of each date of a Requisition and disbursement, with updates of such facts and circumstances that are reasonably necessary to include in such Requisition to render the representations set forth therein true and correct in all material respects) as follows:

(a) Borrower has good and marketable fee simple title to the Development Land free and clear of all liens, encumbrances and charges whatsoever, except for the Permitted Exceptions. Borrower has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the Development Land.

(b) Borrower has good and marketable leasehold title to the Spa Land, pursuant to the Ground Lease, free and clear of all liens, encumbrances and changes whatsoever, except for the Permitted Exceptions. Borrower has the right to mortgage its leasehold estate in the Spa Land. The certified copy of the Ground Lease provided to Lender by Borrower is true, correct and complete in all respects. The Ground Lease is in full force and effect and has not been amended, except as amended by the Ground Lessor Consent, Estoppel Certificate and Amendment. All rents, additional rents and other sums due and payable under the Ground Lease have been paid in full. Neither Borrower, as ground lessee under the Ground Lease, nor ground lessor under the Ground Lease has received or given any notice of a default under the Ground Lease which has not been cured.

(c) Except as otherwise disclosed in writing by Borrower to Lender, no material litigation or proceedings are pending, or, to the best of Borrower's knowledge, threatened, against Borrower, Guarantor, Member or the Project or any portion thereof. There are no pending, or, to Borrower's knowledge, threatened, Environmental Proceedings in respect of the Project or any portion thereof. Neither Borrower nor Member has ever been party to any lawsuit, arbitration, summons or legal proceeding.

(d) Borrower, Guarantor and Member have or will upon request provide Lender and S&P with complete financial statements that reflect a fair and accurate view of their respective financial conditions. Borrower has no contingent liabilities, other than those related to its ownership of the Land and its preparation for the development of the Project. Member has no contingent obligations other than capital funding obligations to Borrower.

(e) Borrower and Member complied and will comply in all material respects with the assumptions made with respect thereto in the Non-Consolidation Opinion;

(f) Borrower is and always has been a duly organized and validly existing limited liability company, duly organized under the laws of the State of Delaware. Member is and always has been a duly organized and validly existing limited liability company, duly organized under the laws of the State of Delaware. Borrower has full power and authority to execute, deliver and perform all Loan Documents to which it is a party, and such execution, delivery and performance have been duly authorized by all requisite action on the part of Borrower.

(g) The Property is not encumbered or subject to any capital leases, liens or judgments, other than, with respect to Borrower, liens for real estate taxes which are not yet due.

(h) To the best knowledge of the Borrower and Member, each of Borrower and Member is in compliance with all Laws applicable to it and has obtained all permits required for it to operate as a limited liability company.

(i) Neither Borrower nor Member is involved in any dispute with any taxing authority. Neither Borrower nor Member is in default of any obligation to pay taxes to any taxing authority.

(j) Borrower has never owned any property, other than the Land, and has never engaged in any business, other than the ownership of the Land, operation of the hotel previously located on the Land, and preparation for the development of the Project. Member has never owned any property, other than its interest in Borrower, and has never engaged in any business, other than business incidental to its ownership of an interest in, and as member of, Borrower.

(k) To the knowledge of Borrower, no consent, approval or authorization of or declaration, registration or filing with any Governmental Authority or nongovernmental Person, including any creditor, partner, or member of Borrower or Guarantor, is required in connection with the execution, delivery and performance of this Agreement or any of the Loan Documents, other than such consents, approvals or authorizations which have been obtained, and the recordation of the Mortgage and the Assignment of Leases and Rents and the filing of UCC financing statements.

(l) The execution, delivery and performance of this Agreement, the execution and payment of the Note and the granting of the Mortgage and other security interests under the other Loan Documents will not constitute a breach or default under any other agreement to which Borrower, Member or any Guarantor is a party or may be bound, or a violation of any law or court order which may affect the Project.

(m) To the knowledge of Borrower, there is no default under this Agreement, any of the other Loan Documents, or any other document or instrument to which Borrower is bound, nor any condition which, after notice or the passage of time or both, would constitute a default or an Event of Default under said documents.

(n) [Intentionally Deleted].

(o) Borrower has no knowledge of and has not received written notice of any pending or threatened, condemnation or eminent domain proceedings in respect of the Land or any part thereof.

(p) As of the date hereof, the amounts set forth in the Construction Budget represent a full and complete itemization by category of all costs, expenses and fees which Borrower reasonably expects to pay or reasonably anticipates becoming obligated to pay to complete the Construction.

(q) To the knowledge of Borrower, neither the construction of the Improvements nor the use of the Project when completed will violate (i) any Laws (including, without limitation, zoning ordinances, building codes, land use and environmental laws and laws relating to the disabled) or (ii) any restrictions, covenants or conditions of record or agreements affecting the Project. Neither the zoning authorizations, approvals or variances nor any other right to construct or to use the Project is to any extent dependent upon or related to any real estate other than the Land. All Governmental Approvals required for the Construction in accordance with the Plans and Specifications have been obtained or will be obtained prior to the commencement of Construction, and, to the knowledge of Borrower, all Laws relating to the Construction and operation of the Improvements have been complied

with. To the extent such Governmental Approvals have been issued or obtained, as the date hereof, Borrower has delivered true, complete and correct copies of same to Lender.

(r) Except for retainage amounts, all costs and expenses incurred for any and all labor, materials, supplies and equipment used in the development of the Project or the construction or demolition of any improvement on the Land have been paid in full as of the date hereof or will be paid in full from proceeds of the Loan following the closing of the Loan.

(s) The Project will have adequate water, gas and electrical supply, storm and sanitary sewerage facilities, other required public utilities, fire and police protection, and means of access between the Project and public streets.

(t) Except as shown on the Survey submitted to Lender in connection with the Loan, no portion of the Project and no building or any other portion of the Improvements is located in an area identified by the Secretary of Housing and Urban Development or any successor thereto as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, as amended, or any successor law, or, if located within any such area, Borrower has obtained and will maintain the insurance prescribed in Section 16.2 hereof.

(u) Borrower has dealt with no broker or finder in connection with this Agreement or the Loan.

(v) All financial statements and other information previously furnished by both Borrower and Guarantor in connection with the Loan are true, complete and correct in all material respects and fairly present the financial conditions of the subjects thereof as of the respective dates thereof and do not fail to state any material fact necessary to make such statements or information not misleading, and no Material Adverse Change with respect to Borrower or Guarantor has occurred since the respective dates of such statements and information. Neither Borrower nor Guarantor has any material liability, contingent or otherwise, not disclosed in such financial statements.

(w) Borrower and Guarantor are solvent, and no bankruptcy, reorganization, insolvency or similar proceeding under any state or federal law with respect to Borrower or Guarantor or any Affiliate thereof has been initiated.

(x) Except as disclosed in the Environmental Report: (i) the Project is free of Hazardous Material and is in compliance with all Laws; (ii) neither Borrower nor, to the best knowledge of Borrower, any other Person, has ever caused or permitted any Hazardous Material to be placed, held, located or disposed of on, under, at or in a manner to affect the Project and the Project has never been used (whether by Borrower or, to the best knowledge of Borrower, by any other Person) for any activities involving, directly or indirectly, the use, generation, treatment, storage, transportation, or disposal of any Hazardous Material; and (iii) there are no underground tanks, vessels, or similar facilities for the storage or containment of Hazardous Materials of any sort on, under or affecting the Project.

(y) The Development Land and Spa Land are each taxed separately without regard to any other property and for all purposes the Development Land and Spa Land may be mortgaged, conveyed and otherwise dealt with as an independent parcel.

(z) There are no Leases, subleases or other arrangements for occupancy of space within the Project, and no person or entity has any possessory interest in, or right to occupy, the Project or any portion thereof, except for the leases and month-to-month rental agreements listed on Schedule C attached hereto and pursuant to Qualifying Contracts of Sale entered into after the date hereof.

(aa) Except pursuant to the ML&P Agreements, the ER Purchase Agreement, and Qualifying Contracts of Sale that will be entered into after the date hereof, neither the Project nor any portion thereof is subject to any purchase option, buy-sell right (except as provided in the limited liability company agreement of Member), right of first refusal, right of first offer or other similar right to acquire same.

(bb) Upon completion of the Construction, no building or other improvement will encroach upon any property line, building line, setback line, side yard line or any recorded or visible easement.

(cc) The Loan is not being made for the purpose of purchasing or carrying "margin stock" within the meaning of Regulation G, T, U or X issued by the Board of Governors of the Federal Reserve System, and Borrower agrees to execute all instruments necessary to comply with all the requirements of Regulation U of the Federal Reserve System.

(dd) The Loan evidenced by the Note is solely for the business purpose of Borrower, and is not for personal, family, household or agricultural purposes.

(ee) No portion of the Project has been or, to the knowledge of Borrower, will be purchased with proceeds of any illegal activity.

(ff) Borrower is not a party in interest to any plan defined or regulated under ERISA, and the assets of Borrower are not "plan assets" of any employee benefit plan covered by ERISA or Section 4975 of the Internal Revenue Code.

(gg) Borrower is not a "foreign person" within the meaning of Section 1445 or 7701 of the Internal Revenue Code.

(hh) Neither Borrower, Member, Guarantor nor any Person holding a direct or indirect interest in Borrower is (or will be) a person with whom Lender is restricted from doing business under OFAC (including Persons named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not intentionally or with knowledge, and shall not intentionally or with knowledge engage in any dealings or transactions or otherwise be associated with such Persons. In addition, Borrower hereby agrees to provide Lender with any additional information that Lender deems

reasonably necessary from time to time in order to ensure compliance with all Laws concerning money laundering and similar activities.

(ii) Borrower has disclosed to Lender all material facts regarding the Project and Borrower and has not failed to disclose any material fact that could cause any representation or warranty made herein to be materially misleading.

(jj) Each of the representations and warranties made by Guarantor herein or in any of the other Loan Documents is true, complete and correct in all material respects.

(kk) Borrower possesses or will possess prior to construction all franchises, patents, copyrights, trademarks, trade names, servicemarks, licenses and permits, and rights in respect of the foregoing, adequate for the conduct of Borrower's businesses substantially as now conducted and to be conducted at the Project without conflict with any rights of others.

(ll) A true and correct organizational chart outlining the percentage of ownership and capital structure of Borrower and the direct and indirect owners of Borrower is attached hereto as Exhibit F.

(mm) Borrower has delivered to Lender true, correct and complete copies of the ER Purchase Agreement and the ML&P Agreements. Each such agreement is in full force and effect and has not been amended. Borrower, Exclusive Resorts and ML&P have not received or given any notice of a default under such agreements which has not been cured. Attached hereto as Schedule B is a complete list of all agreements entered into by, between or among Borrower and any Affiliate of ML&P, Exclusive Resorts, LLC, a Delaware limited liability company, MII and MLP/MII Affiliate. Amendments to the ER Purchase Agreement and any individual purchase agreements entered into pursuant thereto may be amended as permitted by Section 16.1(m).

(nn) Borrower has satisfied the Initial Equity Requirement or the Equity Requirement, as the case may be.

(oo) Borrower represents that to the best of its knowledge, it is in compliance with all of the requirements of state, local and municipal requirements for the construction of the Project, including but not limited to, the requirements of the State of Hawaii Department of Land and Natural Resources (Historical Preservation Division).

Section 3.2 Survival of Representations and Warranties.

Borrower agrees that all of the representations and warranties set forth in Section 3.1 and elsewhere in this Agreement are true as of the Effective Date and, except for matters which have been disclosed by Borrower in writing, will be true at all times thereafter. Each request for a disbursement under the Loan Documents shall constitute a reaffirmation of such representations and warranties, as deemed modified in accordance with the disclosures made and approved as aforesaid, as of the date of such request. It shall be a condition precedent to the making of the Initial Advance and each subsequent disbursement of the Loan that each of said representations and warranties is true and correct as of the date of such requested disbursement, except as aforesaid. In addition, at Lender's request, Borrower shall reaffirm such representations and

warranties in writing prior to each disbursement hereunder; subject to updating same to include those facts and circumstances that are reasonably necessary to include to render the representations true and correct in all material respects. In the event that a representation and/or warranty given to Lender on the Effective Date is updated such that a material adverse fact is disclosed to Lender then Lender shall be permitted to withhold disbursement of an advance under the Loan until the fact or circumstance no longer exists or Lender otherwise waives same.

## ARTICLE IV
## LOAN AND LOAN DOCUMENTS

Section 4.1 Agreement to Borrow and Lend; Lender's Obligation to Disburse.

Subject to the terms, provisions and conditions of this Agreement and the other Loan Documents, Borrower agrees to borrow from Lender and Lender agrees to lend to Borrower the Loan, for the purposes and subject to all of the terms, provisions and conditions contained in this Agreement.

(a) The Loan shall be made to Borrower on the terms and conditions hereinafter set forth. The Loan will bear interest at the rate or rates, and will be repaid, as set forth in this Agreement and in the Note. Borrower shall use the proceeds of the Loan solely for the purposes specified herein.

(b) The aggregate amount of the Loan shall not exceed the lesser of (i) Three Hundred Seventy Million and 00/100 Dollars ($370,000,000.00) and (ii) 61.6% of the total cost of the Project as set forth in the Construction Budget. The Loan is not revolving in nature, and amounts repaid may not be subsequently readvanced.

(c) Provided that Borrower satisfies the conditions to the making of the Loan set forth in Article VIII hereof, Lender shall disburse the Initial Advance to Borrower on the Effective Date. Borrower shall use the Initial Advance to pay Pre-Development Costs encumbering the Land and for such other purposes as the parties shall agree upon.

(d) After the disbursement of the Initial Advance, Lender shall make successive disbursements of the Loan to Borrower, but not more than once per calendar month, provided that (i) there shall then exist no Default or Event of Default, (ii) no Material Adverse Change shall have occurred with respect to Borrower, Guarantor or the Project, (iii) the Loan remains In Balance, (iv) all required Governmental Approvals are in full force and effect as needed for the then-current stage of Construction, and (iv) Borrower satisfies the conditions to the disbursement of the Loan set forth in Articles VIII, IX, X, XIII and XIV hereof, as applicable.

(e) To the extent that Lender may have acquiesced in noncompliance with any requirements precedent to the disbursement of any portion of the Loan, such acquiescence shall not constitute a waiver by Lender, and Lender may at any time after such acquiescence require Borrower to comply with all such requirements.

(f) On or before the Effective Date, Borrower shall pay to Lender a loan fee in the amount of Three Million Seven Hundred Thousand and 00/100 ($3,700,000.00) (the "Loan Fee") payable from the Initial Advance. The Loan Fee has been fully earned by Lender and is non-refundable to Borrower, regardless of when the Loan is repaid or whether any further advances of the Loan are made;

(g) Borrower shall, prior to the Effective Date, open the Operating Account. Borrower authorizes Lender to disburse the Loan proceeds by crediting the Operating Account; provided, however, that Lender shall not be obligated to use such method. Lender may pay interest due on the Note when and as the same shall become due by debiting funds on deposit in the Operating Account and charging the interest line item of the Construction Budget.

Section 4.2 Loan Documents.

On the Effective Date, Borrower shall execute and deliver (and cause any party thereto other than Borrower or Lender to execute and deliver) to Lender the following:

(a) The Note;

(b) The Mortgage;

(c) The Assignment of Leases and Rents;

(d) The Assignment of Contracts;

(e) The Recourse Guaranty;

(f) The Completion Guaranty;

(g) The Environmental Indemnity;

(h) The Assignment of Membership Interests and Security agreement dated the date hereof, made by Member for the benefit of Lender;

(i) The Ritz-Carlton Consent Agreement;

(j) The ML&P Consent Agreement;

(k) The Assignment of Purchase Contracts;

(l) Ground Lessor Consent, Estoppel Certificate and Amendment;

(m) Pledge of Accounts, Security Agreement and Rights to Payment;

(n) Assignment of Contracts, Licenses, Permits, Agreements, Warranties and Approvals;

(o) The Keep Whole Letters;

(p) Such UCC financing statements as Lender determines are advisable or necessary to perfect or notify third parties of the security interests intended to be created by the Loan Documents; and

(q) Such other documents, instruments or certificates as Lender or its counsel may reasonably require, including such documents as Lender in its sole discretion deems necessary or appropriate to effectuate the terms and conditions of this Agreement and the Loan Documents and to comply with Laws.

Section 4.3 Term of the Loan.

(a) All principal, interest and other sums due under the Loan Documents shall be due and payable in full on the Maturity Date.

(b) Borrower may elect to extend the Maturity Date for two (2) additional terms of twelve (12) months each (each, an "Extension Period"; respectively, the "First Extension Period" and the "Second Extension Period"; and collectively, the "Extension Periods"), subject to the satisfaction of each of the following conditions prior to the Initial Maturity Date and First Extension Period Maturity Date, as the case may be:

(i) Borrower furnishes Lender with not less than thirty (30), but not more than ninety (90), days' advance written notice of its election to extend the Maturity Date (the "Extension Notice"), which Extension Notice may be rescinded or withdrawn by Borrower; provided that such rescission notice is deliver to Lender at least five (5) days prior to the Initial Maturity Date and First Extension Period Maturity Date, as the case may be. In the event that Borrower elects to rescind its Extension Notice, Borrower shall pay by all of Lender's actual costs and expenses (including reasonable attorneys' fees and expenses) incurred in connection with such rescission;

(ii) There shall be no uncured Default of which notice has been previously given to Borrower or Event of Default that exists under this Agreement or any of the other Loan Documents either at the time the Extension Notice is given or on the Initial Maturity Date or First Extension Maturity Date, as applicable;

(iii) Borrower shall have established with Lender sufficient reserves for the payment of such Taxes, Insurance Premiums, interest due on the Loan during the Extension Period and other expenses as Lender reasonably anticipates will be incurred by Borrower in excess of any unexpended amounts remaining in Budget Line Items for the payment of such Taxes, Insurance Premiums, interest and other expenses during the Extension Period pursuant to this Agreement;

(iv) Borrower shall have theretofore substantially completed the Improvements in accordance with the Plans and Specifications;

(v) Borrower shall have theretofore obtained the approval of the Office to the Condominium Documents, Residential Condominium and made all filings requisite to the creation of the Residential Condominium;

Borrower shall have delivered a certificate to Lender that (A) there exists no Event of Default at the time the Extension Notice is given and on the Initial Maturity Date or First Extension Period Maturity Date, as the case may be, and (B) the representations and warranties contained herein are true and correct in all material respects at the time the Extension Notice is given and on the Initial Maturity Date or First Extension Period Maturity Date, as the case may be; but subject to update to include those facts and circumstances that are reasonably necessary to include to render the representations true and correct in all material respects. In the event that a representation and warranty given to Lender is updated such that a material adverse fact is disclosed to Lender then Lender shall not be obligated to extend the term of the Loan;

(vi) Guarantor executes and delivers to Lender a reaffirmation of the Recourse Guaranty;

(vii) Borrower shall have delivered to Lender a reaffirmation of each existing Contract of Sale that such Contract of Sale is in full force and effect. The reaffirmations shall be dated not earlier than sixty (60) days prior to the Initial Maturity Date or First Extension Period Maturity Date, as the case may be;

(viii) Borrower causes Title Insurer to deliver to Lender an endorsement to the Title Policy, insuring the priority of the lien of the Mortgage; and

(ix) Borrower shall have paid all costs and expenses actually incurred by Lender in connection with such extension, including, without limitation, underwriting, title and reasonable legal fees and costs.

(c) Borrower shall not be entitled to any further disbursements of Loan proceeds during the Extension Period except to the extent there are unexpended amounts of the Loan remaining in Budget Line Items for the payment of Taxes, Insurance Premiums, interest and other unapplied Budget Line Items.

Section 4.4 Prepayments.

Except as required by Sections 15.4(h), 15.5(e), and 17.1(a) hereof, Borrower may not prepay the Loan at any time prior to the second anniversary of the Effective Date (the "Lockout Date"). Thereafter, except as provided in Section 4.5, Borrower may prepay the Loan in whole only upon not less than thirty (30) days' written notice to Lender. No such prepayment of the Loan shall be permitted unless the same is accompanied by (i) all interest accrued on the Loan through the date of prepayment, (ii) Breakage Costs incurred by Lender as a result of the prepayment, and (iii) reasonable attorneys' fees incurred by Lender as a result of the prepayment. A prepayment notice may be rescinded or withdrawn by Borrower provided that such rescission notice is deliver to Lender at least five (5) days prior to the prepayment date and Borrower shall pay by all of Lender's actual costs and expenses (including reasonable attorneys' fees and expenses) incurred in connection with such rescission.

Section 4.5 Required Principal Payments.

(a) Borrower shall make payments on account of the principal amount of the Loan upon the release of the lien of the Mortgage in respect of a Unit, as provided in Section 15.4(h) hereof; and

(b) On the Maturity Date, Borrower shall pay the entire amount of the Debt.

## ARTICLE V
## INTEREST

Section 5.1 Interest Rate.

(a) Interest shall accrue on the Loan at the Applicable Rate. Subject to the provisions hereinafter set forth, the Applicable Rate shall be the Adjusted LIBOR Rate.

(b) Interest in arrears at the Applicable Rate shall be payable on each Payment Date.

(c) As long as no Event of Default has occurred and is continuing, Borrower may elect from time to time (each, a "LIBOR Rate Election"), but no more frequently than once in any calendar month, to have the Adjusted LIBOR Rate apply to any portion of the principal amount of the Loan (including any disbursement of Loan proceeds about to be made) by giving Lender irrevocable written notice of such election designating the Interest Period for which such LIBOR Rate Election is to apply. Such written notice shall be given to Lender at its New York office by no later than 11:00 A.M. New York time at least three (3) LIBOR Business Days prior to the date on which the applicable Interest Period will commence. If a LIBOR Rate Election is then in effect with respect to any portion of the Loan, then no Interest Period for such portion (or any part thereof) of the Loan may be designated which commences prior to the last day of the then current and applicable Interest Period for such portion of the Loan. In no event may Borrower elect an Interest Period which extends beyond the Maturity Date. Notwithstanding anything to the contrary, (i) the LIBOR Rate Election may be exercised from time to time only as to a minimum amount of $53,000,000, and (ii) in no event shall more than seven (7) Interest Periods be in effect at any time for the Loan. If Borrower does not select an Interest Period at least three (3) LIBOR Business Days prior to the last day of the applicable Interest Period, then the Applicable Rate for such amount following the end of such Interest Period shall be based on a thirty (30) day Interest Period.

(d) All payments (whether of principal or interest) shall be deemed credited to Borrower's account only if received by 3:00 p.m. (New York time) on a Business Day; otherwise, such payment shall be deemed received on the next Business Day.

(e) If Lender determines (which determination shall be conclusive and binding upon Borrower, absent manifest error) (i) that dollar deposits in respect of any portion of the Loan bearing interest at the Adjusted LIBOR Rate are not generally available at such time in the London Interbank market, (ii) that the rate at which such deposits are being offered will not adequately and fairly reflect the cost to Lender of maintaining a LIBOR Rate on such portion of the Loan or of funding the same due to circumstances affecting the London

interbank market generally, (iii) that reasonable means do not exist for ascertaining a LIBOR Rate or (iv) that an Adjusted LIBOR Rate would be in excess of the maximum interest rate which Borrower may by law pay, then, in any such event, Lender shall so notify Borrower and all portions of the Loan bearing interest at the Adjusted LIBOR Rate that are so affected shall, as of the date of such notification with respect to an event described in clauses (ii) or (iv) above, or as of the expiration of the Applicable Rate Interest Period with respect to an event described in clauses (i) or (iii) above, bear interest at the Adjusted Prime Rate until such time as the situations described above are no longer in effect.

(f) If the introduction of (or any change in) any Law, regulation or treaty, or in the interpretation thereof by any Governmental Authority charged with the administration or interpretation thereof, shall make it unlawful for Lender to maintain the Applicable Rate at an Adjusted LIBOR Rate with respect to the Loan or any portion thereof, or to fund the Loan or any portion thereof in dollars in the London interbank market, then (i) Lender shall notify Borrower that Lender is no longer able to maintain the Applicable Rate at an Adjusted LIBOR Rate, (ii) the Applicable Rate shall automatically be converted to the Adjusted Prime Rate and (iii) Borrower shall pay to Lender the amount of Breakage Costs (if any) incurred by Lender in connection with such conversion. Lender shall use reasonable efforts to avoid incurring any Breakage Costs but shall have no liability if any Breakage Costs are incurred. Thereafter, interest shall accrue on the Loan or the applicable portion thereof at the Adjusted Prime Rate until such time as the situation described herein is no longer in effect.

(g) Interest on the outstanding principal balance of the Loan shall be calculated by multiplying (i) the actual number of days elapsed in the period for which the calculation is being made by (ii) a daily rate based on a three hundred sixty (360) day year by (iii) the outstanding principal balance of the Loan.

(h) Borrower shall indemnify Lender and hold Lender harmless from any loss or expense which Lender sustains or incurs as a consequence of (i) any default by Borrower in payment of the principal of or interest on any portion of the Loan bearing interest at an Adjusted LIBOR Rate, including, without limitation, any such loss or expense arising from interest or fees payable by Lender to lenders of funds obtained by it in order to maintain such portion of the Loan at an Adjusted LIBOR Rate, (ii) any prepayment (whether voluntary or mandatory) of any portion of the Loan bearing interest at an Adjusted LIBOR Rate on a day that (A) is not the Payment Date immediately following the last day of an Interest Period with respect thereto or (B) is the Payment Date immediately following the last day of an Interest Period with respect thereto if Borrower did not give the prior written notice of such prepayment required pursuant to the terms of this Agreement, including, without limitation, such loss or expense arising from interest or fees payable by Lender to lenders of funds obtained by it in order to maintain such portion of the Loan at an Adjusted LIBOR Rate and (iii) the conversion (for any reason whatsoever, whether voluntary or involuntary) of the Applicable Rate from an Adjusted LIBOR Rate to the Adjusted Prime Rate with respect to any portion of the Loan on a date other than the Payment Date immediately following the last day of an Interest Period, including, without limitation, such loss or expenses arising from interest or fees payable by Lender to lenders of funds obtained by it in order to maintain such portion of the Loan at an Adjusted LIBOR Rate (the amounts referred to in clauses (i), (ii) and (iii) are herein referred to collectively as the "Breakage Costs"). This provision shall survive payment

of the Note in full and the satisfaction of all other obligations of Borrower under this Agreement and the other Loan Documents. Lender shall make reasonable efforts to avoid incurring any Breakage Costs in connection with the application of the Release Prices in reduction of the Debt.

(i) The outstanding principal balance of the Loan shall bear interest at the Default Rate at any time during which an Event of Default exists.

## ARTICLE VI
## COSTS OF MAINTAINING LOAN

Section 6.1 Increased Costs and Capital Adequacy.

(a) Borrower recognizes that the cost to Lender of maintaining the Loan or any portion thereof may fluctuate and Borrower agrees to pay Lender additional amounts to compensate Lender for any increase in costs incurred in maintaining the Loan or any portion thereof or for the reduction of any amounts received or receivable from Borrower as a result of:

(i) any change after the date hereof in any Law, regulation or treaty, or in the interpretation or administration thereof, or by any domestic or foreign court, (x) changing the basis of taxation of payments under this Agreement to Lender (other than taxes imposed on all or any portion of the overall net income or receipts of Lender), (y) imposing, modifying or applying any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, credit extended by, or any other acquisition of funds for loans by Lender or (z) imposing on Lender, or the London interbank market generally, any other condition affecting the Loan, provided that the result of the foregoing is to increase the cost to Lender of maintaining the Loan or any portion thereof or to reduce the amount of any sum received or receivable from Borrower by Lender under the Loan Documents; or

(ii) the maintenance by Lender of reserves in accordance with reserve requirements promulgated by the Board of Governors of the Federal Reserve System of the United States with respect to "Eurocurrency Liabilities" of a similar term to that of the Loan (without duplication for reserves already accounted for in the calculation of a LIBOR Rate pursuant to the terms hereof).

(b) If the application of any Law, rule, regulation or guideline adopted or arising out of the report of the Basle Committee on Banking Regulations and Supervisory Practices entitled "International Convergence of Capital Measurement and Capital Standards", or the adoption after the date hereof of any other Law, rule, regulation or guideline regarding capital adequacy, or any change after the date hereof in any of the foregoing, or in the interpretation or administration thereof by any domestic or foreign Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by Lender with any request or directive regarding capital adequacy (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, has the effect of reducing the rate of return on Lender's capital to a level below that which Lender would have achieved but for such application, adoption, change or compliance

(taking into consideration the policies of Lender with respect to capital adequacy), then, from time to time Borrower shall pay to Lender such additional amounts as will compensate Lender for such reduction with respect to any portion of the Loan outstanding.

(c) Any amount payable by Borrower under subsection (a) or subsection (b) of this Section 6.1 shall be paid within five (5) days of receipt by Borrower of a certificate signed by an authorized officer of Lender setting forth the amount due and the basis for the determination of such amount, which statement shall be conclusive and binding upon Borrower, absent manifest error.

## ARTICLE VII
## LOAN EXPENSE AND ADVANCES

Section 7.1 Loan and Administration Expenses.

Borrower shall reimburse Lender, from time to time upon five (5) days' demand therefor, for reasonable, out-of-pocket expenses incurred by Lender in connection with the administration of the Loan (excluding Lender's general overhead expenses), including all amounts payable pursuant to Sections 7.2 and 7.3 hereof and any and all other fees owing to Lender pursuant to the Loan Documents, and also including, without limitation, all recording, filing and registration fees and charges, mortgage or documentary taxes, insurance premiums, title insurance premiums and other charges of the Title Insurer, survey fees and charges, cost of certified copies of instruments, cost of premiums on surety company bonds and the Title Policy, charges of Title Insurer or other escrowee for administering disbursements, all fees and disbursements of Lender's Consultant, all fees and disbursements of servicer, appraisal fees, syndication fees, insurance consultant's fees, environmental consultant's fees, travel related expenses and all costs and expenses incurred by Lender or Servicer in connection with the determination of whether or not Borrower has performed the obligations undertaken by Borrower hereunder or has satisfied any conditions precedent to the obligations of Lender hereunder. Further, if any Default or Event of Default occurs or if the Loan is not paid in full when and as due, Borrower shall pay to Lender upon five (5) days' demand therefor, all costs and expenses of Lender (including, without limitation, reasonable attorneys' fees and court costs) incurred in attempting to enforce payment of the Loan or to realize upon the security therefor. Borrower agrees to pay Lender's fees and disbursements incurred in connection with title updates and title endorsements ordered by the Lender (a) in connection with each disbursement of Loan proceeds, (b) to be ordered every six (6) months if construction ceases and (c) after completion of construction every six (6) months thereafter throughout the term of the Loan, or more often if an Event of Default has occurred or if required by examiners.

Section 7.2 Brokerage Fees.

Borrower shall pay all brokerage, finder or similar fees or commissions payable in connection with the transactions contemplated hereby and shall indemnify and hold Lender harmless against all claims, liabilities, costs and expenses (including attorneys' fees and expenses) incurred in relation to any claim by any broker, finder or similar person claiming that they represented Borrower; provided however, that as an inducement to Borrower to make the

foregoing undertaking, Lender represents and warrants to Borrower that Lender has not dealt with any broker, finder or similar person in connection with this Loan.

Section 7.3 Right of Lender to Make Advances to Cure Borrower's Defaults.

If Borrower fails to perform any of Borrower's covenants, agreements or obligations contained in this Agreement or any of the other Loan Documents (after the expiration of applicable grace periods, except in the event of an emergency or other exigent circumstances), Lender may (but shall not be required to), after written notice to Borrower and the expiration of any applicable cure periods, perform any of such covenants, agreements and obligations, and any amounts expended by Lender in so doing shall be added to the Debt and bear interest at the Default Rate.

## ARTICLE VIII
## CONDITIONS PRECEDENT
## TO THE MAKING OF THE LOAN

Section 8.1 Non-Construction Conditions Precedent.

Lender's obligation to fund the Initial Advance and thereafter to make any further disbursements of the Loan is conditioned upon Borrower's delivery, performance and satisfaction of the following conditions precedent in form and substance satisfactory to Lender.

(a) Borrower shall have furnished duly executed copies of the documents listed in Section 4.2;

(b) There shall exist no Default of which Borrower has received notice from Lender or Event of Default;

(c) Borrower has paid the Loan Fee to Lender;

(d) Borrower shall have satisfied the Initial Equity Requirement;

(e) Borrower shall have furnished Lender with evidence (also satisfactory to the Title Insurer) that all pre-closing development costs on the Project have been paid or will be paid as of Closing;

(f) Borrower shall have furnished Lender with evidence that all taxes then due and payable, including without limitation, real estate taxes, with respect to the Property have been paid or will be paid as of Closing;

(g) Borrower shall have furnished to Lender the Title Policy, together with legible copies of all title exception documents cited in the Title Policy and all other legal documents affecting the Project or the use thereof;

(h) Borrower shall have furnished to Lender an ALTA/ACSM Land Title Survey of the Project and any and all existing plats regarding the Project;

(i) Borrower shall have furnished Lender with evidence of zoning or a copy of the final approved Planned Unit Development ("PUD") map, preliminary development plan ("PDP") or other development plan for the Project permitting the construction of the Improvements and containing all use or building conditions or restrictions affecting the Project and approved by the appropriate Governmental Authority;

(j) Borrower shall have furnished to Lender certified copies of the Issued Entitlements and all other Governmental Approvals and Permits then required for the Project;

(k) Borrower shall have furnished Lender with policies or binders evidencing that Borrower has obtained and maintains insurance coverage in respect of Borrower and the Project in accordance with the provisions of Section 16.2 below, and paid all Insurance Premiums in respect thereof;

(l) All of the representations of Borrower and Guarantor set forth in the Loan Documents shall be true and correct in all material respects;

(m) Borrower shall have furnished Lender with an opinion(s) from counsel to Borrower, Member and Guarantor as to due formation, valid existence and good standing of Borrower, Member and Guarantor, authorization, due execution and delivery of the Loan Documents, enforceability and perfection of the Loan Documents, and security interests, usury, zoning and land use entitlements, marketing and sale of Units in accordance with applicable law, and such other matters as Lender may reasonably request.

(n) Borrower shall have furnished Lender with the Non-Consolidation Opinion;

(o) Borrower shall have furnished Lender with an zoning report from PBR Hawaii as to violations and zoning, and use of property and other non-zoning land use permits.

(p) Borrower shall have furnished Lender with current bankruptcy, federal tax lien, litigation, judgment and UCC searches in respect of Borrower, Member and Guarantor;

(q) Borrower shall have furnished Lender with current annual financial statements of Member and Guarantor, each in form satisfactory to Lender and each certified as being true, complete and correct by the party to which it relates;

(r) Borrower shall have furnished Lender with proof satisfactory to Lender of its authority, formation and good standing in the state of its formation and qualification in the State of Hawaii;

(s) Borrower shall have furnished Lender with (i) certified copies of all action taken by Borrower, Member and any other principal of Borrower to authorize the execution, delivery and performance, in accordance with its terms, of this Agreement, the Mortgage, the Note, each of the other Loan Documents and any other documents required or contemplated hereunder or thereunder to which it is a party; (ii) a certificate of incumbency with respect to the representatives of each Borrower, Member and any other principal of Borrower authorized and directed to execute and deliver each of the Loan Documents to which it is a party; (iii)

certificates of good standing for Borrower, Member and any other principal of Borrower from the appropriate authority in their jurisdictions of formation, and (iv) certified copies of all organizational documents, including, without limitation, formation and corporate governance documents, for Borrower, Member and any other principal of Borrower;

(t) Guarantor shall have furnished Lender with (i) certified copies of all action taken by Guarantor to authorize the execution, delivery and performance, in accordance with its terms, of the Recourse Guaranty, the Completion Guaranty, the Environmental Indemnity and any other documents required or contemplated hereunder or thereunder to which it is a party (the "Guarantor Documents"); (ii) a certificate of incumbency with respect to the representatives of each Guarantor authorized and directed to execute and deliver each of the Guarantor Documents to which it is a party; and (iii) certificates of good standing for Guarantor from the appropriate authority in their jurisdictions of formation;

(u) Borrower shall have furnished Lender with evidence of the availability to the Improvements of all utilities utilized or to be utilized at the Project in compliance with the requirements of the Plans and Specifications. Such evidence may be in the form of letters from utility companies or local authorities, that (a) telephone service, cable, telecommunications, electric power, natural gas, storm sewer, sanitary sewer and water facilities are available to the Project; (b) such utilities are adequate to serve the Project and exist at the boundary of the Project; and (c) no conditions exist to affect Borrower's right to connect into and have unlimited use of such utilities except for the payment of a normal connection charge and except for the payment of subsequent charges for such services to the utility supplier;

(v) Lender shall have reviewed and approved the Appraisal;

(w) Lender shall have reviewed and approved the Environmental Report;

(x) Borrower shall have furnished Lender with copies of all engineering reports, land planning maps, or plats, soils tests, environmental reports, surveys prepared for the orderly planning of the Improvements, marketing materials and brochures, building permits or licenses, utility taps or supply agreements, governmental or private agreements, indemnities, waivers, rights to reimbursements, abatements or benefits of whatsoever nature regarding the Property, to the extent assignable, and other documents prepared and existing for the construction of the Improvements, available on the Effective Date, with subsequent submissions to Lender of reports and studies not required to be available on the Effective Date, if requested by Lender (collectively, the "Development Items").

(y) Borrower shall have furnished Lender with copies of any agreements, existing or proposed, with any Governmental Authority, in the nature of a subdivider's agreement, public improvements agreement, or annexation agreement affecting the development of the Project or requiring cash equivalent collateral, or imposing building restrictions in lieu of collateral, as a condition to development of the Project (collectively, the "Development Documents").

(z) Borrower shall have furnished Lender with evidence that any obligations regarding development in connection with the Project arising under the Development Documents or agreements with providers of utility services or governmental regulations which could become a lien against the Property or a restriction against the issuance of building permits or certificates of occupancy for the Improvements (collectively, the "Development Obligations") have been or will be satisfied or performance of the Development Obligations has been or will be secured by adequate financial security such as bonds, letters of credit or certificates of deposit pursuant to the agreements creating the Development Obligations or the requirements of the utility provider.

(aa) Borrower shall have furnished to Lender a fully executed Ground Lessor Consent, Estoppel Certificate and Amendment;

(bb) Borrower shall have furnished to Lender fully executed copies of the Marketing Agreements;

(cc) Borrower shall have furnished Lender with copies of the Condominium Documents and Fractional Ownership Documents;

(dd) Borrower shall have furnished Lender with fully executed copies of all Contracts of Sale existing as of the Effective Date;

(ee) Borrower shall have furnished Lender with a fully-executed copy of that certain ER Residences Agreement (the "ER Purchase Agreement") dated August 31, 2004, by and between Borrower and Exclusive Resorts, as amended by that certain First Amendment dated June 28, 2006, for the purchase of 28 Residential Condominium Units by Exclusive Resorts. The actual purchase of each such Residential Condominium Unit shall be effected by the due execution of a Contract of Sale by Borrower and Exclusive Resorts (or its permitted assigns);

(ff) Borrower shall have furnished Lender with fully-executed copies of the ML&P Agreements;

(gg) Lender shall have received evidence satisfactory to it that the Operating Account has been established.

(hh) The Lender shall have received a true and correct copy of the pay off letter from the holder or any existing debt encumbering the Project, and the terms thereof shall be reasonably satisfactory to the Lender;

(ii) Borrower shall have paid, or will pay at closing, all brokerage fees or commissions arising from the making of the Loan, if any, its own expenses and fees incurred in connection with the Loan, and all of Lender's fees and charges incurred in connection with the making of the Loan, including but not limited to attorneys' fees and charges, title fees and charges, construction, environmental and engineering consultant's fees and charges, appraisal costs, surveys, recording and filing fees and taxes; and

(jj) All documents and legal matters in connection with the transactions contemplated by this Agreement shall be satisfactory in form and substance to the Lender.

## ARTICLE IX
## CONDITIONS PRECEDENT FOR SUBSEQUENT ADVANCES UNDER THE LOAN

Section 9.1 Pre-Development Conditions Precedent.

Subject to Section 9.2, Lender's obligation to disburse loan proceeds for Pre-Development Costs up to a maximum amount of Eighty-Five Million and 00/100 Dollars ($85,000,000.00), which amount shall be inclusive of the Initial Advance, is conditioned upon Borrower's delivery, performance and satisfaction of the following conditions:

(a) Borrower has made its request for disbursement and has satisfied all of the conditions in this Section 9.1;

(b) Borrower delivers to Lender a Requisition, duly executed by the Authorized Representative;

(c) Borrower delivers to Lender such invoices, contracts or other information as Lender may reasonably require to evidence that Borrower has incurred all costs covered by the request for disbursement;

(d) Borrower delivers to Lender an executed, acknowledged lien waiver from each Subcontractor in respect of all Hard Costs covered by the prior disbursement of the Loan;

(e) Borrower delivers to Lender paid receipts or other proof of payment of all Soft Costs covered by the prior disbursement of the Loan;

(f) Borrower delivers to Lender an endorsement to the Title Policy though the date of the disbursement, confirming the first priority lien position of the Mortgage, subject only to the Permitted Exceptions;

(g) Borrower delivers to Lender such other instruments, documents and information as Lender or Title Insurer may reasonably request;

(h) Consent from the Architect to the collateral assignment by Borrower to Lender of the Architect's Agreement and the Plans and Specifications in respect of the Project;

(i) Borrower shall have made or shall simultaneously make an equity contribution that complies with the Equity Requirement conditions, for payment of expenses included in the Construction Budget in an amount equal to forty percent (40%) of the total Hard Costs and Soft Costs incurred through the date of the requested disbursement; and

(j) Borrower shall have utilized all Available Contract Deposits.

Each disbursement shall be made approximately ten (10) days after Borrower's satisfaction of all of the foregoing conditions to the making of such disbursement, except for the Initial Advance which shall be made at Closing.

Section 9.2 Building Permit. Notwithstanding Section 9.1 or any other provision to the contrary in this Agreement, including, without limitation, Article X, Lender shall not be obligated to make any further disbursements of Loan proceeds subsequent to the Initial Advance unless and until the building permits for the Residential Condominium Units and Fractional Ownership Units have been issued. Upon issuance of the building permit for the Residential Condominium Units and Fractional Ownership Units, Lender shall make additional disbursements to Borrower of Loan proceeds subject to the satisfaction of the other conditions set forth in this Agreement; provided, however, that notwithstanding Section 9.1(i) and Section 13.1(l), Borrower shall not be obligated to make any additional equity contributions until such time as Lender has determined that a disbursement by Lender would otherwise result in the ratio of the amount of equity contributed to the Project by Borrower (excluding by application of Contract Deposits) for payment of Hard Costs and Soft Costs provided in the Construction Budget to the total Loan proceeds advanced by Lender being less than 40% of equity to 60% of Loan proceeds.

Section 9.3 Pre-Sales Requirement. Lender's obligation to disburse loan proceeds in excess of $85,000,000 shall be conditioned on Lender's receipt of executed, enforceable Qualifying Contracts of Sale with an aggregate sales price equal to or exceeding Two Hundred Eighty-Five Million and 00/100 Dollars ($285,000,000.00) (including those Units to be sold to Exclusive Resorts pursuant to the ER Purchase Agreement, which is deemed to be a Qualifying Contract of Sale for this purpose).

## ARTICLE X
## CONSTRUCTION CONDITIONS PRECEDENT FOR SUBSEQUENT ADVANCES UNDER THE LOAN

Section 10.1 Required Construction Documents.

Borrower shall obtain prior to the Construction Commencement Date, and as a condition for any advances to be made subsequent to the Construction Commencement Date, Lender's approval of each of the following items:

(a) Confirmation that Issued Entitlements are still in place and in effect. Confirmation shall amount to an affidavit by Borrower that no action has been undertaken which jeopardizes Entitlements;

(b) Fully executed copies of: (i) the General Contract (except that the General Contract pertaining to the Spa shall not be required until August 1, 2007) ; (ii) those Construction Contracts then required to comply with the Construction Contracts Effectiveness Schedule or with respect to which any Construction is then being performed; (iii) the Architect's Agreement and (iv) all contracts with Engineers;

(c) A current annual financial statement of General Contractor, satisfactory to Lender and certified as being true, complete and correct by General Contractor;

(d) A schedule of values, including a trade payment breakdown, setting forth a description of all Construction Contracts;

(e) All Permits then required for that portion of the Construction for which funds will be disbursed; as funds are requested for additional portions of the Construction Borrower shall provide Permits for same;

(f) The Plans and Specifications;

(g) Fully paid Bonds in favor of Lender, guaranteeing the obligations of General Contractor under the General Contract and the Subcontractors under the Major Contracts;

(h) A report from Lender's Consultant which contains an analysis of the Plans and Specifications, the Construction Budget, the Construction Schedule, the General Contract and all Construction Contracts. Such report shall contain (i) an analysis demonstrating the adequacy of the Construction Budget to complete the Project and (ii) a confirmation that the Construction Schedule is realistic. Lender's Consultant shall monitor construction of the Project and shall visit the Project at least one (1) time in connection with each disbursement request, and shall certify as to amount of construction costs for all requested advances;

(i) The Architect's Certificate, executed by the Architect;

(j) Consents from the General Contractor, the Architect, and other Persons reasonably specified by Lender to the collateral assignment by Borrower to Lender of construction documents, including, without limitation, the General Contract, the Architect's Agreement, contracts with Engineers, Plans and Specifications, all permits, licenses and approvals (to the extent assignable under applicable law) in respect of the Project, any other Development Item and any Development Document;

(k) Borrower's certification that all Contract Deposits utilized to date for Hard Costs and Soft Costs constitute Available Contract Deposits and have been utilized or will be utilized in conjunction with the requested advance;

(l) [Intentionally Deleted];

(m) [Intentionally Deleted];

(n) An engineer's report prepared and certified by a qualified engineer acceptable to Lender, showing locations and results of all borings, together with recommendations for the design of the foundations of the Improvements and certifying in a manner satisfactory to Lender the adequacy of the existing soils condition, indicating that the Plans and Specifications for construction of the Improvements are satisfactory in view of the condition of the soil;

(o) Copies of marketing brochures or materials regarding the Project;

(p) An opinion in form and substance reasonably satisfactory to Lender from Borrower's independent counsel that the Fractional Ownership Documents recorded in the Office with respect to the Fractional Ownership Units are sufficient to subject the Fractional Ownership Units to a fractional ownership regime in compliance with the laws of the State of Hawaii ("Fractional Ownership Opinion"), which Fractional Ownership Opinion shall be delivered prior to the initial partial release of any Unit; and

(q) The form of Purchase Contract to be used by Borrower in the sale of the Fractional Ownership Units and the Residential Condominium Units; and

(r) Such other materials and documents as Lender may reasonably require with respect to the Construction.

## ARTICLE XI
## CONSTRUCTION BUDGET; RESERVES; OPERATING BUDGET

Section 11.1 Construction Budget.

Disbursements of the Loan shall be governed by the Construction Budget. The Construction Budget shall include, in addition to the Budget Line Items described in Section 11.2 below, the Contingency Reserve and the Interest Reserve. Borrower shall not modify the Construction Budget without first obtaining Lender's prior written consent thereto. Borrower may reallocate funds among Budget Line Items in the Construction Budget as are reasonably necessary for the Construction of the Improvements in Borrower's judgment, provided that (a) funds may only be moved to or from any particular Budget Line Item once per Budget Line Item without Lender's prior consent and (b) any individual Budget Line Item shall not be reduced by more than five percent (5%). Borrower shall not otherwise modify the Construction Budget without first obtaining Lender's prior written consent thereto

Section 11.2 Budget Line Items.

(a) The Construction Budget shall include as line items ("Budget Line Items") all Hard Costs and Soft Costs. All Loan proceeds disbursed by Lender shall be used only for the Budget Line Items for which such proceeds were disbursed.

(b) Lender shall not be obligated to disburse any amount for any category of costs set forth as a Budget Line Item which is greater than the amount set forth for such category in the applicable Budget Line Item. Borrower shall pay as they become due all amounts set forth in the Construction Budget with respect to costs to be paid for by Borrower. If any Budget Line Item shall be (i) completed without the expenditure of all amounts in the Construction Budget allocated to such Budget Line Item or (ii) with regard to unfinished Budget Line Items, to the extent Borrower can demonstrate to the satisfaction of Lender that savings in the particular Budget Line Item exist that do not result from either the Interest Reserve or the Contingency Reserve and such potential savings do not result in an increase to

the Construction Budget, then Borrower may reallocate savings, provided that: (x) Borrower shall have submitted to Lender a revised Construction Budget reflecting the reallocation of Budget Line Items; and (y) no Budget Line Item for Hard Costs shall be reallocated to pay any Budget Line Item for Soft Costs until Borrower has paid all Hard Costs and completed the Improvements.

Section 11.3 Contingency Reserve.

The Construction Budget shall contain a Budget Line Item for additional, unforeseen costs and expenses (the "Contingency Reserve"). Borrower may from time to time request that Lender permit the reallocation of portions of the Contingency Reserve to pay costs of the Project for which amounts remaining in any Budget Line Item are insufficient. Borrower agrees that the decision with respect to utilizing portions of the Contingency Reserve in order to keep the Loan "In Balance" shall be made by Lender in its reasonable discretion, and that Lender may require Borrower to make a Deficiency Deposit even if funds remain in the Contingency Reserve. Notwithstanding the foregoing, Lender hereby agrees that a proportion of the Contingency Reserve equal to the completed percentage of the Project, up to 50% of sums then in the Contingency Reserve (and not utilized, reallocated or used to keep the Loan In Balance), may be reallocated to pay costs of the Project without Lender's consent, provided that Borrower delivers to Lender a certificate from the Architect confirming the completed percentage of the Project prior to any such reallocation.

Section 11.4 Interest Reserve.

The Construction Budget shall contain a Budget Line Item for payment of interest due in respect of the Loan (the "Interest Reserve"). Borrower hereby authorizes Lender from time to time, for the mutual convenience of Lender and Borrower, to disburse Loan proceeds to pay all accrued interest on the Note, to the extent then due and payable, regardless of whether Borrower shall have specifically requested disbursement of such amount. Any such disbursement, if made, shall be added to the outstanding principal balance of the Note and shall, when disbursed, bear interest at the Applicable Rate. The authorization hereby granted, however, shall not obligate Lender to make disbursements of the Loan for interest payments, unless Borrower requests, and qualifies for, disbursement of the portion of the Construction Budget allocated therefor.

Section 11.5 Tax and Insurance Reserve.

The Construction Budget shall contain Budget Line Items for payment of real estate taxes and Insurance Premiums (the "Tax and Insurance Reserve"). Borrower hereby authorizes Lender from time to time, for the mutual convenience of Lender and Borrower, to disburse Loan proceeds to pay real estate taxes and Insurance Premiums, to the extent then due and payable, regardless of whether Borrower shall have specifically requested disbursement of such amount. Any such disbursement, if made, shall be added to the outstanding principal balance of the Note and shall, when disbursed, bear interest at the Applicable Rate. The authorization hereby granted, however, shall not obligate Lender to make disbursements of the Loan for real estate taxes and Insurance Premiums, unless Borrower requests, and qualifies for, disbursement of the portion of the Construction Budget allocated therefor.

Section 11.6 [Intentionally Deleted].

Section 11.7 [Intentionally Deleted].

Section 11.8 [Intentionally Deleted].

## ARTICLE XII
## SUFFICIENCY OF LOAN

Section 12.1 Loan In Balance.

Anything contained in this Agreement to the contrary notwithstanding, the Loan shall at all times be "In Balance", on a Budget Line Item basis and in the aggregate. A Budget Line Item shall be deemed to be "In Balance" only if Lender, in its reasonable discretion, determines that the amount of such Budget Line Item is sufficient for its intended purpose. The Loan shall be deemed to be "In Balance" in the aggregate only when the total of the undisbursed portion of the Loan plus the undisbursed balance of Available Contract Deposits, less the Contingency Reserve (such total being the "Available Funds"), equals or exceeds the aggregate of: (i) the costs required to complete the Construction in accordance with the Plans and Specifications and the Construction Budget; (ii) the amounts to be paid as retainages to persons who have supplied labor or materials to the Project; (iii) the amount required to pay interest on the Loan through the Maturity Date; (iv) amounts required to be refunded or otherwise paid to any contract vendee under a Contract of Sale; and (v) all other Hard Costs and Soft Costs not yet paid for in connection with the Project, as such costs and amounts described in clauses (i) through (v) above may be estimated and/or approved in writing by Lender from time to time (such costs and amounts in (i) through (v) being the "Outstanding Loan Costs"). If, in Lender's reasonable determination, either any Budget Line Item is insufficient for such purpose or the aggregate amount of the Available Funds is less than Outstanding Loan Costs, then Borrower shall, within fifteen (15) days after written request by Lender, (with simultaneous copies of such written request sent to Guarantors), deposit the deficiency with Lender (a "Deficiency Deposit"). The Deficiency Deposit shall first be exhausted before any further disbursement of the applicable Loan proceeds shall be made. Any Deficiency Deposit remaining after a particular Budget Line Item or the Loan, as the case may be, is back "In Balance" shall be returned to Borrower. Lender shall not be obligated to make any Loan disbursements if and for as long as the Loan is not "In Balance". Notwithstanding anything contained herein to the contrary, Lender will forbear from requiring collection of any Deficiency Deposit until the earlier of (a) February 11, 2007 or (b) the date the Public Report is filed and one or more Contract Deposits become Available Contract Deposits.

## ARTICLE XIII
## CONSTRUCTION PAYOUT REQUIREMENTS

Section 13.1 Documents to be Furnished for Each Disbursement.

As a condition precedent to each disbursement of Loan proceeds (other than the Initial Advance and disbursements for Pre-Development Costs (but excluding Pre-Development Hard